

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

Complaint no. : 5464 of 2023  
Date of filing: 23.11.2023  
Date of decision : 19.08.2025

1. Meenakshi Tiwari
2. Krishna Tiwari

**Regd. Address at:** Flat no 25, Sector 19,  
Pocket 2, Phase I, Dwarka, New Delhi-110075

**Complainants**

Versus

M/s VSR Infratech Pvt. Ltd.

**Regd. office:** A-22, Hill View Apartments,  
Vasant Vihar New Delhi-110057

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri. Ashok Sangwan

**Chairperson  
Member**

**APPEARANCE:**

Mr. Nipun Rao (Advocate)  
Ms. Shriya Takkar (Advocate)

**Counsel for Complainants  
Counsel for Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 there under 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:

S. N.	Particulars	Details
1.	Name of the project	"114 Avenue", at Sector 114, Gurugram.
2.	Nature of project	Commercial complex
3.	Project Area	2.968 acres
4.	DTCP license	72 of 2011 dated 21.07.2011 Valid up to 20.07.2024
5.	Name of the Licensee	M/s AMD Estates Developers Pvt. Ltd.
6.	RERA registered/ not registered and validity status	<b>Registered</b> Vide no. 53 of 2019 dated 30.09.2019 Valid up to 31.12.2019
7.	Unit no.	G-22, Ground Floor, (page no. 19 of complaint)
8.	Unit admeasuring	1168.54 sq. ft. (super area) (page no. 19 of complaint)
9.	Allotment Letter (in the name of Sh. Virender Saini)	01.03.2012 (page no. 37 of the reply)
10.	Endorsement of allotment in favour of complainant	30.07.2012 (page no. 37 of the reply)
11.	Date of start of construction	(To be ascertained)
12.	Date of execution of buy agreement with complainant	22.08.2012 (page no. 18 of complaint)
13.	Possession clause	<b>32</b> "That the company shall gave possession of the said unit within 36 months from the signing of this agreement"

		<p><i>within 36 months from the date of start of construction of the said building, whichever is later."</i></p> <p><b>(Emphasis Supplied)</b></p>
14.	Due date of delivery of possession	<p>22.08.2015</p> <p>(Calculated from the date of execution of buye agreement, as date of start of construction is not available in records.)</p>
15.	Basic sale price	<p>Rs.66,13,937/-</p> <p>(as per BBA at page no. 19 of complaint)</p>
16.	Total amount paid by the complainant	<p>Rs.56,04,870/-</p> <p>(page no. 33 of complaint &amp; as per SOA dated 19.09.2022 at page 89 of reply)</p>
17.	Occupation certificate	<p>17.02.2021</p> <p>(page 84 of reply)</p>
18.	Email by complainant regarding adjustment of DPC before issuing the SOA	<p>18.09.2020, 25.04.2021, 25.09.2021</p>
19.	Intimation for fit out possession along with a demand of ₹29,62,547.06/-	<p>26.02.2021</p> <p>(page 87 of reply)</p>
20.	Intimation for termination	<p>03.02.2022</p> <p>(page 90 of reply)</p>
21.	Last Opportunity	<p>06.08.2022</p> <p>(page 92 of reply)</p>
22.	Legal notice by complainant for not cancelling the said unit and delivering the possession of the said unit	<p>03.09.2022</p>
23.	Termination letter (along with refund cheque of Rs.43,89,335/-)	<p>27.10.2023</p> <p>(page 93 of reply)</p>

