

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

Complaint no.	:	3455 of 2024
Date of Filing:		25.07.2024
Date of Decision:		31.10.2025

1. Shekhar

2. Ashu Rani

Both R/o: RZ-148-B, Gali No. 9, East Sagarpur,
South West Delhi-110046

Complainants

Versus

1. M/s Agrante Realty Limited

Regd. office: 704, DLF Tower B, Jasola, New
Delhi-110025

2. Arvinder Singh

R/o: H. no. 253, Janakpuri, Bareilly, U.P -
243122

3. RK Associate Partnership Firm

R/o: 125, Saini wali Gali no. 3, Rampura, Tri
Nagar, Delhi-110035

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Vineet Kumar

Advocate for the complainants

Sh. Brij Mohan

Advocate for the respondents

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	"Kavyam", Sector- 108, Gurugram
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Registered vide registration no. 23 of 2018 dated 22.11.2018
	Validity status	31.11.2022
	registered area	5 acres
4.	DTPC License no.	101 of 2017 dated 30.11.2017
	Validity status	29.11.2022
	Name of licensee	Arvinder Singh & others
	Licensed area	5 acres
5.	Unit no.	TA1-802, in Tower A1, 8 th floor [page 29 of complaint]
6.	Unit area admeasuring	512.50 sq. ft. (carpet area) [page 29 of complaint]
8.	Agreement to sale	17.12.2019 (page no. 24 of complaint)
9.	Building plan approved on	06.07.2018 [as per data available at DTCP official website]
10.	Environment clearance	20.08.2019

		[as per data (A-H) available in the website of the authority]
11.	Date of start of construction	Not available
12.	Tripartite agreement	Annexed but undated 22.05.2021 (as alleged by complainant)
13.	Possession clause	<p>7. Possession of the apartment</p> <p>7.1 Schedule for possession of the said apartment</p> <p>The Promoter agrees and understands that timely delivery of possession of the Apartment is the essence of the Agreement. The Promoter, based on the approved plans and specifications, assures to hand over possession of the Apartment within 4 years from the start of construction, unless there is delay or failure due to Court Order, Government Policy/guidelines, decisions, war, flood,.....</p>
14.	Possession clause as per Affordable Housing Policy, 2013	<p>1 (iv)</p> <p>All such projects shall be required to be necessarily completed within <i>4 years from the date of approval of building plans or grant of environmental clearance, whichever is later</i>. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.</p>
15.	Due date of possession	<p>20.02.2024</p> <p>[Calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]</p>

16.	Total sale consideration	Rs.21,41,246/-
17.	Amount paid by the complainants	Rs.18,56,646/-
21.	Occupation certificate	Not obtained
22.	Offer of possession	Not offered

B. Facts of the complaint

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

- That respondent no. 1-3 promoted a residential project named "Kavyam" at Sector 108 of Gurugram. Respondent no. 1 represented that it had the necessary license and permissions from the authorities to initiate the project. Respondent no. 2 and 3 represented themselves to be the partners of the respondent no. 1 and equal shareholders in the project. The project was promoted to be a part of residential colony namely "Kavyam" and duly registered with HARERA vide registration No. RC/REP/HARERA/GG/2018/23 dated 22.11.2018.
- That complainants on 24.06.2019 jointly booked the apartment and made a payment of Rs. 1,05,000/- . That subsequent to booking payment of Rs. 4,20,000/- was also made to the respondents on 15.07.2019, ie. even before execution of builder buyer agreement. Thus, the respondents had collected a sum that is more than 10% of the sale consideration, even before execution of the builder buyer agreement, thereby violating Section 13(1) of the RERA Act, 2016.
- That after some delay, on 17.12.2019, builder-buyer agreement was executed by the respondents with complainants for apartment bearing no. T-A-1/802. The agreement was executed with the respondents no.

1-3 collectively who represented themselves as the 'Promoters' in the agreement.

IV. That the complainants entered into a tripartite loan agreement between the complainants, respondents and HDFC Bank dated 22.05.2021 for a sum of Rs. 16,00,000/- @ 6.80% interest on variable rate basis.

