

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

Complaint no.	:	5938 of 2024
Date of complaint	:	03.12.2024
Date of order	:	09.01.2026

1. Annu Yadav
2. Mukesh Kumar
Both R/o: - 888, 1st Floor, Sector-47,
Gurugram

Complainants

Versus

M/s JMS Buildtech Realty Pvt. Ltd.
Office at: Plot No. 10, 3rd Floor, Sector-44,
Gurugram

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sh. Gaurav Rawat (Advocate)
Sh. Ravinder Singh (Advocate)

Complainants
Respondent

ORDER

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

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

A. Unit and project related details

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

	Particulars	Details
1.	Name of the project	Primeland, Sector 95 A, Gurgaon
2.	Project area	10.60 acres
3.	Nature of the project	Affordable Plotted Colony (DDJAY)
4.	RERA Registered or not	Registered vide no. 03 of 2021 dated 18.01.2021 valid upto 28.12.2025
5.	DTCP License no.	44 of 2020 dated 29.12.2020 valid till 28.12.2025
6.	Unit no.	Plot No. 102 (page no. 45 of complaint)
7.	Unit area admeasuring	121.274 sq. yd. (page no. 45 of complaint)
8.	Plot Buyer's agreement	04.06.2021 (page no. 42 of complaint)
9.	Possession Clause	<p>7. Possession of the Plot</p> <p>7.1 Schedule for possession of the said plot</p> <p>The Promoter assures to offer the possession of the allotted plot as per agreed terms and conditions on or before 28.12.2025 i.e., time granted under the registration by the HRERA or such extension thereof as extended by</p>

		HRERA subject to receiving the entire payment of sale price and other charges as per the payment schedule.....
10.	Due date of possession	28.12.2025 (as per possession clause)
11.	Total Sale Consideration	Rs. 63,18,396/- (as per payment plan at page 77 of complaint)
12.	Amount paid by the complainants	Rs. 58,45,176/- (as per final statement annexed with offer of possession at page 93 of complaint)
13.	Occupation certificate	Not on records and even not on websites
14.	Offer of possession	07.10.2024 (page no. 84 of complaint)
15.	Reminder	06.11.2024 (Page no. 92 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -
 - I. That relying on various representations and assurances given by the respondent and on belief of such assurances complainants booked a plot/unit in the project of respondent by paying a booking amount towards the booking of the said unit/plot bearing no. 102 in Sector 95A, Gurugram having super area 121.274 sq. yds. to the respondent dated 18.02.2021.
 - II. That the respondent confirm the booking of the unit to the complainants vide allotment letter dated 16.03.2021 providing the details of the project, confirming the booking of the unit dated 18.02.2021, allotting a plot/unit no. 102 measuring super area

121.274 sq. yds. in the aforesaid project of the developer for a basic sale consideration of the unit i.e. Rs.63,18,396/- which excluding, car parking charges, and development charges, PLC@Rs.4,36,588/-, club membership charges and other specifications of the allotted unit and providing the time frame within which the next instalments was to be paid. The said plot was PLC plot on account of park facing but at present the said plot is no more a PLC plot as the respondent has changed/removed the said park without the prior intimation or consent of the complainants.

- III. That a unit buyer's agreement was executed between the complainants and respondent on 03.06.2021. As per clause 7.1 of the buyer's agreement the respondent had to handover possession of the sold plot on or before 28.12.2025. Therefore, due date of possession comes out to be 28.12.2025.
- IV. As per the demands raised by the respondent, based on the payment plan the complainants to buy the captioned unit already paid a total sum of Rs. 58,45,176/- towards the said unit against basic sale consideration of the unit i.e. Rs. 63,18,396/-.
- V. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and was never definite about the delivery of the possession.
- VI. That the complainants after many requests and emails received the demand letter on account of offer of possession dated 07.10.2024. That along with the above said demand letter respondent raised several illegal demands on various account which are actually not

payable as per the buyer agreement i.e. PLC, electrification charges, water connection charges, sewerage charges, compound wall/ fencing charges, welfare cess, advance maintenance @ 24 months, registration and pasting fee, miscellaneous charges refundable IFMs against construction and interest Rs. 21,474/-. Furthermore, till date respondent has failed to obtain the CC.