24.	Fresh Allotment letter made aft initiation of complaint (In favour of Mr. Amrit Pal Sing Fresh Allottee with ₹2,00,000 only)	06.11.2023 (page 63 of reply)
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### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
  - a. That, the respondent had advertised about their project under name and style "114 Avenue" situated in Sector- 114, Gurugram, Haryana. The respondent represented that the said township is one of the best townships and shall comprise of commercial option in varied form, hubs of business, and commerce backed by truly world class social amenities, and infrastructure. Pursuant to the lucrative offer and strong market hold of the respondent, the complainant namely Mrs. Meenakshi Tiwari & Smt. Krishna Tiwari agreed to purchase a unit measuring 1168.54 sq. ft. in the said project vide booking application No. 38 dated 06.07.2011.
  - b. That, thereafter the in the year 2011-2012 the complainant paid a sum of Rs. 25,17,122/- as earnest/booking amount in respect of the said unit to the respondent. That, thereafter the builder buyer agreement was executed on 22.08.2012 between the respondent and the complainants where they opted for construction linked plan offered by respondent. According to the builder buyer agreement, the respondent allotted, unit bearing no. G-22, Ground Floor, having an approximate super area of 1168.54 sq. ft. for the total sale consideration (including the PLC, EDC/IDC and IFMS charges) of Rs. 66,13,937/-.
  - c. That as per clause 32 of the builder buyer agreement, the respondent has proposed to hand over the possession of the subject unit within 36 months from the date of commencement of construction of the particular

tower/block or signing of the builder buyer agreement whichever is later i.e., on or before 22.08.2015 to the complainant but the respondent company has completely failed to perform its part of contractual obligation and has failed to provide possession of the unit.

- d. Therefore, the complainants are entitled to delayed possession charges under proviso to section 18(1) of the Act w.e.f. 22.08.2012 i.e., the date on which the complainants stepped into the builder buyer agreement. That, against the total sale consideration of Rs. 66,13,937/- the complainants have deposited an amount of Rs. 56,04,870/- according to the payment plan. The complainants have paid all the instalments as and when demanded by the respondent company without any delay.
- e. That, whenever the complainant tried to contact the respondent, the respondent used to give false assurances to the complainant about the completion of the project and due date of possession. That the complainant regularly contacted the respondent through telephonically to get the final date of possession but the respondent with malafide intention were not giving the positive answer to their request. It is pertinent to mention here that the respondent has not obtaining completion certificate/part completion certificate in respect of the part of the project where the unit in question is situated. In fact, the respondent does not have CC/Part CC in respect of the said project till date.
- f. That, the complainants regularly visited the office of the respondent and were chasing them from pillar to post for obtaining the offer of possession and to get the conveyance deed registered in favour of the complainant, however the respondent failed to do the same to the complainant. That, the complainants have been relentlessly communicating by visiting the office and insisting upon the respondent to give offer of possession and



further execute and register the sale deed of the unit in favour of the complainant, but the respondent has been avoiding the complainants' legitimate requests on one pretext or the other.

- g. It is therefore prayed that in the interest of justice, the compliant may kindly be allowed and necessary direction as mentioned in relief sought may kindly be issued against the respondent and also direct the respondent to execute the sale deed in favour of complainants after receiving such charges. Hence, the cause of action has been arising to the complainants to file the present complaint before the Hon'ble Authority. That, from the booking date till July 2022, the respondent has received an amount of Rs. 56,04,870/- time to time from the complainants out of total sale consideration of Rs. 66,13,937/- but no possession has been handed over of their unit.
- h. The complainant paid the instalments on timely basis as and when was demanded by the respondent company without any delay with a hope to get timely delivery of possession of unit. The complainant opted the development linked plan as provided by the respondent company. And till date the complainant has made payment of Rs. 56,04,870/- as the same is evident of payment receipts as annexed with the complaint. It was the respondent, who has failed to perform its part of contract to deliver the possession of the said unit on time.
- i. That, the respondent has failed to fulfil its obligations as under builder buyer agreement and also has failed to provide any offer of possession of the said unit till now. It is clear cut case of abuse of their dominant position of the respondent in the market and such an act needs to be penalized against the respondent.

- j. Thus, the respondent in the given circumstances, has voluntarily committed breached terms of the builder buyer agreement dated 22.08.2012 by forfeiting the amount paid by the complainant for which the respondent company should be even prosecuted criminally for cheating, fraud, and criminal breach of trust.
- k. That according to the relief claimed by the complainants, this Hon'ble Forum only has Jurisdiction to try the present complaint. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application before the Adjudicating Officer, if required.

