

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

Date of decision : 13.01.2026

NAME OF THE BUILDER		1. M/s Real Town Properties Pvt. Ltd. 2. M/S Venetian LDF Projects LLP 3. Dharam Singh s/o Shish Ram Singh	
PROJECT NAME		"83 Avenue" at sector 83, Gurugram	
Sr. No.	Case No.	Case title	Appearance
1.	CR/210/2025	Sh. Dinesh Chander Bahl Vs. 1. M/s Real Town Properties Pvt. Ltd. 2. M/S Venetian LDF Projects LLP 3. Dharam Singh s/o Shish Ram Singh	Shri Kuldeep Kumar Kohli (Advocate) Shri Harshit Batra (Advocate)
2.	CR/211/2025	Sh. Dinesh Chander Bahl Vs. 1. M/s Real Town Properties Pvt. Ltd. 2. M/S Venetian LDF Projects LLP 3. Dharam Singh s/o Shish Ram Singh	Shri Kuldeep Kumar Kohli (Advocate) Shri Harshit Batra (Advocate)
3.	CR/212/2025	Sh. Dinesh Chander Bahl Vs. 1. M/s Real Town Properties Pvt. Ltd. 2. M/S Venetian LDF Projects LLP 3. Dharam Singh s/o Shish Ram Singh	Shri Kuldeep Kumar Kohli (Advocate) Shri Harshit Batra (Advocate)

CORAM:
Shri Arun Kumar

Chairman

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under Section 31 of the Real Estate (Regulation and

Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "83 Avenue" situated at Sector-83, Gurugram being developed by the same respondent/promoter i.e., "M/s Venetian LDF Projects LLP." The terms and conditions of the buyer's agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with assured returns.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"83 AVENUE", Sector-83, Gurgaon
Nature of the project	Commercial Colony
Project area	2.3625 acres
DTCP License No. and validity	12 of 2013 dated 13.03.2013 Valid upto 12.03.2019
Rera registered/ not registered and validity status	Registered Vide no. 4 of 2019 dated 16.01.2019 Valid upto 30.09.2020 Registered in the name of M/s Real town properties Pvt. Ltd.
Date of start of construction	Not on record
Possession Clause	38. The "DEVELOPER/LLP" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer cl.37 above) of Signing of this



	<p>Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the completion of the said Building is delayed by reason slow down, strike or due to a dispute with the construction agency employed by the "DEVELOPER/LLP", lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason ...</p> <p>(Emphasis supplied)</p>
Due date of possession	<p>12.07.2019</p> <p>(Calculated from the date of execution of buyer's agreement i.e., 12.04.2016, as the date of start of construction is not available on record, plus grace period of 3 months is allowed being qualified and unconditional)</p>
Assured Return clause as per MoU	<p>3. ASSURED RETURN</p> <p>3.1 Till offer of possession is issued, the Developer shall pay to the Allottee an Assured Return at the rate of Rs.75.20/- per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return'. After completion of construction, till tenant is inducted possession is delivered to tenant and the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee(s) an Assured Return @ Rs.66.65/- per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return'. The allottee agrees to pay the balance premium as per the Payment Plan mentioned in Schedule-1 of this MOU. The assured return shall be subject to tax deduction at source, which shall be payable on or before 10th day of every English Calendar month on due basis.</p>
Occupation Certificate	<p>18.09.2024</p>

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA and MoU	TSC / AP/ AR	Offer of possession	Relief sought
1.	<p>CR/210/2025</p> <p>Sh. Dinesh Chander Bahl Vs. 1. M/s Real Town Properties Pvt. Ltd. 2. M/S Venetian LDF Projects LLP 3. Dharam Singh s/o Shish Ram Singh</p> <p>DOF: 24.01.2025 Reply by R1 and R2: 30.05.2025 Reply by R3: Not Filed</p>	<p>R21, 2nd Floor admeasuring super area 1999.89 sq. ft. (Page 64 of complaint)</p>	<p>BBA: 12.04.2016 (Page 62 of complaint)</p> <p>MoU: 08.04.2016 (Page 40 of complaint)</p>	<p>TSC- Rs. 1,10,04,484.84/- (Page 89 of complaint)</p> <p>AP- Rs. 52,54,433/- (Page 89 of complaint)</p> <p>AR- Rs. 10,17,859 (Page 6 of synopsis on behalf of the respondents)</p>	<p>14.10.2024 (Page 86 of complaint)</p>	<ul style="list-style-type: none"> • Set aside illegal demands mentioned in OOP letter • Possession • AR • Restrain from charging maintenance charges till actual possession.
2.	<p>CR/211/2025</p> <p>Sh. Dinesh Chander Bahl Vs. 1. M/s Real Town Properties Pvt. Ltd. 2. M/S Venetian LDF Projects LLP 3. Dharam Singh s/o Shish Ram Singh</p> <p>DOF: 24.01.2025 Reply by R1 and R2: 30.05.2025 Reply by R3: No. Filed</p>	<p>R-17, 3rd Floor admeasuring super area 1030.810 sq. ft. (Page 79 of complaint)</p>	<p>BBA: 12.04.2016 (Page 53 of complaint)</p> <p>MoU: 01.11.2015 (Page 34 of complaint)</p>	<p>TSC- Rs. 63,99,411,25/- AP- Rs. 22,95,089/- (Page 80 of complaint)</p> <p>AR- Rs. 6,65,324 (Page 6 of synopsis on behalf of the respondents)</p>	<p>14.10.2024 (Page 77 of complaint)</p>	<ul style="list-style-type: none"> • Set aside illegal demands mentioned in OOP letter • Possession • AR • Restrain from charging maintenance charges till actual possession.



