

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

**Complaint no.:** 4673 of 2024  
**Date of decision:** 02.12.2025

**Bina Devi Somani and Jugal Kishore Somani**

**R/o:** - T4/302, M3M Merlin, Sector 67,  
Badshahpur, Gurugram, Haryana

**Complainants**

Versus

**1. M/s Pareena Infrastructures Private Limited**

**Regd. Office at:** C7A IInd Floor, Omaxe City  
Centre Mall, Sohna Road, Sector 49, Gurugram

**2. Monex Infrastructure Private Limited**

**Regd. Office at:** Flat no.2, Palm Apartment,  
Plot No. 13B, Sector 6, Dwarka, New Delhi-110075

**Respondent**

**CORAM:**

Ashok Sangwan  
Phool Singh Saini

**Member**  
**Member**

**APPEARANCE:**

Complainants in person  
Prashant Sheoran (Advocate)  
None

Complainants  
Respondent No.1  
Respondent No.2

**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 allottee 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 complainant, 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 and location of the project	"Coban Residences", Sector-99A, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.06.2024
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	<b>Registered</b> Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2024
7.	Unit no.	602, Tower-2 (As per page no.26 of the complaint)
8.	Unit area admeasuring	1997 sq. ft. (As per page no.26 of the complaint)
9.	Provisional Allotment letter	14.03.2014 (As per page no.26 of the complaint)
10.	Date of execution of flat buyer's agreement	06.04.2014 (As per page no.28 of the complaint) 11.02.2015 (As per page no.67 of the complaint)
11.	Request for change of payment plan	11.02.2015 (Page 64 of the complaint)
12.	Possession clause	<i>3.1 Possession</i> <i>3.1 That the developer shall under normal conditions subject to the force majeure, complete construction of</i>

		<i>tower/ building in which the said flat is to be located within 4 years of the start of construction of execution of this agreement, whichever is later... [Emphasis supplied]</i>
13.	Date of start of construction	16.10.2014 (as mentioned in demand letter dated 03.03.2021 at page 102 of complaint)
14.	Due date of possession	11.02.2019 (Calculated 4 years from the date of execution of agreement being later)
15.	Total sale consideration	Rs.1,23,53,456/- (As per summary of dues as mentioned in BBA dated 11.02.2015 on page 90 of complaint)
16.	Amount paid by the complainant-allottee	Rs. 1,03,40,366/- (Inadvertently mentioned in the pod dated 04.11.2025 as Rs. 75,39,866/-)
17.	Occupation certificate	13.12.2022
18.	Offer of possession	14.12.2022 (As per page 19-28 of reply by R1)
19.	Possession Letter	21.08.2024 (Page 37 of reply by R1)
20.	Cancellation letter	13.11.2024 (As alleged in para 10 at page 6 of reply also as per page 38-42 of reply by R1)

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- a) That in January 2013, the respondents through their representative had approached the complainants and represented that the respondent's residential project name "Coban Residencies" situated at Sec-99A, Gurugram, Haryana" will effectively serve the purpose of their family and has best of the amenities. Based on

representation and assurance made, the complainants jointly booked a 3bhk unit bearing No. 602 in Tower T2 for size admeasuring 1997 sq. ft. on 20.01.2013 and paid a booking amount of Rs. 8,50,000/- . The unit was purchased under the construction linked plan for a sale consideration of Rs. 1,19,40,077/. On 14.03.2014, the respondent issued a provisional allotment letter in favor of complainants confirming the allotment of flat no. T2-602 in tower T2 for size admeasuring 1997 sq. ft.