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

4. The complainants have sought following relief(s):
- Direct the respondent to handover the possession of the subject unit along with prescribed interest per annum from the promised date of delivery of the unit in question till handing over/actually delivery of the said unit.
  - Direct the respondent to register the conveyance deed, in accordance with section 17 of RERA, 2016.
  - Direct the respondent not to charge anything from the complainants which are not part of the Builder buyer agreement.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 has contested the complaint on the following grounds.
- That the Complainants applied for allotment of a retail unit in the project of the Respondent Company being developed in the name and style of "114 Avenue". That for the purpose of booking the Complainants submitted an

application form for allotment of retail unit no. G-22, 2<sup>nd</sup> Floor. That pursuant to the Application Form, the Respondent Company allotted commercial unit G-22 having a tentative super area of 1168.54 sq. ft. to the Complainants vide allotment letter dated 01.03.2012.

- b. That the Space Buyer's Agreement was executed between the parties on 22.08.2012. The cost of the unit in question as per the Space Buyer's Agreement was Rs.64,38,656/- plus IFMS, taxes and other charges. It is submitted that the Space Buyer's Agreement covers all rights and liabilities of both parties. It is submitted that the Complainant opted for the Development/Construction Linked Payment Plan. It is submitted that all the demands were raised as per the payment plan opted by the Complainants. It is submitted that all the demands raised by the Respondent are as per the Schedule of payment opted by the Complainants. Hence, being totally aware of the payment as per the payment plan, they failed to make timely payments and therefore are a chronic defaulter and are liable to pay interest to the Respondent for the delay in payment under **Section 19 (6)** RERA which states that the Complainants are responsible to make necessary payments in the manner and within time as specified in the agreement and in case of default the complainant is liable to pay interest for delay under **Section 19(7)** of RERA. It is submitted that various reminder letters dated 31.05.2017 and 15.06.2017 were issued by the Respondent Company on several occasions, requesting the Complainants to come forward and clear their dues.
- c. That as per Clause 32 of the Space Buyers Agreement dated 22.08.2012, the Respondent was supposed to hand over the possession within a period of 36 months of the signing of this Agreement i.e. 22.08.2012 or within 36 months from the date of start of construction of the said building i.e. in the



year 2012 whichever is later, and the possession date comes out to be 22.08.2015. However, the said timeline was subject to force majeure conditions. That it is submitted that as per Clause 32 of the Space Buyer's Agreement which clearly states that Respondent shall be entitled to an extension of time for delivery of possession of the said premises if such performance is prevented or delayed due to conditions as mentioned therein. That despite exercising diligence and continuous pursuance of project to be completed, project of Answering Respondent could not be completed due to following reasons:

- The substantial part of delay in delivery of the project happened as unknown to the landowner M/s AMD Developers and the developer (Respondent herein), there was an encroachment by an individual namely Mukesh alias Mahesh on part of land on which the project was to be built. This encroachment came to the knowledge of the developer at the time when construction was to be started, after obtaining license, all the requisite sanctions, approval of building plan, etc. The aforesaid individual, Mukesh alias Mahesh filed a civil suit before the Gurgaon District Court and obtained a stay order upon the construction over the suit land in one corner of the project. The company could not start construction over the said suit land, to the extent that the project was re-visited and re-planned and the building plans had to be revised so as to exclude the encroached land as the litigation had become a prolonged one. Thus, in this process, the project was substantially delayed for approximately 4 years) without there being any fault of the answering Respondents.
- That it is pertinent to mention here that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which

was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the Complaints buying the project was the connectivity of Dwarka expressway which was promised by the State Government to be completed in the year 2012. That it is reiterated that the only approach road to the project in this Dwarka Expressway which is still not complete and is likely to take another year or so. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time. Even now the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. The Dwarka Expressway was earlier scheduled to be completed by the year 2012, by the State Government of Haryana, but later failed to develop the said road. In the year 2017, NHAI (National Highway Authority of India) joined to complete the Dwarka Expressway, but again both State Government as well as NHAI again missed the deadlines and still the Expressway is incomplete, now likely to be completed by the year 2022, if the deadline is adhered to be these agencies. That in this view of the circumstances as detailed above the Respondent Developer can by no means be expected to complete a project which does not even have an approach road to be constructed by the State. Thus, the Respondent cannot be held accountable for the delay in the project and State of Haryana and NHAI, are responsible, hence answerable for the delay in completing Dwarka expressway, which in turn has caused the delay of the present project. That

completion of Dwarka expressway which in turn affected the completion of the project in question was beyond the control of the Respondent.

