

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

Complaint no.	:	4722 of 2024
Date of complaint	:	09.10.2024
Date of order	:	09.01.2026

Major General Dr. Malvinder Pal Singh
R/o: - J-1004, AWHO, Shanti Vihar,
Sector-95, Gurugram

Complainant

Versus

Army Welfare Housing Organization
Office at: South Hutsments, Kashmir House,
Rajaji Marg, New Delhi - 110011

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. K.K Kohli (Advocate)
Sh. Aditya Bhardwaj (Advocate)

Complainant
Respondent

ORDER

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

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

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	"Shanti Vihar" (Tower A to R), Sector-95, Gurugram
2.	Project area	24.53 acres
3.	Nature of project	Group Housing Project
4.	DTCP License no. and validity	40 of 2010 dated 28.05.2010 valid till 27.05.2025
	Name of licensee	Army Welfare Housing Organization
5.	RERA registered/not registered and validity	Registered vide no. 08 of 2018 dated 04.01.2018 valid upto 31.12.2020
6.	Application dated	16.08.2012 (page no. 79 of complaint)
7.	Unit no.	1004, 10 th floor, J Block (page no. 96 of complaint)
8.	Area admeasuring	1750 sq. ft.
9.	Agreement for sale	Not on records
10.	Possession clause	8. As per plans, your DU is expected to be ready for handing over by Dec 2015 [pg. 82 of complaint]
11.	Due date of possession	December 2015
12.	Total sale consideration	Rs. 58,92,246/- (as per application form at page 79 of

		complaint)
13.	Total amount paid by the complainant	Rs. 69,23,476/- (as alleged by complainant)
14.	Occupation certificate	18.12.2020 (page no. 92 of complaint)
15.	Offer of possession	01.01.2021 (page no. 96 of complaint)
16.	Handover of possession	01.02.2021 (page no. 102 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
 - I. That the complainant was handed over a booking letter dated 16.08.2012 wherein clause 2 of the letter confirmed the booking and clause 8 provides that the said dwelling unit in the project was to be handed over by December 2015. The respondent had fixed the tentative cost of the DU as Rs 58,92,246/-.
 - II. That in order to partly finance the cost for the said DU, the complainant availed a loan from the State Bank of India, amounting to Rs. 47,13,000/- on 08.10.2012.
 - III. That the complainant paid various amounts towards consideration of booked DU and a total payment of Rs. 67,92,863/- i.e., 100% of the total cost of the DU and other charges. The complainant had abided by all the terms and conditions of the booking letter of DU.
 - IV. That as per para 8 of the letter of booking, the DU was expected to be ready for handing over by December 2015, i.e., approximately 40 months after the booking.

- V. That the progress at the project site was stalled since 2015 onwards since the contractor i.e., M/s Ramprastha Promoter and Developer Pvt. Ltd. was unable to deploy the required resources at the site for the completion of the project.
- VI. That the respondent vide letter dated 11.05.2018 informed the complainant that the contract with M/s Ramprastha Promoter and Developer Pvt. Ltd. had been cancelled and timeline for completion of the project had been revised.
- VII. That the complainant was kept unaware of the stalled progress till 2018. That the respondent informed the complainant vide a letter dated 04.10.2018 that the contract with M/s Ramprastha Promoter and Developer Pvt. Ltd. had been cancelled on 05.01.2018. The letter further stated that a fresh contract had been concluded on a 'Risk and Cost' basis on 10.08.2018 which had led to an escalation of nearly 8% in the cost of the project which had to be borne by the complainant in order to infuse liquidity.
- VIII. That the project recommenced on 15.08.2018 after the contract was cancelled with M/s Ramprastha Promoter and Developer Pvt. Ltd. That 6 out 7 instalments had been received from the allottee (90 % of the initial cost of the DU, up to 17.01.2017) wherein the contractor had been paid 81% of the cost of the DU and the revised date of completion was scheduled to December 2019 much to the dismay and shock of the complainant.
- IX. The respondent vide letter dated 16.10.2018 informed the complainant that a notice had been issued to RPDPL to pay the enhanced cost due to risk and cost contract and that future arbitration in accordance with contractual provisions will be invoked.