3.	<p>CR/212/2025</p> <p>Sh. Dinesh Chander Bahl Vs. 1. M/s Real Town Properties Pvt. Ltd. 2. M/S Venetian LDF Projects LLP 3. Dharam Singh s/o Shish Ram Singh</p> <p>DOF: 24.01.2025 Reply by R1 and R2: 30.05.2025 Reply by R3: Not Filed</p>	<p>R18, 3rd Floor admeasuring super area 774.68 sq. ft. (Page 87 of complaint)</p>	<p>BBA: 12.04.2016 (Page 61 of complaint)</p> <p>MoU: 01.11.2015 (Page 40 of complaint)</p>	<p>TSC- Rs. 47,97,162.84/-</p> <p>AP- Rs. 22,95,089/-</p> <p>(Page 88 of complaint)</p> <p>AR- Rs. 6,65,324</p> <p>(Page 6 of synopsis on behalf of the respondents)</p>	<p>14.10.2024 (Page 85 of complaint)</p> <ul style="list-style-type: none"> • Set aside illegal demands mentioned in OOP letter • Possession • AR • Restrain from charging maintenance charges till actual possession.
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Note: In the table referred above certain abbreviations have been used.

Abbreviation	Full form
DOF	Date of filing of complaint
BBA	Builder Buyer Agreement
MoU	Memorandum of Understanding
TSC	Total sale consideration
AP	Amount paid by the allottee/s
AR	Assured return paid by respondent
R1,R2,R3	Respondent no.1, Respondent no.2 and Respondent no.3, respectively

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the physical possession of the unit along with assured return, setting aside various illegal demands mentioned in offer of possession letter and maintenance charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/210/2025 titled as "Sh. Dinesh Chander Bahl Vs. M/s Real Town Properties Pvt. Ltd., M/s Venetial LDF Projects LLP and Dharam Singh s/o Shish Ram Singh"** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

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

CR/210/2025 titled as "Sh. Dinesh Chander Bahl Vs. M/s Real Town Properties Pvt. Ltd., M/s Venetial LDF Projects LLP and Dharam Singh s/o Shish Ram Singh"

S. N.	Particulars	Details
1.	Name and location of the project	"83 AVENUE", Sector-83, Gurgaon.
2.	Project area	2.3625 acres
3.	Nature of Project	Commercial Colony
4.	DTCP license no. and validity status	12 of 2013 dated 13.03.2013 Valid upto 12.03.2019
5.	Name of Licensee	M/s Real town properties Pvt. Ltd.
6.	Rera registered/ not registered and validity status	Registered Vide no. 4 of 2019 dated 16.01.2019 Valid upto 30.09.2020. Registered in the name of M/s Real town properties Pvt. Ltd.
7.	Unit No.	R-21, 2 nd Floor (page 64 of complaint)
8.	Unit area admeasuring (Super Area)	1999.89 sq. ft. (page 64 of complaint)
10.	MoU dated	08.04.2016 (page 40 of complaint)

11.	Date of start of construction	Not on record
12.	Date of buyer agreement	12.04.2016 (page 62 of complaint)
13.	Possession clause	38. The "DEVELOPER/LLP" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer cl.37 above) of Signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the completion of the said Building is delayed by reason slow down, strike or due to a dispute with the construction agency employed by the "DEVELOPER/LLP", lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason ... (Emphasis supplied)
14.	Due date of possession	12.07.2019 (Calculated from the date of execution of buyer's agreement i.e., 12.04.2016, as the date of start of construction is not available on record, plus grace period of 3 months is allowed being qualified and unconditional)
15.	Assured Return clause as per MoU	3. ASSURED RETURN 3.1 Till offer of possession is issued, the Developer shall pay to the Allottee an Assured Return at the rate of Rs.75.20/- per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return'. After completion of construction, till tenant is inducted possession is delivered to tenant and the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee(s) an Assured Return @ Rs.66.65/- per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return'. The allottee agrees to pay the balance premium as per the Payment Plan mentioned in Schedule-1 of this MOU. The assured return shall be subject to tax deduction at source,

		<i>which shall be payable on or before 10th day of every English Calendar month on due basis.</i>
16.	Total Sale Consideration	Rs.1,10,04,484.84/- (page 89 of complaint)
17.	Amount paid by complainant	Rs.52,54,433/- (page 89 of complaint)
18.	Occupation certificate	18.09.2024 (page 94 of reply)
19.	Offer of possession	14.10.2024 (page 86 of complaint)
20.	Assured Return paid by respondent	Rs. 10,17,859/- (page 6 of synopsis on behalf of respondents)