- b) That on 06.04.2014, after long follow-ups a pre-printed, unilateral, arbitrary builder buyer's agreement was executed inter-se the respondents and the complainants. According to clause 3.1 of the buyer's agreement, the respondent has to give possession of the said flat within 4 years of the start of construction or execution of this agreement whichever is later. That the construction was commenced on 16.10.2014, therefore, the due date of possession was on 16.10.2018.
- c) That the complainants received a call from the respondents for a change in the payment plan with an additional cost, the complainants were agreed upon that and thereafter, the complainants signed a pre-printed application form for modification in the payment plan on 11.02.2015. Since the complainants have agreed to change the payment plan, the respondents have changed the builder buyer agreement and issued a fresh builder buyer agreement to the complainants on 11.02.2015, under the compelling circumstance, the complainants had signed the builder buyer agreement. The respondents had charged an extra loading amount of Rs. 325/sq feet on account of "loading of payment

plan conversion" and also increased the basic sales price from 4845/sq feet to 5170/sq feet and increased the total sale consideration of the unit to Rs. 1,23,53,456/-. That on 03.03.2021, the respondent sent a Demand Cum Tax Invoice and raised a demand of Rs. 6,31,015/- and the complainants have paid Rs. 6,23,700/- on 06.04.202. As per demand cum tax invoice the complainants have paid Rs. 75,39,866/- i.e. 61% of the total sale consideration of the unit.

- d) That, since 2018 the complainants were contacting the respondents telephonically and sending emails, and making efforts to get possession of the allotted unit. but all efforts went in vain. Despite several telephonic conversations and email requests by the complainants, the respondent did not give possession of the unit.
- e) That aggrieved by non-handing over of possession in due time, the complainant filed complaint no. 2124/2021 before this Hon'ble Authority inter alia seeking following reliefs: -

1. *In case of failure to give possession*
  - I. *Amount paid. Rs. 75,39,866/-*
  - II. *Interest for every month of delay at Prevailing rate of interest. As applicable.*
2. *It is most respectfully prayed that this Hon'ble Authority may graciously be pleased to grant the following relief(s): -*
  - (i) *To get possession of the fully developed/constructed flat/apartment with all amenities after obtaining the OC.*
  - (ii) *To get the delayed possession interest on the amount paid by the allottee, at the prescribed rate from the due date of possession to till the actual possession of the Flat is handed over as per the proviso to Section 18(l) of the Real Estate Regulation and Development) Act, 2016.*
  - (iii) *To get the calculation of flat (Carpet area, common loading, and super area).*
  - (iv) *To get an order in their favour by directing the Respondent to not charge anything which is not the part of BBA.*
  - (v) *The Complainants are entitled to get an order in their favor to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the Apartment Buyer Agreement.*

- (vi) Any other relief/direction which the Hon'ble Authority deems fit and proper in the facts & circumstances of the present complaint.
- (vii) That in the interest of justice, this authority should pass strict and stringent orders against errant Promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the Respondent has not only treated the Complainants unfairly but many other such buyers.

Interim Relief sought:

Direct the respondent to pay delayed possession charges till the actual handing over of the unit.

- f) The said complaint was disposed of by this Hon'ble Authority vide order dated 08.03.2022 with following directions: -

*Para 39. 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 is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 11.02.2019 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier. Grace period of 6 months on account of covid 19 shall be applicable to both the parties.*
  - ii. *The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10<sup>th</sup> of each succeeding month.*
  - iii. *The complainants are also directed to pay the outstanding dues, if any.*
  - iv. *The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.*
- g) That as the specific prayer for giving possession was not directed by the Authority therefore, the complainant refilled a rectification application for the same. The Hon'ble Authority vide order dated 04.05.2023 directed the respondent to handover the actual physical possession of the unit within one month after adjustment of delayed possession charges and other relief as per order dated 08.03.2022. The respondent no.1 did not comply with the said order of the Authority. There was clear order to grant interest on amount paid

within a span of 90 days and also to pay monthly interest. This order was not complied by the respondent. Finding themselves helpless being the senior citizen, the complainants filed execution petition before the Hon'ble Adjudicating Officer in the month of July 2023. The execution petition bearing no. RERA-GRG-3292-2023 is pending before the said Authority. Even after multiple orders the respondent have failed to handover the physical possession of the said unit. The main reason for such deliberate delay in handing over of physical possession is that the interest granted to the complainant for the delay was till offer of possession. The respondent is not bothered to give possession as they have not been directed to give interest till actual handover of possession. Finally, the actual physical possession of the unit was handed over on 21.08.2024.

