

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. : 5599 of 2023  
Date of filing : 06.12.2023  
Date of decision : 23.05.2025

1. Nilesh Aggarwal

**R/o:** A-5/B, SFS Flat No.279, Gate No.8,  
Paschim Vihar, Delhi-110063.

2. Kuldeep

**R/o:** H.No. 41, Kirri Suleman Nagar,  
Nangloi, Delhi-110086

**Complainants**

**Versus**

M/s Shine Buildcon Pvt. Ltd.

**Address:** H-334, Ground Floor,  
New Rajender Nagar, New Delhi-110001.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Ms. Priyanka Agarwal  
Shri Nishant Jain

**Counsel for the complainant**  
**Counsel for the respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the



Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"70 Grandwalk", Sector 70, Gurugram, Haryana
2.	Project area	2.893 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	34 of 2012 dated 15.04.2012 Valid up to 14.04.2020
5.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 Valid up to 30.06.2022
6.	Allotment letter dated	20.01.2015 [As admitted by the respondent on page 6 of reply]
7.	Unit no.	B-025A, Ground Floor [Page 31 of complaint]
8.	Unit area admeasuring	326 Sq. Ft. (Super Area) [Page 31 of complaint]
9.	Date of execution of BBA	16.06.2015 [Page 29 of complaint]

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10.	Possession clause	<p><b>Clause 13. POSSESSION AND HOLDING CHARGES</b></p> <p><i>"(ii) Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee <b>within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later.</b> The Allottee further agrees and understands that the Company <b>shall additionally be entitled to a period of 6 (six month) ("Grace period")</b>, after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."</i></p> <p><b>(Emphasis supplied)</b></p> <p>[Page 52 of complaint]</p>
11.	Due date of possession	<p>16.06.2019</p> <p>[Calculated as 42 months from the date of execution of BBA + Grace period of 6 months is included being unqualified and unconditional]</p>
12.	Basic Sale Price	<p>Rs. 45,92,525/-</p>

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		[As per BBA at page 74 of complaint]
13.	Amount paid by the complainants	Rs. 30,89,463/- [As per statement at page 106 of complaint and admitted by the respondent]
14.	Occupation certificate	10.10.2023 [Page 30 of reply]
15.	Offer of possession	15.10.2023 [Page 104 of complaint]

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:

- i. That respondent launched a commercial project in the name & style of "70 Grandwalk" situated at Sector-70, Gurugram, and promoted its projects extensively through advertisements and the same was registered with the Haryana Real Estate Authority vide Registration no. 28 of 2017 dated 28.07.2017. Complainants were allured by an enamoured advertisement of the respondent and believing the plain words of respondent in utter good faith, the complainants booked a shop in the said project vide booking application dated 06.10.2014.
- ii. That the respondent to dupe the complainants in their nefarious net even executed a Space Buyer Agreement in the name of Mr. Nilesh Aggarwal, Mr. Kuldeep & Mr. Sunil Yadav. The respondent devised a plan under which the Respondent extracted money from Allottees, then didn't even bother to care about the development of



the project on time. That it has been 9 years but the Builder is yet to handover the possession. So, project is extremely delayed.

- iii. That as per Clause 13(ii) of the BBA, the Respondent was liable to offer the possession of the said unit within 42 months from the date of signing of BBA. However, the respondent failed to offer the possession of the unit in question on the due date i.e., 16.12.2018 and kept on raising demands and extracted an enormous amount of money from the complainants. Till date, a sum of Rs.30,89,463/- has been paid by the complainants in time bound manner
- iv. That after a delay of almost 5 years, the respondent offered the possession of the subject unit on 15.10.2023. The complainants were shocked and surprised to see that the respondent has again raised a huge demand in the garb of various illegal charges and offered meagre pennies in the name of delayed possession charges for the last 5 years. The respondent has illegally imposed charges which were not the part of the original Payment Plan such as Glass door Charges of Rs. 41,000/-, Specifications improvement charges of Rs. 32,600/- on the Complainants. The Respondent has also arbitrarily charged EEC/FFC & Power Backup Charges to the tune of Rs. 48,900/- each, without giving any break-up or providing any third-party audit report which extremely illegal and unilateral. Furthermore, the Respondent has charges Interest Free Maintenance Security Deposit (IFMSD) to the tune of Rs. 32,600/- this is a security amount and the builder gets interest on the said amount but has not passed on the same to the allottees, which is again illegal, arbitrary and unilateral.