B. Facts of the complaint

8. The complainant has made following submissions in the complaint:
- That M/S Venetian LDF Projects LLP, i.e., respondent no. 1 is in the business of real estate development. Further, Sh. Dharam Singh, i.e., respondent no. 3, is the absolute owner of the land situated in Khewat No.390, Khatoni No. 422, Mustkil No. 53, Killa No.10/2(2-9), 11 (8-0), 20(7-16), 21/1M (0-13) admeasuring 18 Kanal 18 or about 2.3625 Acres in the Revenue Estate of Village Sihi, Tehsil Manesar, District Gurgaon. Respondent no. 3 entered into a collaboration agreement with M/S. Real Town Properties Private Limited, i.e., respondent no. 2 on 29.10.2010.
 - That respondent no. 3 in collaboration with respondent no. 1 applied for a license for setting up a commercial colony on the said property and was issued a license no.12 of 2013 dated 15.03.2013 by the Director General, Town and Country Planning Department, Chandigarh.
 - That in terms of the aforesaid collaboration agreement and general power of attorney, the original developer was empowered and has the right to develop the said property wholly or partly in joint venture and/or further partnership and/or in association with any person and/or otherwise

transfer all and/or any of the rights in the collaboration agreement to any persona and/or assign and/or otherwise all and/or any of the rights in the collaboration agreement to any person for which the respondent no. 3 has granted his irrevocable consent.

- d) That in terms of above, respondent no. 1 has assigned the entire development rights of the said property well as necessary general/specific power of attorney in favour of respondent no. 2 vide agreement dated 12.06.2013.
- e) That respondent no. 2 has conceived, planned and is in the process of developing and setting up a commercial colony known as '83Avenue' on the Property situated in Sector 83, Village Sihi, Tehsil Manesar & District Gurgaon, Haryana in accordance with the building plans to be approved by the Director, Town & Country Planning, Haryana, Chandigarh.
- f) That on 08.04.2016 the complainant had signed a memorandum of understanding with the respondent no. 1, through their authorized signatory Mr. B.N. Sahoo, on 08.04.2016 at Gurgaon for allotment of a unit no. R 21 in the project "83 AVENUE" located in Sector 83, Village Sihi, Tehsil Manesar and district Gurgaon, Haryana, located on 2nd floor admeasuring the aggregate tentative super area of 1999.89 sq. ft. for a total agreed price of Rs. 59,99,670.00 @ Rs. 3000.00 per sq. ft. and this cost is exclusive of EDC, IDC, PLC, IFMS, power back up charges and such other levies as may be imposed by any statutory authority in this regard. It detailed that respondent no. 3 is the absolute owner of the land situated in Khewat No. 390, Khatoni No. 422, Mustkil No. 53, Killa No. 10/2 (2-9), 11(8-0), 20(7-16), 21/1M (0-13). Thereafter, respondent no. 2 assigned the entire development rights of the said property in favour of respondent no. 1.

- g) The MOU was signed on 08.04.2016 and hence the respondents are liable to pay the assured return of Rs. 75.20 per sq. ft. on a super area of Rs. 1999.89 sq. ft. under Article 3 Para 3 of the said MoU.
- h) That the respondent had paid the assured return for the period November 2015 up to September 2016 regularly. Subsequently the respondent paid through cheques but unfortunately all the cheques bounced.
- i) That the total amount which is due to the complainant w.e.f. October 2016 is Rs. 1,50,392/-per month. After deducting a sum of Rs. 15,039/- as TDS out of this amount, the monthly payment of the assured return comes to Rs. 1,35,353/- in respect of unit no. R 21. The total amount due therefore from October 2016 till January 2025 comes to Rs. 1,50,39,200/- minus TDS of Rs. 15,03,900/- leaving a balance of Rs. 1,35,35,300/- payable the complainant to the respondents. This interest of Rs. 5,013.06/- per day would continue till the actual physical handing over of the possession in a habitable condition together with the conveyance deed executed in favour of the complainant.
- j) That the complainant who is getting/entitled for assured return even after expiry of due date of possession, can claim the assured return as the same is more than the delay possession charges. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till completion of construction of the said building. Moreover, the interest of the allottee is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. It has been held by the Authority in complaint no. 7623 of 2022 that the purpose of delayed possession charges after due

date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher. Accordingly, the authority decided that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. It is matter of record that the amount of assured return was paid by the respondent promoter till 15.10.2016 but later, the respondent refused to pay the same for the reasons best known to the respondent.

- k) The respondent no. 1 allotted the unit stated to be R-21 located on the 2nd floor, admeasuring 1999.89 sq. ft. super area as per tentative building plans to the complainant. The total consideration of the unit was Rs. 73,39,526/- which includes EDC/IDC charges at Rs.670/- per sq. ft., amounting to Rs.13,39,926/-.
- l) That the total amount paid by the complainant was Rs. 52,54,433/- which included service tax of Rs.2,14,710/-. The complainant and respondent no.1, through their authorized signatory Mr. B.N. Sahoo, signed the space buyer's agreement and delivery period for the unit as specified in clause no. 38 of the buyers agreement is 11.04.2019 being 36 months from the date of signing the buyer's agreement on 12.04.2016.
- m) That the complainant, after more than 68 months i.e. 5 years and 8 months, receives a notice of possession from respondent no. 1 on 14.10.2024. The

possession letter raised a demand of Rs.57,50,051/- to be paid by the complainant as outstanding dues. many of these demands are illegal and not as per the space buyer agreement. The offer of possession dated 14.10.2024 has an annexure A, where illegal demands have been raised, which as per the judgements of this Authority are illegal and therefore the offer of possession is not a valid offer of possession.