- It is submitted that under Section 35(2) of the Real Estate (Regulation and Development) Act, 2016 which specifically gives power to this Hon'ble Authority to summon and enforce the attendance of any person and to produce any document which in the opinion of the Hon'ble Authority may be useful or relevant to the subject matter under enquiry. Thus, it is humbly submitted that both State of Haryana and NHAI may be summoned by this Hon'ble Authority to answer the relevant questions which are the subject matter of the present complaint.
- It is submitted that in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. Reference in this regard may be had to the judgment of "Deepak Kumar v. State of Haryana, (2012) 4 SCC 629". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce in the NCR as well as areas around it.
- The Company faced the problem of sub soil water which persisted for a period of 6 months and hampered excavation and construction work. The problem still persists and we are taking appropriate action to stop the same. On 19th February 2013, the office of the Executive engineer, Huda, Division No. II, Gurgaon vide Memo No. 3008-3181 has issued instruction to all Developers to lift tertiary treated effluent for construction purpose from Sewerage treatment plant Behrampur. Due

to this instruction, the Company faced the problem of water supply for a period of 6 months.

- The Company is facing the labor problem for last 3 years continuously which slowed down the overall progress of the project and in case the Company remains to face this problem in future, there is a probability of further delay of project. The contractor of the Project stopped working due to his own problems and the progress of project was completely at halt due to stoppage of work at site. It took almost 9 months to resolve the issues with contractor and to remobilize the site.
- The building plans were approved in January 2012 and company had timely applied for environment clearances to competent authorities, which was later forwarded to State Level Environment Impact Assessment Authority, Haryana. Despite of our best endeavor, we only got environment clearance certificate on 28.05.2013 i.e., almost after a period of 17 month from the date of approval of building plans.
- The typical design of fifth floor slab casting took a period of more than 6 month to design the shutting plans by structural engineer which hampered the overall progress of work.
- The infrastructure facilities are yet to be created by competent authority in this sector is also a reason for delay in overall project. The drainage, sewerage and other facility work not yet commenced by competent authority.
- It is worth mentioning here that there was a stay on construction in furtherance to the direction passed by the Hon'ble NGT. In furtherance of the above-mentioned order passed by the Hon'ble NGT.
- That the sudden surge requirement of labor and then sudden removal has created a vacuum for labor in NCR region. That the projects of not



only the Respondent but also of all the other Developers/Builders have been suffering due to such shortage of labor and has resulted in delays in the projects beyond the control of any of the developers. That in addition the Respondent states that this further resulted in increasing the cost of construction to a great extent.

- Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labors at their hometown despite the fact that the NCR region was itself facing a huge demand for labor to complete the projects.
- That the said fact of labor shortage can be substantiated by way of newspaper articles elaborating on the above-mentioned issues hampering the construction projects in NCR. That this was certainly never foreseen or imagined by the opposite party while scheduling the construction activities. That it is submitted that even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labor shortage on which the whole construction industry so largely depends and on which the Respondent have no control whatsoever.
- That the Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.



- That shortage of bricks in region has been continuing ever since and the Respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project. That sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining Department imposed serious restrictions against manufacturing of sand from Aravali region.
- That this acute shortage of sand not only delayed the project of the answering Respondent but also shot up the prices of sand by more than hundred percent causing huge losses to Respondent.
- That same further cost huge delay in project and stalling various parts and agencies at work in advanced stages, for now the Respondent had to redo, the said work causing huge financial burden on Respondent, which has never been transferred to complainants or any other customers of project.
- That in addition the current Govt. has on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site as the laborers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the laborers not accepting demonetized currency after demonetization.
- That in July 2017 the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project of the

company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

- That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement by several allottees. That because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
- Further, Developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. That in addition to above all the projects in Delhi NCR region are also affected by the Blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects.
- That such stay orders are passed every year either by Hon'ble Supreme Court, NGT or/and other pollution boards, competent courts, Environment Pollution (Prevention & Control) Authority established under Bhure Lal Committee, which in turn affect the project. It is further submitted that the Government of India declared nationwide lockdown

due to COVID 19 Pandemic effective from 24th March, 2020 midnight. It is submitted that the construction and development of the project was affected due to this reason as well. This Hon'ble Authority has vide its order dated 26.05.2020 invoked the force majeure clause.