- X. That the occupation certificate (OC) in respect of AWHO Shanti Vihar, Sector – 95, Gurgaon was issued on 18.12.2020.
- XI. That the respondent issued handing taking over instructions and statement of accounts dated 01.01.2021 to the complainant for the allotted DU.
- XII. The respondent issued a clearance letter dated 06.01.2021 for handing over the dwelling unit to the complainant.
- XIII. That the apartment was handed over to the complainant only in 01 February 2021 after a delay of more than 5 years and the complainant was not paid any compensation towards Delayed Possession Charges in accordance with The Real Estate (Regulation and Development) Act, 2016.
- XIV. That by falsely assuring the timely delivery of possession of the dwelling unit, the complainant has been subjected to unethical/unfair trade practice at the hands of the respondent organization. That by having intentionally and knowingly induced and having falsely misrepresented to the complainant and thereby making him act in accordance to its misrepresentations, and owing to all the deliberate lapses/delays on the part of the respondent, the respondent is liable to make amends as being requisitioned/claimed by the complainant.
- XV. That the respondent has resorted to unfair practices by way of making incorrect, false and misleading statements over the possession and has collected money disproportionate to the construction on site, therefore, the respondent has violated provisions of Section 12 of Real Estate (Regulation and Development) Act, 2016.

XVI. That by falsely assuring the timely delivery of possession of the dwelling unit, the complainant has been subjected to unethical/unfair trade practice at the hands of the respondent organization.

XVII. That in summation, the PDC (Probable Date of Completion) had been shifted several times by the respondent as mentioned below, thereby undermining the complainant's intention to secure a comfortable home for his old age and forced him to incur additional expenses for alternative accommodation until the flat was finally handed over. The PDC was initially December, 2015 as per the letter dated 16.08.2012. Thereafter, vide letter dated 13.04.2015, the PDC was delayed to June, 2016. Yet again, the PDC was extended to June, 2017 vide another letter dated 17.05.2016. Much to the dismay of the complainant, the respondent further delayed the PDC to December, 2019. It is important to bear in mind that the intimation regarding shifting of PDC was given just a few months prior to the previous PDC, precluding the allottee to take a decision to opt out from the project, and invest in some other project.

XVIII. That due to the multiple delays in handing over the DU, the complainant incurred an escalation in cost as well. The cost of DU was increased by Rs 6,29,238/-, from Rs 58,92,246/- to Rs 65,21,484/-, as observed from the statement of accounts as on 31.12.2020. The appreciated value of increase in cost as on 31 January 2021 is Rs 10,23,099/-.

XIX. That the complainant had to incur an avoidable rental amounting to Rs 17,64,000/- from 01.01.2016 to 31.01.2021. The appreciated value of rent paid as on 31.12.2020 is Rs 22,60,277/-.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent for payment of interest for delayed possession in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
 - ii. Direct the Respondent not to ask for anything which is not a part of the Buyers Agreement and not demand any charges like HVAT, GST, Holding Charges, as has been held by this Honourable Authority in the judgement of Varun Gupta & Ors Versus Emaar India Ltd.
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 contested the complaint by filing reply on the following grounds:-
 - I. That the respondent submits that the respondent is Army Welfare Housing Organization (AWHO), a 'No-Profit No Loss' society came into existence from 20th March 1978 under the Indian Societies Registration Act XXI of 1860. The aim and objective of the organisation is to construct houses for the welfare of serving/retired Army personnel and their widows in selected stations throughout the country. That AWHO's mission is to provide structurally sound, economically viable and functionally efficient dwelling units to the desirous serving/retired members of the Army and their Widows on a

"NO PROFIT NO LOSS" basis. The endeavor of AWHO has always been to deliver good quality construction with environment friendly ambience to its allottees. AWHO plans holistic projects as Mini Townships with central amenities such as shopping complex, club, swimming pool, sports facility, CSD and adequate green area with parking and water supply, all-inclusive within the cost as finally incurred by AWHO. AWHO is conscious of their charter for providing affordable housing with utmost dedication and with an emphasis on quality finished end product. Adjutant General (AG) of AG's Branch, South Block, Ministry of Defence is Ex-Officio Chairman of this Organisation. All rules, regulations and policies are made with due approval of Board of Governor (BOG) & Executive Committee Meeting (ECM) which comprises of higher management in hierarchy of Ministry of Defence in Ex Officio capacity. Organization sustains only 3% on establishment charge being collected from allottees.