V. That on 01.07.2022 besides EDC/IDC already paid by the complainants, respondents made an illegal demand of Rs. 1,12,100/- from the complainants on account of external electrification work, which was nowhere provided in the above-mentioned agreement.

VI. That complainants had also charged interest upon late payment from the complainants even during the outbreak of Corona virus epidemic. That till date complainants have paid a sum of Rs. 18,56,646/- to the respondents out of the total sale consideration of Rs.21,41,246/- That as the promised date of delivery of the apartment expired, complainants visited the project site in March 2023 and found that work at the project site was at a standstill and majority of construction work was still incomplete. That when complainants wished to have a closer look at the promised apartment and the status of its construction, officials of respondents present at the site did not even allow the complainants to enter the project site.

VII. That the complainants have now come to know that;

- License of the respondents issued by DTCP has lapsed since 29.11.2022 and the Harera registration of the respondents also stands lapsed since 31.11.2022. As of date project is neither Rera registered nor OC/CC obtained.
- The respondents filed Engineers report dated 12.01.2024 for the quarter ending 31.02.2023 before HARERA, wherein respondents have stated that percentage of work completed is only 63%.

- That 'EDC' & 'IDC' collected by respondents, its Directors and officials from the complainants and other buyers was not deposited with the Director of Town and Country Planning, Haryana and was misappropriated.
- The amount collected from the buyers was misappropriated and never put to the use of the construction/ development of the project.

VIII. That respondents and their directors and officials from day one, never had the intention to give any shop to any of the buyers they induced innocent buyers and committed cheating in criminal conspiracy with each other.

IX. That respondents have carried out only marginal development at the site despite expiry of period of completion and that all the respondents in connivance with each other and under conspiracy with others have committed cheating, criminal breach of trust and dishonest misappropriation of Rs. 18,56,646/-. Respondents never had any intention to give the apartment to complainants; they only induced complainants to commit cheating and misappropriation. Respondents with this modus operandi have cheated hundreds of people and the total cheating thus committed is more than 100 Crores of rupees.

X. That respondents have indulged in unfair and deceptive trade practices as respondents deliberately misused the money of the complainants for years which indicates the mala fide and illegal acts of the respondents.

XI. That the respondents act of collecting internal/ external development charges from the complainants is deficiency in service as same is neither used for the purpose mentioned nor was it deposited with the government authority.

XII. That even after expiry of stipulated period, respondents have admitted that they have only completed part of the project which itself establishes that there is undue delay and deficiency in service on the part of respondents.

C. Relief sought by the complainants:

4. The complainants in the present complaint are seeking the following relief(s).
 - (i) Direct the respondents to pay delay penalty as per RERA w.e.f. 24.06.2019 from the date of each individual payment for apartment bearing no. T-A-1/802 till the date of actual delivery of possession.
 - (ii) To deliver the possession of the abovementioned unit complete in all respects along with OC and CC
 - (iii) Direct the respondents to refund Rs. 1,12,100/- to the complainants charged on account of external electrification work.
 - (iv) Direct the respondents not to charge administrative charges.
 - (v) Direct the respondents to allow the complainants to visit and inspect the project site and not to levy holding charges till outcome of this complaint.
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 no. 1.

6. The respondent no. 1 has contested the complaint on the following grounds.
 - I. That the complainants herein is Mr Shekhar and Ashu Rani had booked the unit/flat bearing apartment no. TA1-802, floor-8th, tower no.- A1, having a carpet area of 512.50 sq. ft. in the project of the respondent no.

1 company namely "KAVYAM" under the affordable housing policy 2013 which is situated at Revenue estate of Village Dharampur, Sector 108, Gurgaon- 122006 Haryana for a total consideration amount of Rs. 21,00,000/-.

