

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

Complaint no.: 6173 of 2024
Date of filing: 10.01.2025
Order pronounced on: 26.11.2025

Mudit Trivedi and Geetika Thakur
Both R/o:- 37/9, Old Rajinder Nagar, Central
Delhi- 110060

Complainants

Versus

M/s Shree Vardhman Infrahome Pvt. Ltd.
Regd. Office at:- 301, 3rd floor, Indraparkash
Building, 21-Barakhamba road, New Delhi-
110001

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Shri Stephen Nelson (Advocate)
Shri Shalabh Singhal (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant-allottee(s) 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 provision 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. N. | Particulars | Details |
|-------|---|---|
| 1. | Name and location of the project | "Shree Vardhman Flora", village Badshapur, Sector-90, Gurugram |
| 2. | Project area | 10.881 acres |
| 3. | Nature of the project | Group housing colony |
| 4. | DTCP license no. and validity status | 23 of 2008 dated 11.02.2008 valid upto 10.02.2025 |
| 5. | Name of the Licensee | Moti Ram |
| 6. | RERA registered/ not registered and validity status | Registered Registered vide no. 88 of 2017 dated 23.08.2017 Valid upto 30.06.2019 |
| 7. | Unit no. | 703, Tower B5 (Page 23 of complaint) |
| 8. | Unit area admeasuring | 1875 sq. ft. (super area) (Page 23 of complaint) |
| 9. | Date of buyer agreement | 02.02.2012 (Page 21 of complaint) |
| 10. | Endorsement in favour of the complainants | 06.11.2012 (Page 42 and 43 of complaint) |
| 11. | Possession clause | 14 (a) Possession <i>The construction of the flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months on receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex.</i> (Emphasis Supplied) (Page 31 of complaint) |

| | | |
|-----|--------------------------------------|---|
| 12. | Date of commencement of construction | 13.08.2012 (As specified by respondent at page 7 of its reply) |
| 13. | Due date of possession | 13.02.2016 (Calculated from date of commencement of construction i.e. 31.05.2012 including grace period of 6 months being unqualified and conditional) |
| 14. | Basic sale consideration | Rs.42,65,625/- (as per BBA page 24 of complaint) |
| 15. | Amount paid by the complainant | Rs.56,94,517/- (as per statement of accounts annexed with offer of possession at page 29-30 of reply) |
| 16. | Occupation certificate | 02.02.2022 (page 17 of reply) |
| 17. | Offer of possession | 18.04.2022 (page 27 of reply) |
| 18. | Reminder Letters | 21.06.2022 and Final Reminder letter dated 07.05.2024 (Page 32 and 33 of reply, respectively) |
| 19. | Cancellation Letter | 19.06.2024 (On failure to pay outstanding dues) (page 34 of reply) |

B. Facts of the complaint

3. The complainants have made the following submissions: -

- a) That, in the month of September, 2012 upon the representation and assurances of respondent's representative, on 01.10.2012 complainants purchased a unit bearing no.703 in tower B-5 from Sh. Pawan Sachdeva and Shipra Bhatia, the original allottees through a person namely Bhupinder Singh after paying a sale consideration of Rs. 10,00,000/- as part payment of the said unit and total sale consideration was Rs.60,93,750/- and sign an agreement to sale on dated 01.10.2012.
- b) That, on 06.11.2012 after signing the Agreement dated 01.10.2020 the respondent transfer all rights and liabilities to complainant (s) from the original allottee Mr. Pawan Sachdeva and Mrs. Shipra Bhatia vide endorsement dated 06.11.2012.