- h) That the respondents offered the possession of the impugned unit vide letter dated 23.12.2022 wherein illegal demand of Rs. 58,06,215/- (except stamp duty) was raised. The possession letter was issued along with indemnity bond. The respondent did not give the benefit of timely payment rebate in terms of clause 1.2.(vii) (b) of BBA @ Rs. 110/sq ft despite having made a communication to complainants' entitlement vide letter dated 26.09.2016. There was no mention of it in offer of possession or indemnity bond. Both the documents are one sided and express the ill intent of the respondent.
- i) Thus, the offer letter doesn't fulfil the one of its basic ingredients as it is supported by illegal demands and thus, the said offer of possession is null and void. As the offer of possession has been

issued after the order 08.03.2022 and thus, the demand made herein could not have been challenged in the earlier complaint. Accordingly, the complainants have new cause of action to pursue the instant complaint which is not barred by Res judicata. Further, as the offer of possession letter dated 23.12.2022 is not valid, the complainants are entitled for delayed possession interest till the actual handover of the possession i.e. up to 21.08.2024. Further, the respondents have failed to execute conveyance deed in favour of the complainants.

- j) That in view of the settled law, the common area maintenance and allied charges shall be payable only from the actual date of hand over of possession. That even though the respondent offered the possession way back on 23.12.2022 but the premise was not complete in any sense as per the site inspection made by complainants on 28.12.2022. The impugned unit was far from complete as per the agreed specifications of the buyer agreement. The unit and site overall were still in the under-construction stage. After adjusting the delayed possession interest and timely payment rebate, the complainants have already paid the balance amount. However, despite the payment, the possession of the impugned unit has been deliberately delayed by the respondent and not been handed over till date. The offer of possession dated 23.12.2022 has given a new cause of action to the complainants additional payment of Rs. 28,00,500/- was made in Jan 2023, which could not have been adjudicated at the time of filing the first complaint.
- k) That post the order of arrest warrant being issued by the Hon'ble Adjudicating officer the respondent handed over the possession of

the unit on 21.08.2024. So, the interest should be computed till this date on the total amount paid by the complainant. Further, direction should be given to do the conveyance deed of the said unit within a span of 45 days. The respondent issued a *cancellation notice* dated 13.11.2024 (despite the execution decree) and threatened to disconnect services on 08.01.2025. The previous complaint No. 2124/2021 (decided 08.03.2022, rectified on 04.05.2023), dealt with delay up to a certain point and granted interest till a cut-off date – i.e. 23.02.2023. The present complaint no. 4673/2024 is founded on entirely new events post-23.02.2022 and different cause of action. These events and reliefs were not and could not have been adjudicated earlier.

- 1) The respondent was under a clear legal obligation to first credit the complainants with the DPC amount before demanding the net balance and issuing possession. The respondent's offer letter dated 23.12.2022 blatantly violated these requirements. It demanded a gross amount of ₹58,06,215/- without factoring with the delayed possession charges that had accrued (as ordered on 08.03.2022). The respondent was under the obligation to pay timely payment rebate (TPR) @ Rs. 110/- per sq. ft to the buyers in case the buyers, complainant herein, makes payment in accordance with the instalments, within the specified time for the initial 40% amount of the total BSP of the unit. Upon timely payment, the respondent has issued a letter dated 26.09.2016 in which it confirmed that the complainant is eligible for TPR. The letter clearly mentioned that the same will be adjusted in the payment of the last instalment of the unit ("On offer of Possession"). It is important to note that the

respondent failed to adjust the agreed timely payment rebate that the complainants were entitled to in the offer of possession.