- II. That on 09.02.2019 the complainants had paid an amount of Rs. 1,05,758/- as a booking amount vide cheque no. 082093 dated 29.01.2019 and the respondent no. 1 had issued an acknowledgement receipt dated 04.02.2019 for the same.
- III. That subsequently, an allotment letter dated 01.07.2019 was issued to the complainants by the respondent no. 1. Thereafter, the apartment buyer agreement was executed on 17.12.2019 between the parties.
- IV. That the respondent no. 1 issued demand letters as per the payment plan and the complainants made the payment of Rs. 18,56,686/- out of the total sale consideration of Rs. 21,41,246/-.
- V. That pursuant to clause 7.1 of the agreement, the possession was slated for delivery by August 2023. However, as a result of Covid-19, the force majeure clause was invoked thereby leading to an unavoidable delay in delivering the possession of the unit, which was entirely beyond the control of the respondent no. 1.
- VI. That the clause 7.1 of the agreement provides an exemption if the delay is caused beyond the control of the respondent no. 1, such as due to force majeure, which will be excluded from the calculated time period. Due to the disruption caused during the first wave of the Covid-19 outbreak, various relief measures were granted to the Real Estate industry by the State Government. Due to the worldwide pandemic, there was general shortage of the labour and material resulting in delay and same amount to the force majeure condition. The policy instructions were issued vide this memo No. Misc-1025/2020/13188

dated 28.07.2020 and 04.08.2020, relaxation was provided to the real estate sector in the state of Haryana by providing a moratorium of six months for making various compliances related approval of licensed colonies and CIU permission. Further Council of Minister in its meeting vide on 15.06.2021 extended the moratorium and considered the zero period from 1.04.2021 to 31.05.2021.

VII. That on 12.01.2017, the environment pollution (Prevention and Control), Authority for the National Capital Region implemented the Graded Response Action. The authority based on the forecast and prediction has decided that the measure put into the place for very poor/ severe category of GRAP from 15.10.2019 would be lifted because the region is expected to stay in moderate/poor category in terms of the air quality. However, same through the urgent notice put further ban from 15.10.2019 and directing to enforce poor/severe category measures under GRAP which consequently delay in the construction of the flat/unit.

VIII. That the complainants also did not adhere to the payment schedule, as most of the payment made after the expiry of the due dates resulted in violation of the agreement in turn affecting the obligation of the respondent no. 1 in terms of handing over the possession of the unit. The respondent no. 1 raised a demand letter dated 11.01.2021 for Rs. 2,65,125/- due on 11.01.2021 followed by reminder letter dated 13.04.2021 but complainants failed to pay the outstanding payment. That respondent no. 1 again raised demand on 10.07.2021 for last and next instalment total amounting to Rs. 5,48,306/- and then the complainants after due date paid last two instalment total amounting to Rs.5,30,250/- on 22.07.2021. Later on, respondent no. 1 again raise demand on 10.01.2022, due date is 10.01.2022 for Rs. 2,84,502/- and

complainants paid this amount through two instalment and paid the same on 11.1.2022 and on 04.02.2022. That the respondent no. 1 again raised demand on 01.07.2022 for outstanding amount of Rs. 2,52,500/- plus taxes followed by reminder letters dated 20.07.2022, 02.08.2022 but complainants failed to pay the same and then as a last opportunity respondent no. 1 sent pre-cancellation letter dated 15.09.2022 only after that complainants paid the amount outstanding partly on 16.09.2022, 10.03.2023 and 06.04.2023. That only after sending multiple demand letters and reminder letters as per affordable housing policy, the complainants paid every instalment after passing of due dates and thus incurred interest on the amounts.

- IX. That the project faced unforeseen market fluctuations, including an unprecedented rise in construction material costs, which impacted the construction schedule due to the outbreak of Covid-19 Pandemic. Despite this, the respondent no. 1 strived to keep the project on track. However, these factors which were beyond the control of the respondent no. 1 inevitably led to delays in the completion of the project and the handing over of possession to the complainants.
- X. That due to the disruptions caused by the COVID-19 pandemic, there was a significant impact on the supply chain, leading to delays in the procurement of essential construction materials. Additionally, the availability of labour was severely affected, as many workers returned to their home states during the lockdowns and were unable to return promptly due to travel restrictions and health concerns. These factors, beyond the control of the respondent no. 1, further contributed to the delay in completing the project and handing over possession to the complainants.

XI. That the respondent no. 1 had throughout conducted the business in a bonafide manner and will complete the project and deliver possession to the customers within the stipulated time. It is submitted that the delay in the construction of the flat was neither intentional nor malevolent but due to reasons beyond the control of the respondent no. 1, as explained in the preceding paragraph.