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- v. That complainants have visited the Respondent's office several times but to no avail. Even during year 2014 to 2023 (9 year), the Builder/Respondent has not yet completed the Project. That as of now, the Registration License of the Respondent stands expired and the project status is reflected as "Lapsed Project" on the website of Haryana Real Estate Authority. That the complainants tried to approach the builder for knowing the reason for inordinate delay but builder didn't reply. Respondent didn't disclose the date of possession but assured the complainants that delay penalty shall be paid at the time of offer of possession.
- vi. The Respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the Respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- vii. During the period, the Complainants went to the office of respondents several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but were not allowed to enter the site and even there was no proper approached road. The Complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- viii. The Complainants contacted the respondents on several occasions and were regularly in touch with the Respondents. The Respondents was never able to give any satisfactory response

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regarding the status of the possession and were never definite about the delivery of the possession.

- ix. That the clauses of the BBA is one sided heavily loaded in favour of the Respondent. Needless to mention that such Agreements have been held to be unconstitutional being one-sided and unfair and hence invalid by the Honourable Supreme Court in **Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan**, (2019) 5 SCC 725.
- x. That the Buyer's Agreement executed inter se parties stipulates payment of compensation on account of delay in handing over possession of the flat in the project. the Respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15%-24% whereas the compensation for delay stipulated for the buyers is merely Rs. 5/- per sq. ft. It is respectfully submitted that the said amount of compensation is atrociously low and unfair. No compensation has been provided to the Complainants till date. Further, such clauses of BBA are totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case titled as **Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015)** as also in the judgment of Hon'ble Supreme Court in **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)**.
- xi. That due to the malafide intentions of the respondent and non-delivery of the commercial unit, the complainants have accrued huge losses on account of the career plans of their children and themselves and the future of the complainants and their families are rendered dark as the planning with which the complainants

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invested their hard-earned monies have resulted in sub-zero results and borne thorns instead of bearing fruits.

- xii. That the Complainant(s) being an aggrieved person has filed the present complaint under section 31 with the Authority for violation/ contravention of provisions of this Act as mentioned in the preceding paragraph.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):

- i. Direct the Respondent to pay the delayed possession charges alongwith interest on the total amount paid by the Complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.
- ii. Direct the respondent to obtain the OC and provide the copy of the same.
- iii. Direct the respondent to provide the actual area of the allotted unit.
- iv. Refrain the respondent from charging the illegal advance maintenance charges from the complainants.
- v. Direct the respondent to get the conveyance deed in favour of the complainants.
- vi. Set aside the one-sided indemnity bond get signed by the Respondent from the complainants under undue influence.
- vii. Restrain the respondents from raising fresh demand(s) for payment under any head, as the Complainants had already made payment as per the payment plan.
- viii. Penal action against the respondents for violation of various provisions of the RERA Act, 2016.

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- ix. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the Complainants.
  - x. Pass such other or further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent contested the complaint on the following grounds by way of reply dated 22.03.2024:
- i. That the present complaint is not maintainable as the Buyer's Agreement was executed between the parties before coming into force of the relevant provision of the Act and the Rules. These legal provisions have been authoritatively held to be prospective in operation and these do not apply retrospectively before coming into force w.e.f. 01.05.2017. Hence, no interest can be imposed upon the respondent under the provisions of sections 12, 18 or 19 of the Act as the parties are bound by the terms and conditions agreed and contained in the Buyer's Agreement dated 20.01.2016 which was executed prior to coming into force of sections 3-19 of the RERA Act/Rules. Hence, the Hon'ble Authority has no jurisdiction to modify the terms and conditions of Buyer's Agreement dated

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16.06.2015. This Hon'ble Authority has no power to re-write the contract between the parties.