- II. The AWHO develops, as a welfare measure, all its group housing projects from the contributions made by the allottees apart from the short-term borrowings from the Financial Institutions like Banks, HUDCO and National Housing Bank. Honorary members of the Board of Governors of Army Welfare Housing Organisation, apart from other very senior Army Officers comprising the Chief of Army Staff, Vice Chief of Army Staff, the Army Commanders and Adjutant General, Army Headquarters, who is also the Ex-Officio Chairman. The Managing Director of the AWHO is assisted by a team of executives who are specialists in their own faculties and includes planners, architects, Engineers, Surveyors, Project Managers and the necessary staff. Members of Board of Governors, and Executive Committee of the

AWHO are appointed as Ex-officio Members of the AWHO by virtue of the appointment they tenet in the Army Head Quarters. The pay and allowance of this team is met out of the administrative charges received from the allottees @ of 3%, since AWHO does not receive any grant/ financial assistance from the Government/ Army HQ or any other Organisation. Any amount received and not spent is retained as reserve for creating land bank/ undertake common repair/ welfare projects for the benefit of the allottees.

III. AWHO maintains separate accounts for each project right from the inception and for each project loss/income accruing on account of bank interest or in any other manner is debited/credited into the said account and at the time of final closure of the project, the surplus is refunded to the allottees on pro rata basis and deficit (if any), is also made good from the allottees. The audited statement of account in the interim is provided to the Apartment Owners Association (AOA) to maintain transparency and complete fairness. Thus, the allottees of each project are shareholder in profit/loss of the said project. In essence, the respondent and other allottees of a project are shareholders in both profit and loss, since they receive proportionate share of the surplus which is refunded and subjected to proportionate recovery in case of deficit. AWHO is working on 'NO PROFIT, NO LOSS' basis and providing housing on affordable cost. Any grant of compensation on account of incidental delay in completion of project of which the complainant were informed from time to time with reasons, when the complainant was also given the benefit of deferred payment schedule, it would adversely affect the surplus/deficit of the project fund at the time of its closure and accordingly adversely affect

financial gain to co-allottee of the complainant in the project as their share in the surplus would be reduced or share of the deficit would be increased. Thus, the compensation against an organisation providing housing on 'No Profit, No Loss' basis would violate the principles of Article 14 of the Constitution of India. AWHO also offers 1% discount to its allottees towards timely payment of the cost of the dwelling unit. AWHO waives off the mandatory interest on delayed payments for its esteemed uniformed customers despite some of the projects(s) accounts) being in deficit.

IV. That till date, AWHO has successfully delivered all its projects involving construction of 33,529 dwelling units and development of 539 plots in 79 projects, across the country in its 45 years of history. The organisation has endeavoured to provide DUs/ plots to the serving/ Ex-servicemen community of the Indian Army and their dependents (war widows etc, at much cheaper rate vis-à-vis the private builders. At present AWHO is being refunded about Rs 91.40 crore to its allottees on account of completed projects, annual registrar and interest on delayed payments, which is unprecedented in the history of construction work. The respondent Society was registered post 1971 war by the Government of India to help war casualties as a welfare measure and to take care of the housing needs of serving/ retired Army Personnel and their widows, since it entailed primarily only welfare work and the aim to provide House to serving and retire person on "No Profit, No Loss" basis. AWHO is not a commercial builder in any manner. The Memorandum of the Society clearly indicates that all the activities of this Society will be carried out without any profit nature. The income and property of the Society

whenever derived shall be applied by the Society towards promotion of the objects of the association set forth in its memorandum of association. No proportion by way of dividend or bonus or otherwise shall be paid to any person who at any time are or have been members of the society or to any of them or to any person claiming through them.

- V. That any Army officer, personnel or their widow in order to apply under the projects, which are administered by the respondent has to abide by the instructions under the master brochure of July 87 and rules and regulations made by board of management and executive committee. That the Allottees having affirmed to abide by such instructions, rules and regulations through an affidavit and forms of allotment have bound themselves to abide by such rules regulations as contracted between the respondent and the applicant.
- VI. That the complainant initially in the year 2007 applied for a residential unit in one of the project administered by AWHO located in the Dwarka. In this regard allotment of registration number was also issued to the complainant dated 28/09/2007. That in the month of June 2008 the complainant gave a request for change of registration from Dwarka to Gurugram, the said request was accepted by the respondent, in furtherance of the request the complainant was allotted unit in the Gurugram Sector 49 Sispal Vihar. The Complainant in the furtherance of the request was allotted a dwelling unit a Gurugram, in this regard a letter dated 30.09.2008 was issued to the complainant.
- VII. That the complainant in the month of December 2009 again requested the AWHO for change of the dwelling unit, which was allotted to complainant in Sispal Vihar Sector 49 Gurugram. This time it was

requested that the unit allotted in Gurugram project be transferred to another project, which was being administered under the aegis of AWHO in Sector 114 MOHALI Punjab. Considering the fact that complainant is senior armed forces personnel, the said request was accepted, and in furtherance of same the complainant was allotted super deluxe apartment in project located at Mohali.