- m) That the complainants are entitled to delay interest from 23.02.2023 until 21.08.2024 at the prescribed RERA rate (SBI MCLR + 2%). The earlier order was not a cutoff for all time; it adjudicated interest up to one point, and did not extinguish the right to further interest as the delay continued. We pray the Authority to award delay possession interest from 23.02.2023 until 21.08.2024 to compensate the buyers for additional defaults of respondent, in line with RERA's Act.
- n) That the respondent's cancellation letter of 13.11.2024 was issued nearly three months after the complainants obtained possession through HRERA's execution proceedings. The respondent never raised any pending dues during the execution; in fact, on 21.08.2024 it expressly agreed to hand over possession "*without any condition of payment*" and allowed the decree to be recorded as satisfied on 18.10.2024. The complainants are ready and willing to sign the deed and pay for stamp/registration as needed, but the respondent must be ordered to come forward and sign as well. The complainants are liable to pay maintenance charges only from 21.08.2024 onward when physical possession was obtained. Any demand for maintenance or holding charges prior to that date is unsustainable and should be declared void.
- o) The respondent's GST demand of ₹10,16,970 appears to have been calculated on the full original sale price (₹1.23 crore) without accounting for the delay possession charges reduction of ₹24.82 lakh and other adjustments. In other words, the builder

calculated GST as if the Complainants were paying the entire price, whereas in reality the effective consideration was lower after the compensatory and other deductions. The GST should be recalculated on the net consideration after delay possession charges and rebates.

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

4. The complainant has sought following relief(s):

- I. Direct the respondents to pay delayed possession interest at prescribed rate on the total amount paid from 24.12.2022 till the actual handover of possession i.e.21.08.2024.
- II. Direct the respondents to adjust timely payment rebate towards the demand made in the offer of possession in terms of letter dated 26.09.2016.
- III. Direct the respondents to set aside of offer of possession letter dated 23.12.2022 issued by respondent no.1 being illegal and defective.
- IV. Direct the respondents to set aside the demand of club membership charges in the offer of possession letter dated 23.12.2022.
- V. Direct the respondents to set aside the demand of maintenance charges w.e.f. 01.02.2023 in the offer of possession letter dated 23.12.2022.
- VI. Direct the respondents to set aside the demand with regard to power backup charges, firefighting charges, power backup charges, meter connection charges, EEC and Admin charges in the offer of possession letter dated 23.12.2022.
- VII. Direct the respondents to set aside the demand of Rs. 10,16,970/- towards taxes including service tax, GST and Cess.
- VIII. Direct the respondents to raise the maintenance charges from the actual date of hand over of possession.
- IX. Direct the respondents to direct the respondents to execute the conveyance deed within 30 days.

**D. Reply by respondent no. 1:**

5. The respondent has contested the complaint on the following grounds:
- a) That That the present complaint is not maintainable in the eyes of law. The present complaint is barred by the law of res judicata as well as order 2 rule 2 CPC. That Hon'ble Authority recently dismissed a similar complaint bearing no. 2496 of 2022 and same was upheld by Hon'ble Appellate tribunal in appeal no. 39 of 2024. It is submitted that prior to present complaint, complainant had filed a complaint bearing number 2124 of 2021 and sought relief of possession as admitted by the complainant in its present complaint. That said complaint was allowed by the Hon'ble authority vide order dated 08.03.2022.
  - b) That as per final order respondent was directed to pay delayed possession charges as follow:
    - The respondent is directed to pay interest at prescribed rate of 9.3% per annum from each month of delay from the due date of possession i.e 11.02.2019 till the offer of possession of the subjected flat after obtaining occupation certificate from the competent authority +2 month. Grace period of 6 months on account of Covid 19 shall be applicable to both the parties.
    - That the complainant is also directed to pay the outstanding amount due and following directions were passed for the complainant "the complainants are also directed to pay the outstanding dues, if any"
  - c) That the present complaint has been filed by the complainant after passing judgement dated 08.03.2022 & 04-05-2023 (rectified judgment). In the present complaint, complainants themselves have placed of offer of possession dated 23.11.2022 and order dated