- d. That after making sincere efforts despite the force majeure conditions, the Applicant/Respondent completed the construction and thereafter applied for the Occupancy Certificate (OC) on 15.07.2020. That the OC has been received by the Respondent Company on 17.02.2021. That immediately after the receipt of the OC on 17.02.2021, the Respondent Company vide letter dated 26.02.2021 requested the Complainants to come forward and clear her dues and take possession. It is submitted that the Complainants till date have made payment of Rs.56,04,870/- and an amount of Rs.29,62,547/- was pending at the time of the offer of possession. It is submitted that despite repeated requests, the Complainants failed to come forward and clear their dues and take possession of the said unit. That since the Complainants did not comply with their obligation to clear the dues and take possession of the unit, the Respondent Company was constrained to issue an intimation of termination dated 03.02.2022. That pursuant to the intimation of termination letter and failure of the complainants to clear its outstanding dues the Respondents issued a last opportunity letter, dated 06.08.2022.
- e. That upon issuance of the said intimation to termination letter dated 03.02.2022 and the last opportunity letter, dated 06.08.2022 the Complainants approached the Respondent Company and requested the Respondent to withdraw the said intimation letter and assured the Respondent that they shall make the payment and take possession of the said unit. As a goodwill gesture, the Respondent Company acceded to the

request of the Complainants and the intimation of termination dated 03.02.2022 was withdrawn by the Respondent Company subject to the Complainant making the timely payment of the outstanding dues. It is pertinent to mention herein that despite giving an opportunity, the Complainants still did not come forward to clear their dues and take possession of the unit due to which the Respondent Company was constrained to issue a termination letter dated 27.10.2023. It is submitted that the Complainants are in default of their obligation under Sec 19(10) of the RERA Act. It is in the humble submission of the answering Respondent that the cancellation letter dated 27.10.2023 was issued as per the Space Buyer's Agreement and owing to the default of the Complainants in coming forward to clear their dues and take possession. It is submitted that as per Clause 18 of the Space Buyer's Agreement, the Respondent Company has the right to cancel the allotment in case of default of the Complainants. That the Respondent was constrained to cancel the unit on account of non-payment of the demand as raised by the Respondent. It is submitted that the Respondent has incurred various losses/damages on account of the breach of the terms of the Space Buyer's Agreement by the Complainants, which the Complainants are liable to pay as per the terms of the Space Buyer's Agreement.

- f. Further, in accordance with the provisions of the Space Buyer's Agreement, the earnest money amount along with brokerage, HVAT and interest on outstanding payments and other applicable charges (if any) are liable to be forfeited. The total loss calculated comes to Rs.12,15,535/- (approx.) which includes earnest money deduction @10% to the tune of Rs.5,88,944/-, taxes to the tune of Rs.5,97,141/-, and an amount of Rs.29,450/- on behalf of the Complainant to the broker through whom the

Complainants had made a booking of the unit. It is submitted that post forfeiture of the aforementioned amounts, the Respondent Company is only liable to refund an amount of Rs.43,89,335/- to the Complainants. That a copy of the cheque for an amount of Rs.43,89,335/- was attached by the Respondent Company along with the termination letter dated 27.10.2023 and the Complainants were requested to collect the said cheque from the office of the Respondent Company but the Complainants failed to do so. It is pertinent to mention herein that post-issuance of the termination letter, the Respondent had resold the unit to a new intending allottee as the Complainants have no rights whatsoever over the said unit. It is submitted that the aforesaid fact has been concealed by the Complainants in the complaint filed before this Hon'ble Authority.