- VIII. That after the change of location in Gurugram to Mohali, again in the month of June 2012 the complainant requested for change of project location from Mohali to Sector 95 Gurugram. In this regard a request dated 29.06.2012 was also given by the Complainant to the respondent.
- IX. That in furtherance of the request made by the complainant, the respondent being a "No Profit No Loss Organisation" permitted the change of station from Mohali to Gurugram. In this regard a letter dated 02.07.2012 was issued to the respondent.
- X. That the respondent based on the representations given by the Contractor, with respect to timely development of the project awarded work contract to RPDPL. That initially the RPDPL in order to gain trust of the respondent started the execution of the project with a fair pace. However after a few months of receiving substantial amount under the work contract, the performance of the RPDPL in the project was found to be slow and not satisfactory.
- XI. That the respondent took all the steps to pursue the RPDL to expedite the work and complete the project. On the assurance of the RPDL the respondent also gave extensions for the completion of the project and even financially supported the RPDL. But finally when in January 2018 the promoter M/s Ramprashtha Promoters and Developers Pvt. Ltd.

failed to mobilized the requisite resources at site of work, the work contract with the RPDL was terminated by respondent by invoking risk and expense clause against the contractor. However, the recovery of amount from the contractor was likely to take time as it involved litigation, it was decided to charged cost of completion of the work from the allottees and refund the same as and when the same is recovered from the contractor beside other recoveries on various counts. At the same time the allottees including the Complainant were given an option to withdraw from the project without any penalty vide letter dated 11.05.2018. The AWHO working in most transparent manner conveyed to its allottees including the complainant vide letter dated 04.10.2018 explaining how much amount has been paid to M/s Ramprashtha Promoter and Developers Pvt. Ltd.

XII. That even after the receipt of letter dated 11.05.2018, wherein the respondent was given an option to the allottees to withdraw from the project, the complainant decided to continue with the same. Thereafter the respondent sent letters dated 10.04.2019, 01.08.2019, 23.08.2019 for the pending instalments, upon receipt of the said letters the complainant approached the respondent for final statement of account, which was duly provided to the complainant.

XIII. That after the receipt of the occupation certificate dated 18.12.2020, the respondent issued handing over taking over instructions to its allottees including complainant on 01.01.2021.

XIV. That in compliance of the instructions given in letter dated 1 January 2021, the complainant gave undertaking dated 06.01.2021. Further upon the receipt of the undertaking, the complainant was issued clearance letter dated 06.01.2021 with respect to its allotted unit.

XV. That on 30.07.2021 the respondent executed a conveyance deed bearing number 2463 in favor of the complainant.

XVI. That the respondent has filed arbitration against the contractor in which an amount of Rs.370.37 Crores (approximately) has been claimed under the various heads by the respondent. The respondent has also stated to the allottees, that as and when the amount under the arbitration will be awarded in favour of the respondent, the same shall be credited into project account and the surplus in the said account will be refunded to allottees on pro rata basis. That recently the Hon'ble tribunal has passed an award in favour of the AWHO, and once the said amount is received the same after the necessary deduction is be transferred in the project account so that it can be further refunded to the allottees.

XVII. That the role of the respondent in the projects which are being developed under the aegis of the respondent is supervision, quality control, inspection and development. The respondent by terminating the contract with the erstwhile developer acted in the best interest of the allottees, as a result of same there are currently a huge number of families which are staying in the said project.

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

E. Jurisdiction of the authority

The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on

ground of jurisdiction stands rejected. 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) 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.

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 leaving aside compensation

which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on contentions raised by respondent in its reply:

F.I Plea taken by the respondent for considering the decision already taken by this authority in case titled *Manoj Kumar vs. AWHO* complaint no 4215 of 2020 vide order dated 17.11.2021.

11. The respondent, in its reply contends that this Hon'ble Authority has previously rendered a decision in respect of the same project being developed by the respondent in the matter of *Manoj Kumar vs. AWHO, complaint no. 4215 of 2020*, wherein it was determined that the respondent being a "no profit no loss" organization is not liable for delay in possession charges under Section 18 of the Real Estate (Regulation and Development) Act, 2016. The Authority after reviewing the facts of the aforementioned case hereby clarifies that although the matter pertains to the same project the facts in the present case and those in the previous matter are fundamentally different. However, it is noted that in the earlier case the complainant's unit was changed at the complainant's request and a new unit was allocated with a revised possession date. Subsequently, the respondent offered possession of the new unit after obtaining the occupancy certificate (OC) from the competent authority prior to the lapse of the due date for possession and as such no delay in possession was established and delay possession charges were not imposed. The circumstances in the present case, however, are distinct. Therefore, the respondent's request for the Authority to adopt the same view as in the earlier case is hereby rejected.