- c) That, on 12.11.2012 complainants entered into the tripartite agreement with PNB Housing Finance Ltd and respondent for a unit in "Shree Vardhman Flora" in Sector-90, Gurugram to finance the said flat, accordingly PNB Housing Finance Ltd had sanction the housing loan for purchase of said property.
- d) That, on 12.11.2012 the respondent signed the tripartite agreement with complainants and PNB Housing Finance Ltd to finance the property. The PNB Housing Finance Ltd grant the Loan facility of Rs. 54,00,000/- to complainants to buy the said flat. PNB Housing Finance Ltd disbursed the amount of Rs. 53,48,435/- to the respondent to buy the said unit and original tripartite agreement received on 27.11.2012 by complainants. The complainants have started the paying EMI since that time to till date in hope to get own house.
- e) That, in 2013 when the complainants had visited the above mentioned site office of the respondent to see the construction of the site, the respondent's representatives assured that since the project has already started, possession shall be handed over by the 2015 and also assured that as per the BBA Clause 14 (b) in case of delay of construction of the said unit the respondent will pay you the delayed possession charges Rs. 5 per sq. ft. per month till possession along with prevailing rate of interest.
- f) That the respondent has claimed that they have obtained License from Director General, Town and Country Planning (DTCP), Haryana for development of a residential Group Housing Colony on the said land and building plans have already been approved. It was further assured that there will be no price escalation of any sort and there will be no hidden charges as well.

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- g) That the respondent has further claimed that the unit area and the location of the unit are based on approved building plans and in case of any change in plans due to technical reasons or minor deviation during construction they may vary marginally for which the buyer/complainants will be duly notified in time.
- h) That as per agreement read with schedule of payment the complainants were to make payments as per the schedule provided by them and till date the complainants have already paid a total of Rs. 63,48,435/- against a total cost of Rs.60,93750/- which comprises more than 100% of the total payment as demanded by the respondents and there is no default or delay in remittances by the complainant.
- i) That the complainants have paid all the demanded amounts towards the cost of the unit till date including costs towards other facilities. However, the possession still is not given so far by the respondent company despite an elapse of more than 149 months of the start of the construction. The respondent has miserably failed to perform their obligations as per the agreed terms.
- j) That as per clause 14(b) of the BBA the respondent company committed under the Agreement to sell that it is their sincere endeavour to give possession of the flat to the complainant within 36 months in respect to the project from the date of the start of the construction i.e. 14.05.2012. Thus, the commitment of the respondent to hand over the possession of the unit to the complainants was on or before 13.05.2015.
- k) That the respondent has charged monies towards installation of firefighting equipment's which he has neither purchased nor installed so far and the respondent has also charged monies for the Club House but has not laid even the foundation stone for the same. Since the complainants have opted for Construction Link Plan the builder is duty

bound to charge amounts for the services and equipment's for which he has either incurred expenses or is about to incur the estimated expense.

- l) That respondent company without obtaining occupation/completion certificate and other necessary permissions from Fire department etc. offered the possession of the said unit to the complainants vide letter "Offer of possession for fitouts of Flat No. B5-703, in Shree Vardhman Flora, Sector-90, Gurugram" dated 23.07.2021 in a clever manner. The said offer is illegal and not tenable in the eyes of law as the Government issues occupation certificate to a dwelling unit only after it confirms to all safety measures and is habitable.
- m) That, on the name of offering possession the respondent has an oblique motive to achieve i.e. of charging undue amounts thereby causing undue loss to the complainants and undue profits to themselves. In the said letter the respondent also raised demands towards escalation charges which applicant is not liable to pay since besides there being an agreement towards no escalation charges if in case any escalation has taken place (though denied) the same has occurred because of the fault of the respondent and not because of any of the acts of the complainants. Likewise, the respondent is making demand in various heads for which the amounts could be charged if the work is either completed or is initiated, for the reason that it being a Construction Linked Plan and in such a plan there is no scope for charging anything which would be provided in remote future.
- n) That in terms of personal visit to the project site by the complainants in the month of April, 2024 the respondent failed to keep their promise completing the project in all respects and for obtaining of the occupation certificate in respect thereof. The respondent keeps on giving lame

excuses for the delay and for raising illegal demands which is unjustified and illegal.