- n) That in view of the unreasonable demands, not as per the space buyers agreement and in view of the delay of more than 5 years and 8 months, the complainant is left with no alternative but to approach this Authority for the possession as well as the delay possession charges and removal of the illegal demands from the offer of possession and issuance of a fresh offer of possession.
- o) That the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the unit. They have not only been deprived of the timely possession of the said unit but also the loss of rent in case the property would have been given to the complainant on time and the complainant would have leased the same for rental purposes.

C. Relief sought by the complainant

9. The complainant has sought the following relief(s):
 - I. Direct the respondents to pay assured return at the prescribed rate as specified in the Memorandum of Understanding and as elaborated earlier in the complaint for every month of delay from the till the actual handing over of the physical possession, in a habitable condition, together with the conveyance deed duly executed in favor of the complainant.
 - II. Direct the respondents to pay the arrears of the assured return as detailed in the annexure till the date of the actual handing over of the physical possession, in a habitable condition, together with the Conveyance Deed duly executed in favor of the complainant within a period of 90 days from the date of the order.

- III. Direct the respondents to handover the possession in a habitable condition immediately.
 - IV. Direct the respondents to ensure the actual handing over of the physical possession, in a habitable condition, as per the requirements of "habitable" as laid down in the judgement of this Honorable Authority in "Varun Gupta & Ors. Versus Emaar India Ltd" together with the conveyance deed duly executed in favor of the complainant.
 - V. Direct the respondents to remove the illegal demands from the offer of possession as elaborated earlier in the complaint.
 - VI. Direct the respondents not to ask for anything which is not a part of the Space Buyers Agreement.
 - VII. Direct the respondents to not demand Holding Charges as has been held by this Honorable Authority in the judgement of Varun Gupta & Ors Versus Emaar India Ltd.
 - VIII. Direct the respondents to restrain from charging maintenance charges till the actual handing over of the physical possession, in a habitable condition, together with the Conveyance Deed duly executed in favor of the complainant.
 - IX. Direct the respondent to pay compensation for mental agony and harassment, physical pain and emotional pain and agony to the family of Rs. 15 lakhs on account of deficiency in service and litigation charges of Rs. 1 lakh.
10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no.1 and 2

11. The respondents have contested the complaint on the following grounds:
- a) That the complainant has no locus standi or cause of action to file the present complaint before the Authority. The present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the space buyer's

agreement dated 12.04.2016, as shall be evident from the submissions made in the following paragraphs of the present reply.

- b) That the complainant is not "allottee" but are investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
- c) That the complainant herein being interested in the real estate development of the respondent no. 2 i.e. Venetian LDF projects LLP (earlier Real Town Properties Pvt Ltd.) , under the name and style "83 avenue", situated in village Sihi, Gurgaon, approached the respondent no. 2 to know the details of the project and expressed his willingness to invest in the said project.
- d) That after having made all the due inquiries about the said project, the complainant voluntarily and willingly invested in the project of the respondent no. 2 and booked a commercial unit in the project of the respondent no. 2. Thereafter, a unit bearing no. R-21 having a tentative super area of 395.19 sq. ft. was provisionally allotted to the complainant vide the allotment letter dated 07.04.2016.
- e) That the parties entered into a Memorandum of Understanding dated 08.04.2016 ("MOU") with respect to the unit in question.
- f) That thereafter, the buyer's agreement dated 12.04.2016 was executed between the parties. The relationship between the parties is contractual in nature and is governed by the agreement, the contents of which were willingly, voluntarily, and categorically accepted between the parties. The rights and obligations of the parties flow directly from the agreement.
- g) That clause 24 of the agreement dated 12.04.2016 establishes the fact that the agreement dated 12.04.2016 is the entire agreement and supersedes

all the previous agreements and understandings. Thus, the agreement supersedes the MOU in its entirety.

- h) That the execution of the agreement dated 12.04.2016 amounts to rescission of the previous contract and makes the parties bound by the agreement dated 12.04.2016 and frees the parties from the obligations of the old agreement. It is a settled principle of law that upon novation involving substitution of an old contract with a new contract, the obligation of the old contract stands dissolved and are completely dealt with by the new contract.
- i) That as per clause 38 of the agreement, the proposed due date of offer of possession was 36 months of signing of the agreement (12.04.2016) or within 36 months from the date of start of construction of the said building whichever is later with a grace period of 3 months subject to force majeure conditions or Governmental action/inaction and such other terms and conditions as mentioned in the said section. Accordingly, the proposed and estimated date, as taken from the date of signing of agreement, comes out to be 12.07.2019. However, the same was not absolute and, subject to various force majeure events and governmental actions and timely payment by the complainant.
- j) Moreover, the due date for the offer of possession was extendable if there was a delay or failure by a concerned department or on the occurrence of force majeure conditions that are beyond the power and control of the developer. It is evident to mention here that the construction of the project was gravely hit by various force majeure conditions beyond the control of the respondents which are directly consequential to timely completion of the construction of the project and allow extension of timelines for