04.05.2023 passed by the Hon'ble authority wherein the Hon'ble authority passed following directions" Keeping in view of the above, respondent is directed to handover physical possession of the subject unit to the complainant within one month subject to payment of outstanding dues, if any, after adjustment of delayed possession charges and other reliefs as per order dated 08.03.2022. Further the delay possession interest at the prescribed rate of interest as per order dated 08.03.2022 is required to be paid on the amount paid by the complainant-allottee till due date." However, complainant placed incomplete offer of possession on case file.

- d) That after receiving of offer of possession complainant only requested the Hon'ble authority to pass direction to hand over possession after adjustment of dues as given in the offer of possession and the complainant never challenged the amount so claimed by the respondent before the authority after receiving the same. That vide order dated 04.05.2023, Hon'ble authority specifically directed the complainant to pay the outstanding dues after adjustment of delayed possession charges and other reliefs as per order dated 8<sup>th</sup> of March 2022. That as per order dated 8<sup>th</sup> of March 2022 Hon'ble authority only granted delayed possession charges till the offer of possession +2 months and other relief which was granted to the petitioner was relaxation of interest for a period of 6 months during Covid 19.
- e) That in the order dated 04.05.2023 Hon'ble authority, clarifies the order that the possession can only be given after payment of outstanding dues. That as per offer of possession respondent has

demanded an amount of rupees 5806215 + (716000+ 50003 for registration of conveyance deed).

- f) That the following table will clarifies the fact that petitioner never paid the outstanding dues.

• Due Amount As Per Possession Letter	5806215
• Less Interest	6908
• Less DPC	2387202
• Less Customer Paid After Possession Letter	2801965.66
• Balance Amount	610139.34
• Add Water Connection Charges	5743
• Balance amount for interest calculation	615882.34
• Add Taxes	30554
• Interest from 23-12-2022 to till 15-08-2024	105334
• Customer to pay	751770.34
Plus	
• Stamp Duty	716000
• Registration Charges	50003

- g) That as far as delayed possession charges is concerned the amount of ₹ 23,87,202/- comes in following manner:

Total Amount Received from Customer as Per Order	69,16,166 <b>Paid till 11-02-2019</b>	6,30,000 <b>Paid on 06-04-2021</b>	75,46,166.00
Due Date of offer of Possession	11-02-2019		
Grace Period allowed on account of COVID	6 Months		
Date after considering Grace Period	11-08-2019		
Offer of Possession Date (Actual)	23-12-2022		
DPC Payment date (+2 month)	23-02-2023	23-02-2023	

Rate of DPC	9.30%	9.30%	
Delay (In Days)	1,292.00	688.00	
<b>DPC Amount</b>	<b>22,76,764.00</b>	<b>1,10,438.00</b>	<b>23,87,202.00</b>

- h) That once the Hon'ble Authority has directed the complainant to pay the outstanding dues after receiving offer of possession and adjustment of delayed possession charges, the complainant were under an obligation to pay complete balance amount. That it is settled law, the executing court is bound to execute the judgement as it is and as per the directions passed by the Hon'ble Authority the petitioner is also liable to pay the outstanding dues and only thereafter, the petitioners are entitled to possession. However, even executing court in execution bearing no. 3292 of 2023 refused of entertain the objections filed by respondent to direct the complainant to pay balance sale consideration and the complainants malafidely withdraw execution petition being fully satisfied to avoid adjudication of objection filed by respondent. The said order was passed without deciding objections of respondent. That executing court is bound to comply complete judgment whereas in the present case executing court ignored the rights of respondent and illegally ignored the objections of respondent.
- i) That as per offer of possession, the petitioners are also liable to pay an amount of rupees 751770.34 + 716000 +50003 total 15,17,773. The petitioners are also liable to pay maintenance charges as per agreed terms. It is crystal clear that the petitioners have failed to pay the outstanding dues as per the offer of possession and as per directions passed by the Hon'ble Authority on 04.05.2023.