- o) That thereby the respondent failed to deliver the timely possession as assured and all the representations and assurances of the respondent company have now turned all false and fraudulent and it is quite evident that the respondent have been wrongfully availing the hard-earned monies of the complainants which are complainant's life time savings and the possession of unit still looks distant.
- p) That the complainants had been repeatedly sending emails and visiting the site office but to no avail against the economic might and superior position of the respondent as none from the respondent informs anything about the possession of the said unit and their hard-earned monies and the representatives just keep passing the buck.
- q) That due to the breach of obligations and wrongful conduct of the respondent, the complainants have to suffer doubly on the one hand complainants have not been delivered the unit noted above, secondly the respondent has fraudulently charged from the complainants the monies for services and equipment's which he has not purchased and installed such as electrical and firefighting equipment's and club-house services etc.
- r) Since the complainants have invested their lifetime savings for purchasing this Flat the complainants are not interested in withdrawing from the project. As per obligations on the promoter under Section 18(1) proviso, the promoters are obligated to pay the complainants interest at the prescribed rate for every month of delay till the actual handing over of the possession. Promoter has not fulfilled his obligation. The complainants reserve their right to seek compensation from the

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promoter for which the complainants shall make separate application to the Adjudicating Officer, if required. Hence this complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to pay delay possession charges with interest for every month of delay at prevailing rate of interest as per the provisions of law.
 - II. Direct the respondent to deliver possession of the unit immediately.
 - III. Direct the respondent not to charge Rs.90,000/- for power backup and Rs.2,50,000/- for electrical meter charges and to charge the same on actual basis.
 - IV. That the respondent cannot charge the money without providing club facility and therefor liable to return Rs.75,000/- charged in lieu of club membership charges.
5. 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 these undisputed documents and submissions made by the parties.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:

- a) That the present complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is not maintainable as there has been no violation of the provisions of the Act. The complaint under Section 31 can only be filed after a violation or contravention has been established by the authority under Section 35. Since no violation or contravention has been established, the complaint should be dismissed.
- b) That the allotment made in favour of the complainants was terminated on 19.06.2024 i.e., even before filing the present complaint. The agreement stood terminated on 19.06.2024. As such after 19.06.2024, the complainants ceased to be the allottees in the project and were not

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covered under the definition of "Allottee" as given under Section 2(d) of the RERA Act, 2016.

- c) That Section 18 of the Act of 2016, under which the complainants seek relief, is not applicable to the present case as it does not have retrospective effect and cannot be applied to transactions entered into before the Act of 2016 came into force. Therefore, Section 18 cannot be applied in the present case as buyers' agreement was executed before the Act of 2016.
- d) That unit in question is situated in tower B (Block-8) which was completed in June 2021 and the application for OC was submitted on 18.06.2021 and OC was received on 02.02.2022. The complainants were also offered possession of the unit vide offer of possession letter dated 18.04.2022, however they did not come forward to make payment of the outstanding dues and to take possession of the unit.
- e) That the respondent sent a reminder letter dated 21.06.2022 whereby the complainants were again reminded to take possession of the unit after making the due payments. The complainants did not respond. The respondent again through letter dated 07.05.2024 gave a final reminder to the complainants to make payment of outstanding dues and take possession and the complainants were also notified that in case the needful was not done within 7 days the allotment of the unit will be cancelled. The complainants did not respond to the said final reminder also. As such the respondent left with no other alternative, vide its cancellation letter dated 19.06.2024 cancelled the allotment made in favour of the complainants and they were advised to return all the original documents of the unit in question.
- f) Upon receipt of OC, the possession of the units were offered to all the eligible allottees and majority of them have already taken possession of

their respective units. The complainants however dithered and the respondent had to cancel the unit.