- completion. Additionally, the due date of possession was also liable to be extended on account of delay in making payment by the allottee.
- k) That the development and implementation of the said project has been hindered on account of several orders/ directions passed by various authorities/ forums/courts as has been delineated herein below:
- l) That a period of 347 days was consumed on account of circumstances beyond the power and control of the respondent no. 2, owing to the passing of orders of various statutory authorities and the covid-19 pandemic, as noted above. It is well recognized that one day of hindrance in the construction industry leads to a gigantic delay and has a cascading effect on the overall construction process of a real estate project. However, despite all odds, the respondent no. 1 was able to carry out construction/development at the project site and obtain the necessary approvals and sanctions and has ensured compliance under the agreement, laws, and rules and regulations.
- m) The even though the respondents as deeply aggrieved with a number of unforeseeable circumstances causing hindrance in the continuous construction of the Project, like the ban on construction activities, orders by the NGT and EPCA, demobilization of labor, the grave effect of the corona virus pandemic etc. being circumstances beyond the control of the respondent and force majeure circumstances. Nonetheless, the respondent completed the construction and rightfully applied for an occupancy certificate on 14.10.2024 and rightfully obtained the same on 18.09.2024.
- n) That thereafter, the respondent rightly issued the legal and valid notice of offer of possession on 14.10.2024. That the possession of the unit has been rightly offered after the receipt of the occupancy certificate and the complainant and under the obligation to take the possession of the unit.

- o) That all the charges contested by the complainant are charged by the respondent no. 2 as per the terms of the agreement. The obligation of the complainant to take possession of the unit within 30 days of the notice of offer of possession after remittance of the total sales consideration of the unit, however, the complainant failed to do so.
- p) That the occupation certificate in respect of the said unit was obtained by the respondent no.2 on 18.08.2024. Thereafter, the complainant was offered possession of the unit in question through a notice of possession dated 14.10.2024. The respondent company has been maintaining the project in question since the receipt of OC, i.e., September 2024. it is a settled principle that an allottee is bound to pay maintenance charges from the date of the offer of possession. The complainant should be directed to take possession and pay the maintenance charges from October 2019 onwards
- q) That the complainant has prayed for the relief of "Assured Returns", inter alia, on the basis of a memorandum of understanding. it is submitted that the MoU was replaced by the agreement dated 12.04.2016, and thus all the rights and obligations under the MoU stand discharged.
- r) That the parties have novated the agreement over the MOU to establish their rights and obligations in toto through the agreement. Section 62 of the Indian Contract Act, 1872, is squarely applicable in the present instance. It is a settled principle of law that the parties to an original contract can, by mutual agreement, enter into a new contract in substitution of the old one, leading to novation of the Contract.
- s) That without prejudice, it is submitted that the respondent no. 2 has paid the assured return to the complainant for a certain period of time.

- t) That without prejudice to the submissions of the respondent no. 2 that there is no obligation of payment of assured return, it is submitted that the relief of Assured Return is beyond the jurisdiction of the Authority. From the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a developer and allottee with respect to the development of the project as per the Agreement for sale. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project, and the other being "interest for delay of every month" in case the allottee wants to continue in the project, and the last one is for compensation for the loss incurred by the allottee. The RERA Act also does not define a 'Memorandum of Understanding' on the basis of which relief has been sought by the complainant.
- u) That the payment of assured return is not maintainable before the Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 [BUDS Act] wherein, under section 7 thereof, the Legislature, in its utmost wisdom, has noted that the 'competent authority' shall have the jurisdiction to deal with cases pertaining to the Act. That any direction for payment of assured return shall be tantamount to a violation of the provisions of the BUDS Act. It is stated that the assured returns or assured rentals under the said Agreement clearly attract the definition of "deposit" and fall under the ambit of "Unregulated Deposit Scheme". Thus, the Respondent was barred under Section 3 of the BUDS Act from making any payment towards assured return in pursuance of an "Unregulated Deposit Scheme," and the competent authority to adjudicate such issue has to be notified under Section 7 of the BUDS Act.

v) That it is specifically mentioned under Rule 2(1) (C) what is included in the meaning of deposits, along with other transactions which does not constitute deposits. Under sub rule (1)(c)(xii)(b) of Rule 2 of the Deposit Rules, an amount shall not be termed as deposit if received in advance, accounted for in any manner whatsoever, in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of the agreement or the arrangement. Thus, the relief of assured returns is not maintainable before the Authority.

12. All other averments made in the complaint were denied in toto.
13. 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 submission made by the parties.

E. Jurisdiction of the authority

14. 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

15. 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

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

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

17. 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 the objections raised by the respondent.

F.I Objection regarding maintainability of complaint on account of complainants being the investors.

18. The respondent took a stand that the complainant is an investor and not the consumer and therefore, he is not entitled to protection of the Act and thereby not entitled to file the complaint under Section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or Rules or Regulations made thereunder. Upon careful perusal of all the terms and conditions of the MoU as well as the buyer's agreement, it is revealed that the complainant is a buyer and has paid a considerable amount to the respondent-

promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

19. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.

20. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in **CR/8001/2022** titled as **"Gaurav Kaushik and Another Vs. Vatika Limited"** has already held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the

builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(I)(iii) of the BUDS Act of 2019. Hence, the plea with respect to non-payment of assured return is hereby dismissed.

F.III Objection regarding delay in project due to force majeure circumstances.

21. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by High court of Punjab and Haryana, GST, adverse effects of Covid-19 etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The MoU was executed between the parties on 08.04.2016 and the events taking place such as orders of NGT in NCR on account of the environmental conditions, demonetization, GST are for short duration, which does not made any impact of the construction of the developer, adverse effects of Covid-19 etc. and others force majeure circumstances which occurred after the due date of completion. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant

- G.I Direct the respondents to pay assured return at the prescribed rate as specified in the Memorandum of Understanding and as elaborated earlier in the complaint for every month of delay from the till the**

actual handing over of the physical possession, in a habitable condition, together with the conveyance deed duly executed in favor of the complainant.

G.II Direct the respondents to pay the arrears of the assured return as detailed in the annexure till the date of the actual handing over of the physical possession, in a habitable condition, together with the Conveyance Deed duly executed in favor of the complainant within a period of 90 days from the date of the order.

22. Both the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.

23. In above mentioned cases, after some time of execution of MOU, the buyer agreement was executed. As per clause 83 of the BBA, the space buyer agreement constitutes the entire agreement between the parties and supersedes all previous agreement or application, which reproduced below as:

83. That this Agreement which has been titled as "Space Buyer's Agreement" constitutes the entire Agreement between the parties and revokes and supersedes all previous discussions/correspondence, application and Agreement between the parties, if any, concerning the matters covered herein whether written, oral or implied. This Agreement shall not be changed or modified except by written amendments duly agreed by the parties. The terms and conditions and various provisions embodied in this Agreement shall be incorporated in the sale deed and shall form part thereof

24. Further, this is also supported by Section 62 of the Indian Contract Act, 1872 (If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed), which reproduced below as:

Section 62. Effect of novation, rescission, and alteration of contract.

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

25. After consideration of all facts and circumstances, Authority is of view that as per buyer agreement, delay possession charge is to be given. Since buyer agreement is the effective and legally enforceable agreement here, so delay possession charge should be allowed. MOU is not legally enforceable after the execution of buyer agreement.

26. 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. 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."*

(Emphasis supplied)

27. Clause 38 of the agreement for sale provides for handing over of possession and is reproduced below:

The "DEVELOPER/LLP" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer cl.37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force @ majeure events or Governmental action/inaction

28. **Due date of handing over possession:** In the present case, the promoter has proposed to hand over the possession of the subject unit on within 36 months (refer cl.37 above) of Signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. The due date of possession comes out to be 12.07.2019

(Calculated from the date of execution of buyer's agreement i.e., 12.04.2016, as the date of start of construction is not available on record, plus grace period of 3 months is allowed being qualified and unconditional).

29. **Admissibility of delay possession charges at prescribed rate of interest:** 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. 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.

30. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
31. 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., 13.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
32. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall

be liable to pay the allottees, 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;"*

33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.

34. On consideration of the documents available on record and submissions made by both the parties, 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 per the agreement. By virtue of clause 38 of the agreement for sale executed between the parties on 12.04.2016, the possession of the subject unit was to be delivered by 12.07.2019 including grave period of 3 months is allowed being qualified and unconditional. It is important to note that respondent builder obtained occupation certificate on 18.09.2024 and offered possession on 14.10.2024, hence, the offer of possession dated 14.10.2024 is valid. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 12.04.2019 to hand over the possession within the stipulated period.

35. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. This 2 months' of reasonable time is being given to the complainant 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 i.e., 12.07.2019 till the expiry of 2 months from the date of offer of possession (14.10.2024) which comes out to be 14.12.2024.
36. 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 rate of the prescribed interest @10.80% p.a. w.e.f. 12.07.2019 till 14.12.2024 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.
- G.IV Direct the respondents to ensure the actual handing over of the physical possession, in a habitable condition, as per the requirements of "habitable" as laid down in the judgement of this Honorable Authority in "Varun Gupta & Ors. Versus Emaar India Ltd" together with the conveyance deed duly executed in favor of the complainant.**
37. The Authority observes that occupation certificate with respect to the project in question has already been obtained by the respondent promoter on 18.09.2024. An Occupation Certificate (OC) issued by the competent statutory authority is sufficient proof to establish that a unit is in a habitable condition, as it certifies that the construction has been completed in accordance with the sanctioned plans and applicable building laws, and that essential civic amenities and safety requirements necessary for occupation are in place. The

grant of an OC signifies that the authority, after due inspection, has found the premises fit for lawful occupation, and therefore creates a strong presumption of habitability. In the absence of cogent evidence to the contrary, the validity of an OC cannot be lightly disregarded, and it constitutes reliable and conclusive evidence that the unit is suitable for occupation.

38. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainant upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. Section 17 (1) of the Act provide for statutory right of the allottee to get the conveyance deed executed in his favour and the same is reproduced below for ready reference:

“Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or 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.”

39. In view of the above, the respondent no.1 and 2 are under an obligation to execute the registered conveyance deed in favor of the complainant in terms of Section 17(1) of the Act of 2016, upon payment of requisite stamp duty/registration charges at applicable rates fixed by State Government, within

a period of 90 days from the date of this order as the occupancy certificate has been already obtained.

G.V Direct the respondents to remove the illegal demands from the offer of possession as elaborated earlier in the complaint.