- j) That the complainants have defaulted on their payment obligations as mandated by the Hon'ble Authority order dated 04.05. 2023. The final calculation of outstanding dues, as detailed in the respondent's reply is as follows: -

Particulars	Amount (in ₹)	Source / Reference
<b>Due Amount as per Offer of Possession</b>	58,06,215.00	Annexure R1 at page no 21 of reply & Annexure 7 of complaint at page 129
<b>Less: Interest charged in Offer of Possession</b>	(6,908.00)	
<b>Less: Delayed Possession Charges (DPC) payable by Respondent</b>	(23,87,202.00)	Calculation given at page no. 4 & 5 of reply) also at (page no. 31 & 32 of reply i.e Annexure R2 i.e objections filed in execution petition) ( It is pertinent to mentioned here that complainant accepted said DPC and withdrawn his execution) order of withdrawal of execution petition is Annexure R3 , wherein it is specifically mentioned that according to Learned counsel for DH decree has already been satisfied, However it is submitted that decree was satisfied only for DH but not for respondent, since as per order dated 04.05.2023 , complainant was directed to pay the outstanding dues as per offer of possession.
<b>Net Due Amount after DPC Adjustment</b>	34,12,105.00	
<b>Less: Amount Paid by Complainant post Offer of Possession</b>	(28,01,965.66)	
<b>Balance Outstanding Amount (A)</b>	6,10,139.34	
<b>Add: Water Connection Charges</b>	5,743.00	
<b>Add: Taxes</b>	30,554.00	
<b>Add: Interest on default (from 23.12.2022 to 15.08.2024)</b>	1,05,334.00	
<b>Total Outstanding Dues (B)</b>	7,51,770.34	
<b>Other Charges for Conveyance</b>		

<b>Add: Stamp Duty (C)</b>	7,16,000.00	
<b>Add: Registration Charges (D)</b>	50,003.00	
<b>TOTAL AMOUNT PAYABLE BY COMPLAINANT (B+C+D)</b>	15,17,773.34	

- k) That the present complaint is not only barred by res judicata, but is also completely baseless on merits. The complainants' core allegation that the charges in the offer of possession are "illegal" or "not part of the bba" is demonstrably false. All such charges are explicitly and contractually agreed to by the complainants in the apartment buyer agreement dated 11.02.2015 .

<b>Disputed Charge (from OFFER OF POSSESSION, Annexure R1)</b>	<b>BBA Clause Authorizing the Charge</b>
<b>Club Membership Charges</b> (₹2,00,000)	<b>Clause 2.6</b> <i>Clause 2.6 states the allottee "shall be eligible for membership of the Club... on payment of prescribed charges as mentioned in Annexure-I," and it is specifically agreed by complainant "</i>
<b>Fire Fighting Charges</b> (₹70,694)	<b>Clause 1.2(b)(iv)</b> <i>States the allottee agrees to pay "proportionate cost of fire fighting and fire safety equipments as required..."</i>
<b>EEC (₹2,98,524) &amp; Meter Connection Charges</b> (₹2,10,384)	<b>Clause 1.2(a)(ii).</b> <i>States the price "does not include electric connection charges, service lines..." and that "Electric connection charges will be charged extra... to cover the cost payable to HSEB..."</i>
<b>Advance Maintenance Charges</b> (₹1,06,041)	<b>Clause 1.2(b)(vi)</b> <i>Obligates the allottee to pay maintenance charges "from the date of notice of possession" and to execute a separate maintenance agreement.</i>
<b>Administrative Charges</b> (₹2,17,700)	<b>Clause 1.2(b)(iv).</b> <i>Covers "any other charges... as may be demanded by the Company..." This specific charge is a statutory pass-through, as clarified in the OFFER OF POSSESSION (Annexure R1): "Administrative Charges in terms of Office Order 3295 dated 02.04.2018 passed by the District Town Planner..." and said charges were already declared valid by RERA itself in hundreds of cases.</i>