G. Findings on the relief sought by the complainant.

- I. Direct the respondent for payment of interest for delayed possession in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
12. In the present complaint, the complainant intends to continue with the project and is 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."

13. Clause 8 of the application letter provides for handing over of possession and is reproduced below:

8. As per plans, your DU is expected to be ready for handing over by Dec 2015."

14. The authority has gone through the possession clause of the application letter and observed that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of flat buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step and the authority appreciates such firm commitment by the promoter regarding handing over of possession.
15. **Admissibility of delay possession charges at prescribed rate of interest:**

16. The respondent society was formed for providing DU to the serving/retired personals as well as their widows all over India with no profit no loss basis. The project namely "Shanti Vihar" consisting of tower A to R was plotted by the respondent for providing DUs to serving/retired army personals as well as their widows all over India. In pursuant to request made by the complainant he was allotted a unit detailed above by the respondent society vide its letter dated 16.08.2012. Though the project was to be completed by December, 2015 and the possession of the allotted unit was to be delivered after that. But that's schedule could not be adhered to, for the one reason or the other and resulting in delay in handing over of possession. The complainant has stated that due date of possession was shifted several times but no documentary proof regarding the said is annexed in the file therefore, the due date is considered as December 2015. The occupation certificate of the project was received on 18.12.2020 from Directorate of Town and Country Planning, Chandigarh and in pursuant to which the respondent society started offering possession of the allotted units to different allottees. The respondent offered possession to the complainant on 01.01.2021 and subsequently the possession of the said unit has been handed over to the complainant on 01.02.2021.
17. Also, the respondent in its reply contends that respondent being a "No Profit No Loss" Organization has to be treated different from the promoters who carry out their business with profit as motive. As far as the liability of the respondent under the RERA Act, 2016 is concerned it would be relevant to refer the definition of the term 'Promoter'

under the section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

(zk) "promoter" means

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) xxxXxxXX*

18. The authority observes that a person who constructs or causes to be constructed a building or apartments is a promoter if such building or apartments are meant for the purpose of selling to other persons. Similarly, a person who develops land into a project i.e., land into plots is a promoter in respect of the fact that whether or not the person also constructs structures on any of the plots. It is clear that a person develops land into plots or constructs building or apartment for the purpose of sale is a promoter. Hence, the respondent is expressly covered under the definition of promoter under Section 2 (zk) of the Act, 2016 and therefore is obligated under the provisions of the Act, 2016.

19. As mentioned earlier the occupation certificate of the project has already been received on 18.12.2020 and according to which respondent society has offered possession of unit different allottees including the complainant on 01.01.2021.

20. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as agreed. By virtue of letter dated 16.08.2012, the possession of the said unit was to be delivered by Dec, 2015. Therefore, the due date of handing over possession comes out to be 31.12.2015. In the present case, the complainant was offered possession by the respondent on 01.01.2021 after obtaining occupation certificate dated 18.12.2020 from the competent authority. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer of possession of the allotted unit to the complainant as per the terms and conditions of the application letter dated 16.08.2012. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

21. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.80% p.a. w.e.f. 31.12.2015 till actual handing over of possession i.e., 01.02.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules. Further, the complainant allottee shall not be entitled to the delay compensation claim filed by the AWHO against the contractor of the project i.e., M/s Ramprastha Promoters & Developers Pvt. Ltd.

II. **Direct the respondent not to ask for anything which is not a part of the buyers agreement and not demand any charges like HVAT,**

GST, Holding Charges, as has been held by this Honourable Authority in the judgement of Varun Gupta & Ors Versus Emaar India Ltd.

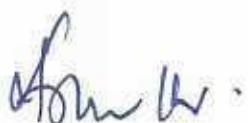
22. The respondent shall not to charge anything which is not part of buyer's agreement/application letter.

H. Directions of the authority

23. 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 interest at the prescribed rate i.e., 10.80% per annum for every month of delay on the amount paid by the complainant(s) from the due date of possession 31.12.2015 till actual handing over of possession i.e., 01.02.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.
- b. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.
- c. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- d. The respondent shall not to charge anything which is not part of buyer's agreement/ application letter.
- 24. Complaint as well as applications, if any, stands disposed off accordingly.
- 25. File be consigned to the registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.01.2026