- g) In the said Agreement dated 02.02.2012, no definite or firm date for handing over possession to the allottee was given. However, clause 14 (a) provided a tentative period of 42 months within which the project was to be completed and application for OC was to be made to the competent authority was given. As the possession was to be handed over only after receipt of OC from DTCP Haryana and it was not possible to ascertain the period that DTCP, Haryana would take in granting the OC, therefore the period for handing over of possession was not given' in the agreement. In this particular case, the unit in question was completed in June 2021 and the occupancy certificate in respect thereof was applied on 18.06.2021, as such the answering respondent cannot be held liable for payment of any interest and/or compensation for the period beyond 18.06.2021.
- h) Though the construction of tower in question i.e., tower B5 commenced on 13.08.2012. However, as per the agreement, the tentative period given for completion of construction was to be counted from the date of receipt of sanction of the building plans/revised plans and all other approvals and commencement of construction on receipt of such approvals. The last approval being the consent to establish (CTE) was granted by the Haryana State Pollution Control Board on 15.05.2015 as such the period mentioned in clause 14(a) shall start counting from 16.05.2015 only.
- i) That as per clause 14(a), the obligations of the respondent to complete the construction within the tentative time frame mentioned in the said clause was subject to conditions such as force majeure, restraint/restrictions from authorities, non-availability of building material or dispute with construction agency / work force and circumstances beyond the control of the respondent and timely payment of instalments by all

the buyers in the said complex including the complainants. As aforesaid many buyers / allottees in the said complex, including the complainants committed breaches/defaults by not making timely payment of instalments.

- j) The construction activity in Gurugram has also been hindered due to orders passed by Hon'ble NGT/State Govts. /EPCA from time to time putting a complete ban on the construction activities in an effort to curb air pollution. The Hon'ble National Green Tribunal, New Delhi (NGT) vide its order 09/11/2017 banned all construction activity in NCR and the said ban continued for almost 17 days hindering the construction for 40 days.
- k) The District Administration, Gurugram under the Graded Response Action Plan to curb pollution banned all construction activity in Gurugram, Haryana vide from 01/11/2018 to 10/11/2018 which resulted in hindrance of almost 30 days in construction activity at site in compliance of direction issued by EPCA vide its notification No. EPCA-R/2018/L-91 dated 27/10/2018.
- l) The Environmental Pollution (Prevention and Control Authority for NCR ("EPCA") vide its notification bearing No. EPCA-R/2019/L-49 dated 25/10/2019 banned construction activity in NCR during night hours (06:00 PM to 06:00 AM) from 26/10/2019 to 30/10/2019 which was later on converted into complete 24 hours ban from 01/11/2019 to 05/11/2019 by EPCA vide its notification No. EPCA-R/2019/L-53 dated 01/11/2019.
- m) The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in Writ Petition No. 13029/1985 titled as, "MC Mehta vs Union of India" completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was

completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.

- n) The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of approval files etc. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty) days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Even before the country could recover from the first wave of Pandemic, the second wave of the same struck very badly in the March/April 2021 disrupting again all activities. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity. The pandemic created acute shortage of labour and material. The nation witnessed a massive and unprecedented exodus of migrant labourers from metropolis to their native village. Due to the said shortage the construction activity could not resume at full throttle even after lifting of restrictions on construction sites.
- o) That every responsible person/institution in the country has responded appropriately to overcome the challenges thrown by COVID-19 pandemic and have Suo-Moto extended timelines for various compliances. The Hon'ble supreme court of India has extended all timelines of limitations for court proceedings with effect from 15.03.2020 till further order; the

Hon'ble NCDRC had also extended the timelines on the similar lines; RERA authorities also had extended time periods given at the time of registration for completion of the project; even income tax department, banking and financial institutions have also extended timelines for various compliances. Thus, the respondent should not be held liable for delay in completion of construction.

E. Jurisdiction of the Authority:

7. The authority has complete territorial and 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 allottee 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 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.

F.1 Direct the respondent to pay delay possession charges with interest for every month of delay at prevailing rate of interest as per the provisions of law.