- ii. That in around July, 2015, the Complainants learned about the Project and approached the Respondent repeatedly to know the details of the Project. The Complainants further enquired about the specification and veracity of the Project and were satisfied with every proposal deemed necessary for the development of the Project. After being fully satisfied with specification and veracity of the Project, the complainants applied for booking of commercial unit vide Application Form dated 06.12.2014. However, the Complainants were aware of every terms of the Application Form and decided to sign upon the same after being fully satisfied, without any protest or demur. The Respondent vide Allotment Letter dated 20.01.2015 was allotted a Unit bearing no. B-025A at Ground Floor (hereinafter referred to as '**Shop**') admeasuring Super Area of 326 Sq. Ft. (32.29 Sq. Mtr.) approximately, in the aforesaid Project.
- iii. That the complainants have no right to claim more than the amount for delayed possession as agreed between the parties as per clause 13(ii) of the Buyer's Agreement. As per clause 13 (ii) of the Buyer's Agreement, the complainants were entitled for compensation for delayed period, if any, @ Rs. 5/- per sq. ft. of the super area for every month of delay until the actual date fixed by the company for handing over of possession of the shop to the complainants which was subject to force majeure. The occupation certificate dated 10.10.2023 has been issued to the respondent by the competent authority. The respondent has offered possession of the shop to the complainants vide letter dated 15.10.2023. The total cost of the unit





including taxes is Rs. 52,83,804.68/- out of which the complainants have only paid an amount of Rs. 30,89,463/- and Rs. 21,29,141.68/- is still outstanding against the complainants. The respondent has already offered possession to the complainants.

- iv. That as per clause 13(iv) of buyer's agreement, the parties agreed that in case the completion of the said shop is delayed due to Force Majeure, then the commitment period, and/or grace period and/or extended delay period, as the case may be, shall be extended automatically to the extent of the delay.
- v. That the respondent has already obtained the occupation certificate for the unit of the complainants. The complainants are under contractual obligation to clear their outstanding dues and take possession from the respondent.
- vi. That the development of the project was affected due to the Covid-19, and accordingly the respondent is entitled for an extension of 6 months in due date of possession. It may also be noted that the date of offering possession was to be calculated from the date of sanctioning of revised building plans approved by the concerned authority on 01.09.2016. The respondent herein was entitled for extension for such period of delay caused due to force majeure being purely beyond the control of the respondent.
- vii. That it is an evident fact that since starting the respondent was committed to complete the construction of the project within the proposed timeline and till date had invested an amount approx. ₹1,20,00,00,000/- towards completion of the project including both the land cost and construction related costs/expenditures. The respondent under bonafide had already

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paid EDC/IDC charges in full to the concerned department and on the contrary, the collection from the allottees of the project was only approximate Rs. 45,00,00,000/-. The respondent has already spent more amount than collected from the allottees in completion of the project and even obtained occupation certificate from the concerned department which apparently proves that there was never any malafide on the part of the respondent and there is no intentional delay in completion of the project. The respondent is not liable to pay any delayed charges to the complainants.

- viii. That in accordance with the provisions of the Act, the respondent had even applied for registration of the said project with the Ld. Authority vide application dated 20.07.2017 and upon receiving the said application, the Ld. Authority had granted registration to the respondent for the project in question vide registration no. 28 of 2017 dated 28.07.2017.
- ix. That the respondent was committed to complete the development of the project and handover the possession with the proposed timelines. The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of GST Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- x. That the development of project of the respondent was also adversely affected due to various directions of National Green Tribunal or statutory authorities, etc. The various dates during

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which the constructions of the project was affected have been detailed as under:

Sr. No.	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 – 16.11.2016 (8 days)
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 – Ban was lifted after 10 days (10 days)
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 – 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 – 17.06.2018 (3 days)
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note – 29.10.2018 and later extended till 12.11.2018	01.11.2018-12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 – 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 – 30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr. Bhure Lal, Chairman	Complete Ban	01.11.2019 – 05.11.2019 (5 days)
9.	Supreme Court – 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (C) 13029/1985	04.11.2019 – 14.02.2020 (3 months 11 days)
10.	Ministry of Housing & Urban Affair, Government of India – Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)





11.	Covid-19 Lockdown 2021	8 weeks
<b>TOTAL</b>		<b>1.4 years (approx.)</b>

- xi. As per the aforesaid calculations, the date to offer possession has to be extended by approximately 1.4 years. Subsequently in June, 2021, after the removal of the Covid-19 restrictions, it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite, facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.
- xii. That on 08.08.2022, after continuous efforts of Respondent towards the completion of the project, the Respondent informed the Complainants that the mechanical, electrical, plumbing and other related services along with finishing work, tremix work and surface preparation in retail shops will be completed within 2-3 months. The Respondent also stated that offer of possession will be provided within next 3-4 months and soon the Complainants will be receiving the call letter for remittance of payment for the last instalment. The Respondent also attached photographs showing the progress in the construction of the Project.
- xiii. That despite, after facing various hindrances in mid-way of the construction of the project, the respondent herein has managed to complete the construction of the project. It is further submitted that

*[Handwritten signature]*



the respondent has already obtained occupation certificate on 10.10.2023.

xiv. That the complainants herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and have mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this Hon'ble Authority and in the interest of justice.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E. I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

##### **E. II Subject matter jurisdiction**

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10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case maybe;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent**

**F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act**

12. The respondent raised an objection that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties as the same had been executed prior to coming into force of the Act or the rules made thereunder.