- VII. That raising demand letter by the respondent on payment of charges which the buyer is not contractually bound to pay, cannot be considered to be a valid demand letter/offer of possession.
- VIII. That the respondent asked the complainants to sign the indemnity bond as prerequisite condition for handing over of the possession. Allottee raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- IX. That the respondent asking for electric meter and electrification charges from the complainants is absolutely illegal as the cost of the electric meter in the market is not more than Rs. 2,500/- hence asking for such a huge amount, when the same is not a part of the builder buyer agreement is unjustified and illegal and therefore needs to be withdrawn immediately.
- X. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The

complainants has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.
 - ii. Direct the respondent to get the conveyance deed executed.
 - iii. Quash the illegal offer of possession cum demand letter dated 07.10.2024 and 06.11.2024.
 - iv. Direct the respondent not to charge penal interest from complainants.
 - v. Direct the respondent not to charge PLC @ Rs.4,36,588/- as the said plot is no more a PLC plot.
 - vi. Restrain the respondent from raising fresh demand for payment under any head which is not the part of the payment plan as agreed at the time of booking.
 - vii. Direct the respondent not to force the complainants to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
 - viii. Direct the respondent to provide the exact lay out plan of the said unit.
 - ix. Direct the respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.
 - x. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Interest Free

maintenance security deposit, sinking fund, labour cess, electrical meter charges, fixed deposit towards the HVAT, PLC, electrification charges, water connection charges, Sewerage charges, Compound wall/ fencing Charges, welfare cess, Advance maintenance @ 24 months, registration and pasting fee, miscellaneous charges refundable IFM against construction and interest Rs. 21,474/-, etc which in any case is not payable by the complainants.

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 present complaint, filed by the complainants, is bundle of lies and hence is liable to be dismissed. Further the complaint is also not maintainable as it doesn't disclose any cause of action for filing the complaint against the respondent.
 - II. That the complaint is also liable to be dismissed being premature as respondent has not yet issued the formal offer of possession letter to the complainants along with details of final demand of pending dues which will contain remaining part payment of total price/total sale consideration along with other charges. However, only a letter pertaining to prior arrangement of funds was sent to the complainants as the project is near completion and thus at this stage the complainants can't file the complaint pertaining to final demand of pending dues and also the complainants are alleging delay in handing over of possession and accordingly prayed for possession of the plot.

However, the timelines for possession as granted by hon'ble authority have not been lapsed and thus at this stage the complainants can't file the complaint for seeking possession and therefore the complaint is a pre mature complaint and is liable to be dismissed.

- III. That the present complaint is an abuse of the process of this Hon'ble Authority and process of law at the behest of the complainants. The complainants are trying to suppress material facts relevant to the matter. The complainants are making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and the sole purpose of the complainants behind filing the complaint is to extract unlawful gains from the respondent.
- IV. That the complaint is devoid of any merits and as such is liable to be outrightly dismissed with heavy and exemplary costs in favour of the respondent.
- V. That the present complaint is also not maintainable and is liable to be dismissed as the complainants by way of this complaint wants to extract unlawful money.
- VI. That the present complaint is also liable to be dismissed as there is no cause of action in favour of the complainants and against the respondent, to file the present complaint. The complaint is premature and is without any cause of action and hence appropriate application under Order VII Rule 11 CPC is being filed alongwith present reply for rejection of captioned complaint.
- 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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

- I. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.**
11. In the present complaint, the complainants intend to continue with the project and is seeking possession.
12. Clause 7 of the buyer's agreement provides for handing over of possession and is reproduced below:

7. 1 Schedule for possession of the Said Apartment

The Promoter assures to offer the possession of the allotted plot as per agreed terms and conditions on or before 28.12.2025 i.e., time granted under the registration by the HRERA or such extension thereof as extended by HRERA subject to receiving the entire payment of sale price and other charges as per the payment schedule....."

13. By virtue of clause 7 of the agreement executed between the parties on 04.06.2021, the possession of the subject plot was to be delivered on or before 28.12.2025. Therefore, the due date of handing over possession was 28.12.2025. The completion certificate for the project was not received till date. The respondent/promoter is directed to handover physical possession of allotted plot after obtaining completion certificate for the unit.

II. **Direct the respondent to get the conveyance deed executed.**

14. With respect to the conveyance deed, the provision has been made under clause 10 of the buyer's agreement and the same is reproduced for ready reference:

10. Conveyance

The Promoter on receipt of total price of the Plot in terms of the payment plan, alongwith due interest and other charges and upon execution of all documents, undertakings, indemnities, agreements, etc. by the Allottee(s), shall execute a Conveyance Deed in favour of Allottee(s), preferably within three months but not later than six months from handing over of the possession and convey the title of the Plot in favour of the Allottee(s) for which the possession is granted to the Allottee(s).....

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

"17. Transfer of title.-

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

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

16. As CC of the unit has not been obtained, accordingly conveyance deed cannot be executed without the unit come into existence for which conclusive proof of having obtained CC from the competent authority and filing of deed of declaration by the promoter before registering authority.