- l) That the charges listed above are not "illegal demands." They are contractual and statutory obligations that the complainants were

fully aware of and had agreed to pay. Their attempt to dispute these legitimate charges *after* an order for DPC was passed in their favour is a malafide attempt to unjustly enrich themselves. The complainant intentionally did not pay the balance amount as per offer of possession and thus make themselves liable for getting their unit cancelled.

- m) That as demonstrated in the table in para 2 of these submissions, after adjusting the full DPC amount of ₹23,87,202 and the part-payment of ₹28,01,965.66, a balance consideration of ₹7,51,770.34 was still outstanding and payable by the complainants.
- n) The respondent no. 2 i.e Monex Infrastructure private limited never filed any reply after giving multiple opportunities. Therefore, the defence of respondent no. 2 is struck off.

6. 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:**

7. 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**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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**

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

***Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder."*

10. 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.

**F. Findings on the relief sought by the complainants:**

- F.I** Direct the respondents to pay delayed possession interest at prescribed rate on the total amount paid from 24.12.2022 till the actual handover of possession i.e.21.08.2024.
- F.II** Direct the respondents to adjust timely payment rebate towards the demand made in the offer of possession in terms of letter dated 26.09.2016.
- F.III** Direct the respondents to set aside of offer of possession letter dated 23.12.2022 issued by respondent no.1 being illegal and defective.
- F.IV** Direct the respondents to set aside the demand of club membership charges in the offer of possession letter dated 23.12.2022.
- F.V.** Direct the respondents to set aside the demand of maintenance charges w.e.f. 01.02.2023 in the offer of possession letter dated 23.12.2022.
- F.VI.** Direct the respondents to set aside the demand with regard to power backup charges, firefighting charges, power backup

**charges, meter connection charges, EEC and Admin charges in the offer of possession letter dated 23.12.2022.**

**F.VII. Direct the respondents to set aside the demand of Rs. 10,16,970/- towards taxes including service tax, GST and Cess.**

**F.VII. Direct the respondents to raise the maintenance charges from the actual date of hand over of possession.**

11. The above-sought relief(s) by the complainants are taken together being inter connected.
12. On the basis of the documents placed on record and submissions made by both the parties, the Authority observes that the complainants were allotted a unit bearing no. T-2, 602 in the project of the respondent vide buyer's agreement dated 11.02.2015. The total sale consideration of the unit was Rs. 1,23,53,456/- and the complainants have paid an amount of Rs. 1,03,40,366/- against the said unit.
13. The complainants filed a previous complaint bearing no. 2124 of 2021 on 19.04.2021 which was decided by the Authority on 08.03.2022 wherein the respondent was directed to pay delay possession charges @ 9.30% from 11.02.2019 till the date of offer of possession after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier. Thereafter, the complainants filed an application dated 14.03.2023 for rectification of the said order dated 08.03.2022 seeking specific direction for handing possession of the subject unit as the respondent after receipt of OC on 13.12.2022, offered possession of the unit to the complainant on 14.12.2022 but failed to handover the actual possession to the complainant which was decided on 04.05.2023. Thereafter, the complainants filed an execution petition vide no. 3292 of 2023. In compliance of the said order dated 08.03.2022, the respondent handed over the possession of the unit to the complainants, and the said execution petition was disposed of accordingly on 18.10.2024.