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13. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

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14. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019, the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act and the Rules made thereunder and are not unreasonable or exorbitant in nature.

**F.II Objections regarding force Majeure**

16. The respondent-promoter has raised the contention that the construction of the unit of the complainants has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court and COVID-19. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time



and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons.

17. The respondent-promoter also raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 16.06.2015 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 16.06.2019 which is way before the abovementioned orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.
18. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S*





**Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020** dated 29.05.2020 which has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

19. In the present complaint, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 16.06.2019. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

**G. Findings on the relief sought by the complainant**

- G. I Direct the Respondent to pay the delayed possession charges alongwith interest on the total amount paid by the Complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.
20. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:

***"Section 18: - Return of amount and compensation***

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18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

21. Clause 13(ii) of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"13. POSSESSION AND HOLDING CHARGES**

*(ii) Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee **within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later.** The Allottee further agrees and understands that the Company **shall additionally be entitled to a period of 6 (six month) ("Grace period")**, after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."*

22. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the subject unit within a period of 42 months from the date of signing of this agreement or approval of the building plans, whichever is later and further additionally be entitled to a period of 6 months as Grace period. In the present matter, the date of building plan approval is not placed on record, and in absence of the same, due date is ought to have been calculated from the date of execution of the buyer's agreement. The buyer's agreement was executed inter se parties on 16.06.2015. Thus,

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42 months from 16.06.2015 comes out to 16.12.2018. Further, grace period of 6 months is allowed to the respondent being unqualified and unconditional for the force majeure. Thus, the due date of handing over possession comes out to be 16.06.2019.

23. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the

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promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.90% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
28. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 13(ii) of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered by 16.06.2019 as delineated hereinabove. The occupation certificate was obtained by the respondent from the competent authority on 10.10.2023 and the possession of the subject unit was offered to the complainants on 15.10.2023.
29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainants-allottees shall be



paid, by the respondent-promoter, interest for every month of delay from due date of possession i.e., 16.06.2019 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.II Direct the respondent to obtain the OC and provide the copy of the same.**

30. The Authority observes that the respondent has obtained occupation certificate from the concerned department bearing memo no. ZP-819/JD(RA)/2023/33687 dated 10.10.2023 and a copy of the same has already been annexed as annexure R2 at page 30 of reply. Moreover, occupation certificate is a public document and the same can be accessed through the website of the concerned department. Hence, no direction in this regard.

**G.III Direct the respondent to provide the actual area of the allotted unit.**

31. As per section 17(2) of the Act, after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws. Further, as per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Further as per section 11(3) of the Act, the

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respondent-promoter are also under obligation to provide such details. Therefore, in view of the same, the respondent is directed to provide details i.e., actual area of the allotted unit in question to the complainants within a period of 1 month from the date of this order.

**G.IV Refrain the respondent from charging the illegal advance maintenance charges from the complainants.**

32. Advance maintenance charges accounts for the maintenance charges that builder incurs while maintaining the project before the liability gets shifted to the association of allottees. Builders-promoters generally demand advance maintenance charges for 6 months to 2 years in one go on the pretext that regular follow up with allottees is not feasible and practical in case of ongoing projects wherein OC has been granted but CC is still pending.
33. This issue has already been dealt with by the authority in complaint bearing no. 4031 of 2019 titled as "*Varun Gupta Vs. Emaar MGF Land Limited*" decided on 12.08.2021, wherein it was held that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the advance maintenance charges have been demanded for more than a year.
34. Keeping in view the above, the respondent is directed not to demand the advance maintenance charges for more than one year from the complainants.

**G.V Direct the respondent to get the conveyance deed in favour of the complainants.**

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35. The complainants are seeking relief of execution of conveyance deed.