- g. That in furtherance of the cancellation of the subject unit, the Respondent Company has re-allotted the unit vide a fresh allotment letter. It is submitted that post allotment, the allottee has also made a substantial payment towards the booking. That the unit being cancelled there is no privity of contract between the parties and the Complainants have no right, title or interest in the unit in question and neither are allottees of the same and therefore the Complaint is infructuous. Post cancellation of allotment, the respondent is free to deal with the unit in question in whatsoever manner it desires and the unit in question has been resold to another allottee. The present complaint merits dismissal. Thus, the Complainants are not entitled to get any relief as sought from this Hon'ble Authority, and failure on the part of the Complainants to perform their contractual obligations disentitles them from any relief.
- h. That the Respondent has fulfilled its contractual obligations under the Application Form as well as the Allotment Letter however despite that the



Complainants have failed to clear the outstanding dues. The Complainants are in default of their contractual obligations and are raising these frivolous issues in order to escape the liability cast upon them by the virtue of the allotment and unjustly enrich themselves. Therefore, the Complainants are not entitled to any relief whatsoever.

- i. That the Space Buyers Agreement was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the Said Agreement. The said Agreement was duly signed by the Complainants after properly understanding each and every clause contained in the Agreement. The Complainants were neither forced nor influenced by Respondent to sign the said Agreement. It was the Complainants who after understanding the clauses signed the said Agreement in their complete senses.

7. Copies of all the relevant documents have been filed and placed on 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.

8. Written submissions filed by the parties are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

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

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.1 Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

11. 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 may be;

#### **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.

12. 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 relief sought by the complainants.**

**F.I. Direct the respondent to handover the possession of the subject unit along with prescribed interest per annum from the promised date of delivery of the unit in question till handing over/actually delivery of the said unit.**

13. The original allottee, vide Allotment Letter dated 01.03.2012, was allotted a unit bearing no. G-22, situated on the Ground Floor in the Respondent's project titled "114 Avenue", located at Sector 114, District Gurgaon, Haryana. Subsequently, the said unit was endorsed in favor of complainants on 30.07.2012. Pursuant thereto, a Flat Buyer Agreement (hereinafter referred to

as "BBA") was executed with the complainants on 22.08.2012, stipulating a total sale consideration of ₹66,13,937/- against which the complainants have paid ₹56,04,870/-.

14. As per Clause 32 of the BBA dated 22.08.2012, the Respondent was obligated to offer possession of the subject unit within a period of 36 months from the date of execution of the Agreement or 36 months from the date of start of construction of the said building, whichever is later. Since the exact date of commencement of construction is undisclosed, the due date for possession is computed from the date of execution of the BBA, i.e., 22.08.2012. Accordingly, the possession was due on or before 22.08.2015.
15. The respondent obtained the occupation certificate from the competent authority on 17.02.2021 and offered the said unit to the complainants vide letter dated 26.02.2021 along with a demand of ₹29,62,547.06/-. The respondent thereafter on 03.02.2022 issued an intimation for termination of the unit followed with reminder letter dated 06.08.2022 and finally cancelled the unit of the complainant vide letter dated 27.10.2023. It is observed that the complainants vide mails dated 18.09.2020, 25.04.2021 & 25.09.2021, i.e., prior to the cancellation letter, requested the respondent to issue fresh statement of account after adjusting the DPC since the project is delayed.
16. The complainants have sought possession of the unit through their complaint. Before examining the merits of the case, it is pertinent to adjudicate on the validity of the cancellation letter dated 27.10.2023. The Authority notes that the complainants had accrued a statutory right to Delay Possession Charges due to the Respondent's delay in delivering possession. Despite repeated requests, the Respondent failed to adjust DPC before raising a fresh demand, and instead levied Delay Payment Charges on the complainants. The complainants have paid approximately 84.74% of the total sale consideration. The Authority

deems it necessary to assess the validity of the offer of possession dated 26.02.2021, as a valid and lawful offer would end the promoter's liability for delay. If the offer is found to be invalid, the liability continues, and the allottee remains entitled to interest for the delay.