40. The Authority is of the view that the respondents shall not charge anything from the complainant which is not part of the MOU dated 08.04.2016 as well as buyer's agreement executed between the parties on 12.04.2016. Further, the Authority would deliberate upon all the charges imposed by the respondents upon the complainant-allottee as under:

Sr. No.	Description	Observation by Authority
1.	Electric Meter Charges	<p>The undertaking to pay the electric meter charges was comprehensively set out in clause 1(e), clause 4 and clause 9 of the buyer's agreement executed between the parties. Same are reproduced herein for ready reference:-</p> <p><i>"1(e) Electric connection charges and meter charges. The amount payable on this account will depend on the estimates approved by DHBVN for service connection/ substation equipment's, cost of area and security deposit etc."</i></p> <p><i>"4. That the Sale Price does not include the enhanced pro-rata share of External Development Charges (EDC) and Infrastructure Developmental Charges (IDC) if applicable and levied by The Director General, Town & Country Planning, Haryana after issuance of License, Maintenance Charges, IFMS, Property Tax, Electric Connection Charges, Power Backup Charges, Air Conditioning cost, interior furnishing cost and such other charges as provided in this agreement and is being charged separately as shown in schedule of payment annexed hereto as per Annexure-III to the said Unit."</i></p> <p><i>"9 (b) The rate mentioned in this agreement is inclusive of the cost of providing electric wiring in each Unit and firefighting equipment in the common areas but does not include the cost of electric fittings, fixtures, electric meter etc. which shall be installed by the Allottee at his/her/its own cost."</i></p> <p>The Authority is of the view that the complainant had agreed to pay the cost of electric meter charges over and above the basic sale price. Accordingly, the respondent is justified in charging the same from the complainant.</p>



2.	Power Backup Charges (PBC)	<p>The undertaking to pay the power backup charges was comprehensively set out in clause 4 of the buyer's agreement executed between the parties.. The said clause is reproduced hereunder: -</p> <p><i>"4. That the Sale Price does not include the enhanced pro-rata share of External Development Charges (EDC) and Infrastructure Developmental Charges (IDC) if applicable and levied by The Director General, Town & Country Planning, Haryana after issuance of License, Maintenance Charges, IFMS, Property Tax, Electric Connection Charges, Power Backup Charges, Air Conditioning cost, interior furnishing cost and such other charges as provided in this agreement and is being charged separately as shown in schedule of payment annexed hereto as per Annexure-III to the said Unit."</i></p> <p>The Authority is of the view that the complainant 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 complainant.</p>
3.	Fire Fighting Charges	<p>The undertaking to pay the fire-fighting charges was comprehensively set out in clause 11 of the buyer's agreement executed between the parties.. The said clause is reproduced hereunder: -</p> <p><i>"11. That the intending Allottee shall pay the Sale Price and other charges on the basis of super built-up area which shall include the plinth area, full share of outside walls, inside partition walls, columns, half area of the partition walls between the space and the adjoining space, full area of any projections and balcony window, stilt, sunshades, galleries and proportionate share in the common corridors, staircases, lobbies, shafts, lift-wells, muftis, machine-room, firefighting equipment, electric substation and electric and water meters, cables and distribution boards and public convenience and any other common services/amenities/areas."</i></p> <p>The Authority is of the view that the complainant had agreed to pay the fire-fighting charges over and above the basic sale price. Accordingly, the respondent is justified in charging the same from the complainant.</p>
4.	Air Conditioning Charges (ACC)	<p>The undertaking to pay the air conditioning charges was comprehensively set out in clause 4 and clause 9(d) of the buyer's agreement executed between the parties. Same are reproduced herein for ready reference:-</p> <p><i>"4. That the Sale Price does not include the enhanced pro-rata share of External Development Charges (EDC) and Infrastructure Developmental Charges (IDC) if applicable</i></p>



		<p>and levied by The Director General, Town & Country Planning, Haryana after issuance of License, Maintenance Charges, IFMS, Property Tax, Electric Connection Charges, Power Backup Charges, Air Conditioning cost, interior furnishing cost and such other charges as provided in this agreement and is being charged separately as shown in schedule of payment annexed hereto as per Annexure-III to the said Unit."</p> <p>"9(d)The design of said Commercial Colony is non-air conditioned. In case the "DEVELOPER/LLP" decides to make it air conditioned at a later stage, the allottee confirms to pay the proportionate cost of air conditioning as determined by the "DEVELOPER/LLP".</p> <p>The Authority is of the view that the complainant had agreed to pay the proportionate cost of air conditioning charges over and above the basic sale price. Accordingly, the respondent is justified in charging the same from the complainant.</p>
5.	<p>Interest Free Maintenance Security (IFMS)</p>	<p>The undertaking to pay the IFMS was comprehensively set out in clause 4 and clause 49 of the buyer's agreement executed between the parties. Same are reproduced herein for ready reference:-</p> <p>"49. The Allottee shall also deposit with the "DEVELOPER/LLP" a sum of Rs. 150/- (Rupees One hundred fifty Only)per Sq. Ft. by way of Interest Free Maintenance Security (IFMS). The allottee is also required to pay such sum as determined by "DEVELOPER/LLP" by way of Interest Free Capital Replacement Fund (IFCRF) in case of Managed Homes/ Serviced Apartments and Miniplex as per Annexure -IV."</p> <p>Therefore, the Authority is of the view that the respondent is allowed to collect a reasonable amount from the complainant 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</p>