Clause 14 of the buyer's agreement provides for 'Conveyance deed and stamp duty' and is reproduced below:

**"14. CONVEYANCE DEED AND STAMP DUTY**

Subject to the Allottee, fulfilling all its responsibilities stipulated herein and executing any other document as required to be executed pursuant to this Agreement and making all payments under this Agreement, including but not limited to:

- (i) All payments as set forth in **ANNEXURE III** to this Agreement, including the Sale Consideration of the said Shop;
  - (ii) Interest on delayed instalments;
  - (iii) Registration charges;
  - (iv) Stamp duty;
  - (v) Any other incidental charges or dues, required to be paid for due execution and registration of the Conveyance Deed;
  - (vi) Holding Charges and/or any other charges, dues payable by the Allottee to the MSA/Company till the date of execution of the Conveyance Deed;
  - (vii) All other dues, as set forth in this Agreement or as may become due to the Company from time to time with respect to the said Shop;
- The Company shall prepare and execute Conveyance Deed to convey the title of the said Shop in favour of the Allottee."

36. The authority has gone through the conveyance clause of the agreement. A reference to the provisions of section 17 (1) of the Act is also must and it provides as under:

**"Section 17: - Transfer of title**

*17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

*Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be*

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*carried out by the promoter within three months from date of issue of occupancy certificate."*

37. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. Also, as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. As delineated hereinabove, the occupation certificate in respect of the said project/unit was granted on 10.10.2023 by the competent authority. Thus, the respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act.

**G.VI Set aside the one-sided indemnity bond get signed by the Respondent from the complainants under undue influence**

38. In the complaint bearing no. 4031 of 2019 titled as *Varun Gupta V/s Emaar MGF Land Ltd.*, the authority has comprehensively dealt with this issue and has held that the unit handover letter and indemnity cum undertaking executed at the time of taking possession, does not preclude the allottees from exercising their right to claim delay possession charges as per the provisions of the Act.
39. Thus, the respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as *Varun Gupta V. Emaar MGF Land Ltd.*

**G.VII Restrain the respondents from raising fresh demand(s) for payment under any head, as the Complainants had already made payment as per the payment plan.**

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**G.VIII Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the Complainants.**

40. The above-mentioned reliefs sought by the complainants are being taken together.
41. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as "**Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited**" wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent and amount paid on account of labour cess is refundable to the complainant.
42. As far as external electrification charges are concerned, the respondent-promoter is entitled to recover the charges only in terms of the builder buyer agreement executed inter se parties. As per offer of possession dated 15.10.2023, the respondent has charged EEC/FFC and the same are payable under clause 21(ii) of the Agreement which states that:
- "Adequate firefighting equipment as per law will be installed by the Company in the 70 Grandwalk project and any increase in the cost by way of additional equipment deemed necessary by the Company or MSA shall be paid on demand by the Allottee in proportion to the Super Area of the said Shop to the super area of all the Buildings in the 70 Grandwalk project."*
43. In view of the aforesaid clause, the respondent is entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis on account of electrification, i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the



flats in this particular project. The complainant will also be entitled to proof of such a payment to the concerned department along with a computation proportionate to the allotted flat, before making payment under the aforesaid head.

44. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges as has already been laid down in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" decided on 12.08.2021.
45. The respondent is further directed that it shall not charge anything from the complainants which is not the part of the buyer's agreement.

**G.XI Penal action against the respondents for violation of various provisions of the RERA Act, 2016.**

46. If a developer fails to comply with the provisions of the RERA Act, including failing to deliver the property on time or not adhering to the declared project details, they are subject to penalties. However, before imposing such a penalty, RERA follows a due process that includes conducting an investigation and a hearing where the promoter can present their case.
47. The above-mentioned relief sought by the complainants was not pressed by the counsel for the complainants during the pendency of the complaint or during the arguments. The authority is of the view that the complainant's counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not rendered any findings w.r.t to the above-mentioned relief.

**H. Directions of the authority**




48. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 16.06.2019 till valid offer of possession (15.10.2023) plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent is directed to provide details i.e., actual area of the allotted unit in question to the complainants within a period of 1 month from the date of this order.

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- vi. The respondent is not entitled to charge labour cess as it is the respondent builder who is solely responsible for the disbursement of said amount.
  - vii. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges as per the agreed terms of BBA. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.
  - viii. The respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act.
  - ix. The respondent/promoter shall not charge anything from the complainants which is not the part of the buyer's agreement.
49. The complaint and application, if any, stands disposed of.
50. File be consigned to registry.

**Dated: 23.05.2025**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate Regulatory  
Authority, Gurugram