11. The factual matrix of present case reveals that the original allottees (Mr. Pawan Sachdeva and Ms. Shipra Sachdeva) were allotted unit no. 703, tower B5, in the respondent's project at basic sale price of Rs.42,65,625/-. Thereafter, a buyer's agreement was executed between the original allottees and the respondent on 02.02.2012, which was later endorsed in the name of the complainants on 06.11.2012. The possession of the unit was to be offered within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to unqualified grace period of six months. The date of construction commencement was 13.08.2012 as mentioned by the respondent at page no.7 of its reply. Therefore, the due date of possession comes out to be 13.02.2016, including grace period of six months being unqualified and unconditional.

12. Upon perusal and submission of complainants it has been found that allotment of booked unit was cancelled by the respondent on 19.06.2024 due to non-payment of amount as per demand issued along with offer of possession dated 18.04.2022. At the time of cancellation of allotment of unit, respondent was already in receipt of Rs.56,94,517/- which is more than the basic sale price of unit. Further, the possession of the unit was to be handed over to the complainants by 13.02.2016 and it was only on 02.02.2022 that occupation certificate was obtained by the respondent-promoter from the

competent authority and thereafter, possession was offered to the complainants only on 18.04.2022. Therefore, the interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent would, in fact, be liable to pay the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest since the complainants had already paid more than basic sale consideration of the unit. Alleged cancellation for this reason is not tenable and is therefore, quashed.

13. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 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."***

(Emphasis supplied)

14. Clause 14(a) of buyer's agreement provides for handing over of possession and is reproduced below:

"Clause 14(a)

The construction of the flat is likely to be completed within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex....."

(Emphasis supplied)

15. Due date of possession and admissibility of grace period: The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The date of construction commencement was initially to be commenced from 13.08.2012 as mentioned by the respondent at page no.7 of its reply. Therefore, the due date of possession comes out to be 13.02.2016, including grace period of six months being unqualified and unconditional.

16. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges however, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

17. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 26.11.2025 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
19. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant Section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
21. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 02.02.2012, the possession of the said unit was to be delivered within a period 36 months from the date commencement of construction i.e. 13.08.2012 and it is further provided in agreement that promoter shall be entitled for a grace period of six months. As far as grace period is concerned,

the same is allowed being unconditional and unqualified. Therefore, the due date of handing over of possession comes out to be 13.02.2016. In the present complaint the complainants were offered possession by the respondent on 18.04.2022 after obtaining occupation certificate dated 02.02.2022 from the competent authority. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 02.02.2012 executed between the parties.

22. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 02.02.2022. The respondent offered the possession of the unit in question to the complainants only on 18.04.2022, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (18.04.2022) which comes out to be 18.06.2022.

23. 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 complainants are entitled to delay possession

charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. 13.02.2016 till expiry of 2 months from the date of offer of possession (18.04.2022) i.e., up to 18.06.2022 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

F.II Direct the respondent to deliver possession of the unit immediately.

24. In the present complaint, the grievance of the complainants is that the physical possession has not been handed over by the respondent to them till date.
25. As per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainants. Occupation certificate has also been obtained by the respondent-promoter on 02.02.2022. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties within a period of 30 days from date of this order after payment of outstanding dues, if any.
26. Further, the respondent/promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. 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. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 60 days from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainants may approach the Adjudicating Officer for execution of order.

F.III Direct the respondent not to charge Rs.90,000/- for power backup and Rs.2,50,000/- for electrical meter charges and to charge the same on actual basis.

A. Power Backup Charges

27. The complainants took the plea that the respondent-builder has arbitrarily imposed power backup charges at the time of offer of possession. The respondent-builder in its defence submits that power backup charges were duly agreed by the complainants at the time of booking/agreement and the same was incorporated in the buyer agreement. The undertaking to pay the above-mentioned charges was comprehensively set out in the buyer agreement. The said clause of the agreement is reproduced hereunder: -

"2.(i) The cost of providing and installing the Power Back-up facility in the project for flat/apartment shall be charged additionally and paid by the Buyer(s) and when demanded by the company."