XII. That on 30.11.2021, the Government of the National Capital Territory (NCT) of Delhi issued directions pursuant to the Writ Petition Aditya Dubey v. Union of India and Ors., Writ Petition (Civil) No. 1135 of 2020. The Commission for Air Quality in NCT and adjoining areas convened a meeting on 21.11.2021 and issued directions under Section 5 of the Environment Protection Act, 1986. These directions include stopped the entry of trucks into NCT of Delhi, except for those carrying essential commodities, until 7th December 2021, and the closure of all GNCT offices, autonomous bodies, and other offices till 26.11.2021. Moreover, the Hon'ble Supreme Court, in its order dated 24.11.2021, imposed a ban on all construction activities within the NCR as part of its interim order. These restrictions further contributed to the delay in construction activities, thereby impacting the timely possession of the unit.

XIII. That the project was also affected by adverse weather conditions due to bad air quality all over the NCR region which caused delays in construction activities. The respondent no. 1 took all possible measures to mitigate the impact of such weather conditions, but the delays were inevitable due to the safety concerns of the labour.

XIV. That in 2022 Commission for Air Quality Management in National Capital Region and Adjoining Areas vide its order dated 29.10.22 implemented the actions under Stage-III of GRAP for Severe plus

category of AQI in Delhi NCR and revoked the order of Stage-III GRAP vide its order dated 14.11.2022, in same manner the commission implemented and imposed Stage-III of GRAP through orders dated 04.12.2022, 30.12.2022, 06.01.2023, 02.11.2023, 22.12.2023, 14.01.2024, 14.11.2024, 03.01.2025 and 09.01.2025 and revoked the same through revocation orders dated 07.12.2022, 04.01.2023, 15.01.2023, 28.11.2023, 01.01.2024, 18.01.2024, 27.12.2024, 05.01.2025 and 12.01.2025 respectively, due to these reasons the construction work in Delhi NCR had stopped for approximately 129 days between 29.10.2022 to 12.01.2025. It is pertinent to mention here that Stage-III of GRAP clearly states "Enforce strict ban on construction and demolition activities in the entire NCR"

XV. It is also important to point out that on various occasions the time period between the revocation of Stage-III GRAP and Re-implementation of the Stage-III GRAP is less than 10 days, sometimes 4 days, made difficult for Promoter to continue the construction and caused loss of time and money. In view of the above-mentioned reasons the procurement of materials, machinery, labour, collection was becoming impossible for respondent no. 1, due to which respondent no. 1 was unable to utilize this short span of time between the GRAP period and caused stoppage in work for almost nine months.

XVI. That the possession of the unit as per the agreed clause in the apartment buyer agreement, was scheduled for August, 2023. However, due to unprecedeted and unforeseen circumstances beyond the control of the respondent no. 1, such as the onset of the COVID-19 pandemic, the government-imposed moratorium period of 8 months, and various legal restrictions and bans, including construction bans due to environmental and health concerns, the completion of the project was

unavoidably delayed. The combined effect of these external factors necessitated the extension of the project timeline. As a result, the delivery of possession has to be exempted from the original timeline and is reasonably be extended to March 2025. Therefore, the present complaint is premature, not maintainable, and liable to be dismissed.

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.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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 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

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 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.

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 respondent no. 1:

F.I Objection regarding delay caused due to Force Majeure circumstances.

12. The respondent no. 1 has taken an objection that the construction of the project was delayed due to force majeure conditions such as various orders passed by the concerned authorities (including courts, pollution control boards/Air Quality management authorities), outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent no. 1, so taking into consideration the above-mentioned facts, the respondent no. 1 be allowed the period during which the construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Agreement For Sale' was executed between the parties on 17.12.2019. As per clause 1(iv) of the Affordable Housing Policy, 2013

*All such projects shall be required to be necessarily completed **within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.** This date shall be referred to as the „date of commencement of project" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project*

[Emphasis supplied]

13. The possession of the unit was to be offered with 4 years from approval of building plans (06.07.2018) or from the date of environment clearance (20.08.2019) and whichever is later which comes out to be 20.08.2023. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 20.08.2023 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 20.02.2024.
14. The respondent no. 1 has submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, shortage of labour etc but these were for a short period of time and are the events happening every year. The respondent no.1 was very much aware of these events and thus, the promoter/ respondent cannot be given any further leniency based on the aforesaid reasons.

G. Entitlement of the Complainants:

- i. Direct the respondents to pay delay penalty as per RERA w.e.f. 24.06.2019 from the date of each individual payment for apartment bearing no. T-A-1/802 till the date of actual delivery of possession.
- ii. To deliver the possession of the abovementioned unit complete in all respects along with OC and CC.

15. The complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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."

16. Clause 1(iv) of the Affordable Housing Policy, 2013 provides the time period of handing over possession and the same is reproduced below:

"1(iv):

"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges in terms of proviso to section 18 of the Act which 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.

18. 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.
19. 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., 31.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.
20. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. 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;"*

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

22. On consideration of the documents available on record and submissions made by the parties, the authority is satisfied that the respondent no. 1/promoter is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as agreed between the parties. It is a matter of fact that agreement to sale was executed between the parties on 17.12.2019. The said project is a affordable housing project therefore, it is regulated by the affordable housing policy, 2013. As per the clause 1(iv) of the affordable housing policy, 2013 the possession of the booked unit was to be delivered within a period of 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. The building plans was approved on 06.07.2018 and the environmental clearances was granted on 20.08.2019. The due date of possession was calculated from the date of environment clearance, being later i.e., 20.08.2019 which comes out to be 20.08.2023. Furthermore, the a grace period of 6 months on account of covid-19 is hereby allowed for the reasons mentioned above. Hence, the due date of possession comes out to be **20.02.2024**. Till date no occupation certificate has been obtained by the respondent no. 1/promoter. The authority is of the considered view that there is delay on the part of the respondent no. 1/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period.

23. Accordingly, 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 no. 1/promoter is established. As such complainants are entitled to delay possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid

by complainants to the respondent no. 1/promoter from the due date of possession i.e., 20.02.2024 till the offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

24. The respondent no. 1/promoter is also directed to handover possession of the subject unit allotted to the complainants within a period of 60 days after obtaining valid occupation certificate from the competent authority.
- iii. **Direct the respondents to refund Rs. 1,12,100/- to the complainants charged on account of external electrification work.**
25. This issue has already been dealt by the authority in complaint bearing no. CR/4031/2019 titled ***as Varun Gupta Vs. Emaar MGF Land Limited*** wherein it is held that the promoter cannot charge external electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.
- iv. **Direct the respondents not to charge administrative charges.**
26. The complainants have pleaded that the respondent/promoter should not charge an amount on account administrative charges. The authority is of the view that the respondent/promoter can charge administrative charges of Rs.15000/- for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard vide circular dated 02.04.2018.

- v. Direct the respondents to allow the complainants to visit and inspect the project site and not to levy holding charges till outcome of this complaint.
27. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as ***Varun Gupta V/s Emaar MGF Land Ltd.*** wherein the authority has held that the respondent/promoter is not entitled to claim holding charges from the complainants/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
28. Therefore, in light of the above, the respondent/promoter shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

H. Directions of the authority

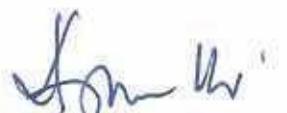
29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
 - a. The respondent/promoter is directed to pay the interest at the prescribed rate i.e. 10.85% per annum for every month of delay on the amount paid by the complainants from the due date of possession i.e., 20.02.2024 till valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent/promoter is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date

of handing over of possession shall be paid on or before the 10th of each succeeding month.

- iii. The respondent/promoter is directed to handover possession of the unit allotted to the complainants within a period of 60 days after completing the unit in terms of buyer's agreement and obtaining of occupation certificate from the competent authority.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent/promoter shall not charge anything from the complainants, which is not the part of the buyer's agreement.

30. Complaint as well as applications, if any, stands disposed off accordingly.

31. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.10.2025