III. Direct the respondent not to charge penal interest from complainants.

17. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

IV. Direct the respondent not to charge PLC @ Rs.4,36,588/- as the said plot is no more a PLC plot.

18. The complainants in the present complaint have raised a plea that the respondent should not charge the Preferential Location Charges (PLC) amounting to Rs. 4,36,588/- on the ground that earlier the said plot was park facing whereas at present the said plot is no more park facing as the respondent has removed the park without obtaining the prior consent of the complainants/allottees. The Authority vide order dated 12.12.2025 appointed Sh. Sumit Nain, Engineer Executive as Local Commissioner to visit the project site to ascertain the fact whether the unit is preferentially located or not. Accordingly, the site of the project was inspected on 06.01.2026 and the report submitted by Local Commissioner is reproduced hereinbelow:

5. Conclusion:

The site of project named "Primeland" being developed by M/s JMS Buildwell Realty Pvt. Ltd. in sector-95 A, Gurugram has been inspected on 06.01.2026 and it is concluded that:

A. There is green area (can be termed park) in the project and there are some plots (including complainant plot) surrounding that area. Therefore, the complainant plot no. no. 102 is green area facing plot and the green area is completely visible from the front of complainant

plot. Hence, the complainant plot is preferentially located in terms of green area facing.

....

19. In the view of the report dated 07.01.2026 submitted by Local Commissioner, the complainants are liable to pay the amount as agreed under the agreement dated 04.06.2021 towards Preferential Location Charges (PLC).

V. Direct the respondent to provide the exact lay out plan of the said unit.

20. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the exact layout plans of the said unit to the complainants.

VI. Direct the respondent not to force the complainants to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

21. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.**

VII. Quash the illegal offer of possession cum demand letter dated 07.10.2024 and 06.11.2024.

VIII. Restrain the respondent from raising fresh demand for payment under any head which is not the part of the payment plan as agreed at the time of booking.

IX. Direct the respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.

X. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Interest Free maintenance security deposit, sinking fund, labour cess, electrical meter charges, fixed deposit towards the HVAT, PLC, electrification charges, water connection charges, Sewerage charges, Compound wall/ fencing Charges, welfare cess, Advance maintenance @ 24 months, registration and pasting fee, miscellaneous charges refundable IFM against construction and interest Rs. 21,474/-, etc which in any case is not payable by the complainants.

22. **IFMS:** The complainants have contended that the respondent has charged IFMS and sought direction for not charging the same. In this regard the relevant clause from the agreement is reproduced as under:-

(vi) *In addition to the Total Price, the Allottee hereby undertakes and agrees to pay the Maintenance Charges for the Common Areas Maintenance at the rate as may be specified by the Promoter/or any nominated maintenance agency, Interest Free Maintenance Security (IFMS) of Rs. 24,255/-, proportionate charges for all enhanced taxes and proportionate charges for dues, rates, charges, municipal taxes, stamp duty and registration charges and other monies, levies, imposition premium, damages and other outgoing payable retrospectively and/or prospectively with respect to the said Project to the competent authority as per provision of Haryana Development and Regulation of Urban Areas Act, 1975, rules thereof.*

23. Therefore, the Authority is of the view that the respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges with respect to IFMS as has already been laid down in **complaint bearing no. 4031 of 2019** titled as "*Varun Gupta Vs. Emaar MGF Land Limited*" decided on 12.08.2021. However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of Section 14 of the Act.

24. **Labour Cess:** Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled ***Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not

a tax but a fee. Thus, the demand of labour cess raised upon the complainants are completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

25. **Sinking Fund:** The respondent shall not charge anything from the complainants, which is not the part of the buyer's agreement.
26. **Holding charges:** The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.
27. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the *Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020*. The relevant part of same is reiterated as under-

"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be

payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

28. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainants.
29. **Electrification charges, water connection charges, Sewerage charges, Compound wall/ fencing Charges, welfare cess:** The complainants have pleaded that the respondent while issuing offer of possession dated 07.10.2024 has charged an amount on account Electrification charges, water connection charges, Sewerage charges, Compound wall/ fencing Charges, welfare cess etc. The authority is of the view that clause 1(v) is relevant. The said clause is reproduced hereunder for ready reference:

1 (v) The Total Price of the Plot does not include the individual electric meter charges, Electric connection charges (ECC) i.e., the cost borne-by the Promoter to get the connection from HVPN/DHBVN/HSEB to the colony, water charges, sewerage, connection charges, solar geyser, solar heating, solar lighting, registration charges, stamp duty, documentation charges/legal charges including statutory deposits as per actual, administrative charges for registration, taxes applicable on Preferential; Location Charges (PLC) etc.

30. The authority is of the view that as per the above mentioned clauses of the agreement dated 04.06.2021 the complainants/ allottees are liable to pay the said charges.

G. Directions of the authority

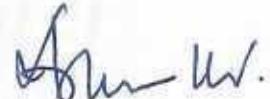
31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to handover physical possession of allotted plot after obtaining completion certificate for the unit.
- b. 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.
- c. The respondent shall not to charge anything which is not part of buyer's agreement.

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

15. File be consigned to the registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 09.01.2026