14. The Authority observes that it lacks the jurisdiction to re-open the matter directly and substantially in issues between the same parties which have been heard and finally decided in the former complaint bearing CR/2124/2021. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers but this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908 (CPC). Section 11 of CPC is reproduced as under for ready reference:

*“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

***Explanation I.**—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.*

***Explanation II.**—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*

***Explanation III.**—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.*

***Explanation IV.**—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.*

***Explanation V.**—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.*

***Explanation VI.**—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.*

***Explanation VII.**—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.*

**Explanation VIII.** —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

15. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 are, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the Authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the Act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the above-mentioned reliefs sought by the complainants are not maintainable having been already adjudicated as discussed in the foregoing para from 12 to 14.
16. The Authority further observes that post passing of order dated 19.04.2021, the respondent has cancelled the unit of the complainants on 13.04.2024.

#### **Validity of cancellation**

17. The complainants have submitted that a fresh cause of action arose when they received an offer of possession dated 14.12.2022 from the respondent wherein the respondent raised various demands amounting to ₹58,06,215/- without factoring with the delayed possession charges that had accrued (as ordered on 08.03.2022). Thereafter, the respondent had also cancelled the allotment of the complainants on 13.11.2024 on failure to pay the outstanding dues raised via the said offer of possession letter dated 14.12.2022. On the

other hand, the respondents pleaded that the pending dues were not paid by the complainants as per the offer of possession as per the directions passed by the Authority on 08.03.2022 and since the complainants have failed to pay the entire sale consideration, the respondent has cancelled the unit of the complainants on 13.11.2024.

18. After considering the documents available on record as well as submissions made by the parties, it is determined that the Adjudicating Officer during the pendency of execution proceedings before it, passed an order dated 21.08.2024, wherein it was specifically stated that no condition of payment, etc., shall be imposed upon the complainants. Despite the passing of this order, the respondent proceeded to cancel the unit on the alleged ground of non-payment of dues on 13.11.2024.

The said order is reproduced under for ready reference:-

*"Arrest warrants were ordered to be issued against directors of JD namely Mr. Virender Kumar Verma and Mr. Surender Kumar Verma for not handing over possession of subject unit till now. As per learned counsel for JD, DH can take possession at any time. No condition of payment etc. will be imposed upon him. DH is thus free to take possession at any time."*

Thus, the said act of the respondent is in direct violation of the said order, as the Adjudicating Officer had expressly directed that no payment condition was to be imposed upon the complainants. Therefore, in light of the above observations, the cancellation of the subject unit is held to be invalid being bad in the eyes of law.

**F.IX Direct the respondents to direct the respondent to execute the conveyance deed within 30 days.**

19. As per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration

of the conveyance deed of the unit in question. The complainants had taken the physical possession of the unit on 21.08.2024.

20. It is to be further noted that Section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17 (1) of the Act provide for transfer of title and the same is reproduced below:

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

21. As the occupation certificate of the unit has been obtained from the competent authority on 13.12.2022 and the respondent has offered the possession on 14.12.2022 ,there is no reason to withhold the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent to execute the conveyance deed in favour of the complainant after payment of applicable stamp duty charges and administrative charges as fixed by

the local administration , if not already paid , within 90 days from fate of this order.

**G. Directions of the authority**

22. 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 cancellation is set aside.

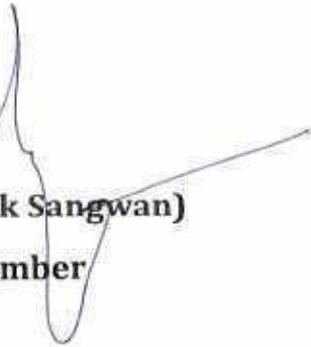
II. The respondent is directed to execute the conveyance deed in favour of the complainants after payment of applicable stamp duty charges and administrative charges as fixed by the local administration , if not already paid , within 90 days from fate of this order.

III. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

23. Files be consigned to the registry.

  
(Phool Singh Saini)

Member

  
(Ashok Sangwan)

Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 02.12.2025**