6.	Interest Free Capital Replacement Fund (IFCRF)	<p>obligations as per the provisions of Section 14 of the Act.</p> <p>The undertaking to pay the interest free capital replacement fund was comprehensively set out in clause 13(a) of the buyer's agreement executed between the parties. Same are reproduced herein for ready reference:-</p> <p><i>"13.(a) Notwithstanding the fact that a portion of the common areas has been included for the purpose of calculating the area of the said premises, it is repeatedly and specifically made clear that it is only the inside space in the premises that has been agreed to be allotted and the inclusion of the common areas in the computation does not give any interest or right therein as such to the Allottee, except as provided here under. It is however, agreed, that if the maintenance, replacement and other charges are paid regularly, as provided under this agreement, the Allottee will have a right of use of common facilities. In default of such payment, it shall not be open to the Allottee to claim any right of use of common facilities, if none has been agreed to be transferred/conveyed by these presents. Similarly, .. the Allottee commits breach of any of the covenants herein, no right of use of facilities shall be permitted until the breach is rectified and the "DEVELOPER/LLP" or its nominee/ Maintenance Agency are assured that there will be no future repetition of such a breach."</i></p> <p>The clause clearly provides that although no ownership or interest in the common areas is conveyed to the allottee, the right to use common facilities is expressly conditional upon regular payment of maintenance, replacement and other charges under the agreement. Since IFCRF is a replacement-related charge intended to meet future capital replacement of common facilities, non-payment would constitute a default, disentitling the allottee from claiming any right to use common facilities until such default is cured. Accordingly, payment of IFCRF is contractually enforceable under Clause 13(a).</p>
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7.	GST and HVAT before 30.06.2017	<p>The undertaking to pay the GST and HVAT was comprehensively set out in clause 15 of the buyer's agreement executed between the parties. Same are reproduced herein for ready reference:-</p> <p><i>"15. That the Allottee agrees to pay directly or if paid by the "DEVELOPER/LLP" then reimburse to the "DEVELOPER/LLP" on demand, Government rates, if any imposed on the property, property taxes, ground rent, wealth tax, and taxes of all and any kind by whatever name called, whether levied or leviable now or in future on the land and/or building constructed on the said plot of land as assessable/applicable from the date of application of the Allottee and the same shall be borne by the Allottee in proportion to the Super Area of the Said Unit to the Super Area of all the Units in the said building/commercial colony as determined by the "DEVELOPER/LLP".</i></p> <p>The Authority is of the view that since the GST law came on 01.05.2017 and the due date is after the said date, the promoter is right in charging GST from the allottees where the same was leviable, at the applicable rate.</p> <p>The promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is liveable.</p> <p>Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis- à-vis the total area of the particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads</p>
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G.VI Direct the respondents not to ask for anything which is not a part of the Space Buyers Agreement.

41. The Authority vide order dated 09.12.2022, passed in case bearing no. **4147 of 2021** titled as **"Vineet Choubey V/s Pareena Infrastructure Private Limited"** and also in the complaint bearing no. **4031 of 2019** titled as **"Varun Gupta V/s Emaar MGF Land Limited"**, has already decided that the promoter cannot

charge anything which is not part of the buyer's agreement subject to the condition that the same are in accordance with the prevailing law. The respondents shall not charge anything from the complainant which is not the part of the buyer's agreement and is directed to charge the demands relying on the above said orders.

G.VII Direct the respondents to not demand Holding Charges as has been held by this Honorable Authority in the judgement of Varun Gupta & Ors Versus Emaar India Ltd.

42. 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
43. 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 complainant 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."

44. Therefore, the respondent is directed not to levy any holding charges upon the complainant.

G.VIII Direct the respondents to restrain from charging maintenance charges till the actual handing over of the physical possession, in a habitable condition, together with the Conveyance Deed duly executed in favour of the complainant.

45. The complainant raised an objection towards the amount raised towards maintenance charges. This issue has 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 the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.
46. Hence, the respondents are well within their rights to charge for the maintenance as per the agreed terms of the buyer's agreement executed between the parties.

G.IX Direct the respondent to pay compensation for mental agony and harassment, physical pain and emotional pain and agony to the family of Rs. 15 lakhs on account of deficiency in service and litigation charges of Rs. 1 lakh.

47. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021* titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)*, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating

officer having due regards to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

H. Directions of the authority

48. 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 delayed possession charges at the prescribed rate of interest i.e., 10.80% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 12.07.2019 till the expiry of 2 months from the date of offer of possession (14.10.2024) which comes out to be 14.12.2024, after adjustment of assured returns already paid, as per Proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
 - II. 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, *ibid*.
 - III. The respondent is directed to handover the physical possession of the unit within period of 30 days from the date of this order.
 - IV. The respondent is directed to execute the registered conveyance deed in favour of the complainant within 60 days from the date of this order.
 - V. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - VI. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% 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.

- VII. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement and in terms of para 42 of this order. The respondent is also not entitled to claim holding charges from the complainants/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in *Civil Appeal Nos. 3864-3889/2020 decided on 14.12.2020*.
- VIII. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of rate of assured return, area of the unit and amount paid by the complainant(s)-allottee is mentioned in each of the complaints.
49. The complaints as well as applications, if any, stand disposed of.
50. True certified copies of this order be placed on the case file of each matter.
51. Files be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:13.01.2026