17. The Respondent's actions are found to be deficient for two primary reasons:
- a. Firstly, the respondent issued the demand of ₹29,62,547.06/- along with the offer of possession dated 26.02.2021 and charged huge arbitrary amount under several heads such as advance maintenance charges and contingency charges. On careful perusal of the space buyer agreement dated 22.08.2012 signed between the parties to complaint, the Authority could not find any explanation, cause, or definition of the aforesaid charges. Nowhere in the said BBA has it been mentioned what entails the advance maintenance charges and what is the purpose of the contingency charges. In the instant case, the respondent has raised a demand for advance maintenance charges of ₹2,52,405/- for 18 months. Whereas, the law relating to the demand of advance maintenance charges has already been laid down in the CR/4031/2019 and others wherein it is held that the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee 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. Furthermore, no explanation has been provided by the respondent in its reply, written statement or oral arguments for charging the contingency charges apart from IFMS charges. Accordingly, the said demand of AMC for 18 months & contingency charges are arbitrary and illegal.
  - b. Secondly the respondent has raised a demand of ₹1,27,754.17/- upon the complainant in lieu of late payment charges. However, clause 19 of the said



agreement states that an interest of 18% p.a. shall be charged on delayed payments. The said clause is reproduced below:

*"19. Without prejudice, to the Company's aforesaid rights, the Company may at its sole discretion waive the breach by the Allottee in not making payments as per the Payment Plan but on the condition that the Allottee shall pay to the Company, interest which shall be charged from the due date @ 18% per annum. In the event, that the company decides to waive its right to cancel the allotment and to forfeit the earnest money and instead accept the outstanding payment with interest in lieu thereof, no right whatsoever would accrue to any other defaulting Allottee and/or Allottee in future to entitle them or any of them to insist that the company is bound to accept the outstanding amount with accumulated interest. Each case shall be examined separately/individually by the company and shall be dealt with in a manner deemed appropriate and suitable by the company at its absolute discretion."*

18. The BBA was executed on 22.08.2012, and as per Clause 32, possession was due by 22.08.2015. The Respondent has failed to fulfil its obligations, resulting in significant delay. Given, the breach of agreement by the Respondent, it cannot now enforce its own terms to the detriment of the complainants. Furthermore, the 18% p.a. interest rate under Clause 19 is excessive and punitive, and therefore any such demand is impermissible.
19. In light of the foregoing, the Authority holds that the letter dated 26.02.2021 includes multiple illegal demands and thus does not constitute a valid offer of possession. Consequently, the subsequent reminder notices and the cancellation letter dated 27.10.2023 are also rendered invalid. The cancellation letter is hereby quashed for being contrary to law.
20. It is further observed that an allotment letter was issued in favor of a third party on 06.11.2023 upon payment of a booking amount of ₹2,00,000/-. However, no registered BBA has been executed in respect of the said transaction. In view of the fact that the complainants have already paid approximately 84% of the total sale consideration, mere issuance of an allotment letter to a third party does



not affect their rights over the unit. Accordingly, the allotment letter dated 06.11.2023 issued to the third party is declared null and void.

21. The respondent is further directed to restore the complainant's unit to its original state within 2 months from the date of this order and issue fresh valid offer of possession after eliminating the illegal demands as discussed above and adjustment of delay possession charges from the due date of possession i.e., 22.08.2015 till valid offer of possession or actual handing over of possession, whichever is earlier at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**F.II. Direct the respondent to register the conveyance deed, in accordance with section 17 of RERA, 2016.**

22. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

*"17. Transfer of title.-*

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

23. As on date, conveyance deed has not been executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit

within 3 months from the date of this order and upon payment of requisite stamp duty by the complainant as per norms of the state government.

**G. Directions of the authority**

24. 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):
- a. The respondent is further directed to restore the complainant's unit to its original state within 2 months from the date of this order and issue fresh valid offer of possession after eliminating the illegal demands as discussed above and adjustment of delay possession charges from the due date of possession i.e., 22.08.2015 till valid offer of possession or actual handing over of possession, whichever is earlier at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
  - b. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months from the date of this order upon payment of requisite stamp duty by the complainant as per norms of the state government.
  - c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - e. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
  - f. The respondent shall not charge anything which is not the part of BBA.

25. Complaint stands disposed of.
26. File be consigned to registry.



**(Ashok Sangwan)**  
Member



**(Arun Kumar)**  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 19.08.2025**