(Emphasis supplied)

28. As per clause 2(i) of the builder buyer agreement dated 02.02.2012, the complainants had agreed to pay the cost of power backup charges over and above the basic sale price. Accordingly, the respondent is justified in charging the same from the complainants.

B. Electrical Meter Charges

29. The complainants took the plea that the respondent-builder has arbitrarily imposed electrical meter charges at the time of offer of possession. The undertaking to pay the above-mentioned charges was comprehensively set out in the buyer agreement. The said clause of the agreement is reproduced hereunder: -

*"2.(h) The **Basic Price** includes the cost of providing electric wiring and switches in the Flat but **does not include electric connection charges, electricity consumption meter cost etc., which shall be got installed at the cost of the Buyer(s)** and also does not include the amount payable, inter alia, to cover the cost payable to Haryana State Electricity Board ("HSEB") or Uttri/ Dakshin Haryana Bijli Nigam Ltd. (U/DHBVNL) or to any other authority/ agency responsible for providing electricity to the Said Complex, for the service connection, service lines, security deposit etc., along with the cost of substation equipments to be installed in the project either by HSEB/U/ DHBVNL or the company. The Buyer(s) will*

be required to pay the charges for the same on pro-rata basis as and when demanded by the Company.

(Emphasis supplied)

30. There is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Moreover, this issue has also already been dealt with by the authority in complaint bearing no. 4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021, wherein it was held that these connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

F.IV That the respondent cannot charge the money without providing club facility and therefor liable to return Rs.75,000/- charged in lieu of club membership charges.

31. Perusal of case file itself reveals that club membership charges amounting to Rs.75,000/- were payable by the complainants. This understanding was explicitly agreed upon between the parties as specified on page no.4 as well as Annexure-I of the buyer's agreement executed between the parties on 02.02.2012.

32. Further, Section 2(n) of RERA Act, 2016 defines “common areas” to include community and commercial facilities provided in the real estate project. A club, being a part of such community facilities, falls under this category.
33. However, in **Complaint Case No. 4031 of 2019** titled as “**Varun Gupta vs Emaar MGF Land Limited**”, decided on 12.08.2021, the Hon’ble Authority had already decided that if the club has come into existence and the same is operational or is likely to become operational soon, i.e., within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be discharged by the complainants as per the terms and conditions stipulated in the builder buyer agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club charges and its membership from the allottees only after completion of the club.
34. Therefore, the Authority is of the view that if such facility is not completed and operational, the promoter cannot impose charges for the same. The charges towards the club facility are premature, arbitrary, and unenforceable unless and until the said facility is fully constructed, completed, and made operational in all respects. Therefore, the respondent is not entitled to demand or collect such charges until the club is made available for the actual use of allottees.

G. Directions of the authority

35. 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 to the complainants against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the

complainants from due date of possession i.e., 13.02.2016 till expiry of 2 months from the date of offer of possession (18.04.2022) i.e., up to 18.06.2022 only. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.

- II. The respondent is directed to charge power backup charges from the complainants in terms of clause 2(i) of the buyer's agreement executed between the parties.
- III. The respondent is directed to recover the actual charges paid to the concerned department with respect to electric meter charges from the allottees on pro-rata basis i.e. depending upon the area of the unit allotted to the complainants viz- à-viz the total area of the particular project. The complainants are entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.
- IV. The respondent is not entitled to demand or collect club membership charges from the complainants until the club is made available for the actual use of allottees.
- V. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- VI. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days. ✓

- VII. The respondent is directed to handover possession of the allotted unit within a period of 30 days from the date of this order, since occupation certificate has already been obtained by the respondent-promoter on 02.02.2022.
- VIII. The respondent shall execute the conveyance deed of the allotted unit within a period of 60 days from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the Adjudicating Officer for execution of order.
- IX. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 26.11.2025



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram