

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

Complaint no.: 2166 of 2025
Complaint filed on: 06.05.2025
Date of first hearing 11.09.2025
Date of decision 05.02.2026

Mr. Arvind Aggarwal
R/o: - Ground Floor, 41-I, Sector-40, Gurugram,
Haryana - 122001

Complainant

Versus

MVN Infrastructure Private Limited
Office at: - MVN Athens Sohna, Sector-5, Dhaula Road,
Sohna Gurugram

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)

Shri Lokesh Dixit (Advocate)

Complainant

Respondent

ORDER

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

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

S. No.	Particulars	Details
1.	Name and location of the project	"MVN Athens", Sector-5, Sohna, Gurugram
2.	Nature of the project	Affordable Group Housing
3.	Project area	6.50625 acres
4.	DTCP license no.	49 of 2014 dated 18.06.2014 valid up to 17.02.2026
5.	Name of licensee	M.V.N. Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	284 of 2017 dated 10.10.2017 valid up to 09.10.2021
7.	Unit no.	1401, 14 th floor & Tower-B 6 (As per page no. 39 of the complaint)
8.	Revised unit no.	1501, 15 th floor & Tower-4 (As per page no. 59 of the complaint) (Note: Unit no. has been revised to 1501, 15 th floor & tower-4 from 1401, 14 th floor vide offer of possession)
9.	Unit area	485.2734 sq. ft. (Carpet Area) and 80.50 sq. ft. (balcony area) (As per page no. 39 of the complaint)
10.	Revised unit area	458 sq. ft. (Carpet area) and 77.63 (Balcony area) (As per page no. 40 of the complaint) (Note: Unit area has been revised to 457.997 sq. ft. from 485.2734 sq. ft. vide statement of account dated 15.04.2022)
11.	Date of approval of building plans	05.09.2014 (As per page no. 38 of the complaint)
12.	Date of Environment Clearance	05.01.2015 (As per another complaint of the same project)
13.	Allotment letter	06.02.2015 (As per page no. 36 of the complaint)



14.	Date of execution of flat buyer's agreement	05.03.2015 (As per page no. 37 of the complaint)
15.	Possession clause	<p>3. Possession</p> <p><i>3.1 Subject to force majeure circumstances, intervention of statutory Authorities, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by company and not being in default under any part hereof and flat buyer's agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the company proposes to offer possession of the said flat to the allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "commencement date"), whichever is later, subject to the allottee has executed the flat buyer's agreement.</i></p> <p>(As per page no. 43 of the complaint)</p>
16.	Due date of possession	05.01.2019 (Note: Due date to be calculated four years from the date of environment clearance i.e., 05.01.2015, being later)
17.	Total sale consideration	Rs.17,87,236/- (As per clause 2.1 of the FBA at page no. 40 of the complaint)
18.	Amount paid by the complainant	Rs.17,96,449/- (As per page no. 76 of the complaint)
19.	Occupation Certificate	02.07.2021 (Clarify by the counsel for the respondent during proceeding dated 05.02.2026)
20.	Demand cum offer of possession	05.07.2021 (As per page no. 59 of the complaint)
21.	Reminders for offer of possession and taking over the possession	30.08.2021 (Page no. 49 of reply)



22.	Reminder letter	26.07.2021, 12.08.2021, 08.10.2021, 01.11.2021, 09.11.2021, 13.12.2021, 03.03.2022, 06.10.2022, 08.12.2022 (As per page no. 86 of the complaint)
23.	Final notice of demand cum cancellation	15.04.2022 (As per page no. 64 of the complaint)
24.	Cancellation of allotment	01.05.2023 (As per page no. 67 of the complaint)
25.	Legal notice for offer of possession for originally allotted unit or refund of amount	06.06.2024 (As per page no. 70 of the complaint)
26.	Newspaper publication	02.05.2023 (As alleged by the respondent in its reply at page no. 8 of the reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- a. That the complainant while searching for a unit was lured by such advertisements and calls from the brokers of the respondent for buying apartment in their project. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments. The respondent widely published their project on the website and claiming that the "MVN ATHENS SOHNA" is situated on the premium location and is a unique project. Relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant booked a plot in the project by paying an amount towards the booking of the said unit, in Sector - 5, Dhaura Road, Sohna, Gurugram and the same was acknowledged by the respondent.
- b. That the respondent confirms the booking of the said unit to the complainant, asking to get submitted the relevant documents provided in the letter and the



same was duly submitted by the complainant on time. Further, providing the details of the project, confirming the booking of the unit dated 16.11.2014, allotting a unit no. 1401, tower-B6, 14th Floor having a carpet area of 485.273 Sq. ft. along with Balcony area of 80.50 Sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.17,87,236/-which includes basic price, Car parking charges and Development Charges and other Specifications of the allotted unit and providing the time frame within which the next instalments was to be paid.

- c. That the buyer's agreement was executed between the complainant and respondent on 05.03.2015. As per clause 3.1 of the buyer's agreement the Respondent had to deliver the possession within a period of 4 years from date of building plan or environment clearance. Hence the due date of possession comes out to be 05.01.2019 calculated from the date environment clearance being later 05.01.2015.
- d. That the complainant kept on making payments to respondent and paid a total amount of Rs.17,75,354/- plus input tax credit of Rs.21,095/-, total amount Rs.17,96,449/- as per the scheduled plan/demand of respondent from the date of allotment of the aforesaid flat and the last payment of Rs.2,73,150/- was made on 19.03.2020. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.17,96,449/- towards the said unit against total sale consideration of Rs.17,87,236/-. Repeated request and reminders from the complainant the respondent sent a mail to the complainant stating that the unit is ready and they have posted the offer of possession to the complainant.
- e. That after respondent issued possession letter dated 05.07.2021 in favour of the complainant. It is pertinent to note here that along with the above said

demand letter respondent raised several illegal demands on various account which are actually not payable as per the buyer agreement. Furthermore, respondent has asked for the meter charges, EEC and IFSD and same was never agreed upon. Hence, respondent cannot charge the same.

- f. Further, it is pertinent to mention here that the allotted unit was flat bearing no. 1401 in Tower B6, having a carpet area of 485.273 sq. ft. along with balcony area of 80.50 sq. ft. on 14th floor together with the two wheeler parking site but acting arbitrary respondent changed the unit to flat no. 1501 in Tower 4, having carpet area of 458 sq. ft. with balcony area of 77.63 sq. ft., without any prior intimation and approval from complainant.
- g. That the respondent asked the complainants to sign the indemnity bond as prerequisite condition for handing over of the possession. Allottee raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainant but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainant do not sign the aforesaid indemnity bond. Further, the complainant left with no option instead of signing the same.
- h. The fact is that the complainant has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA. The complainant/allottee has approached the respondent company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.
- i. The purpose of quoting this example is that not only the BBA is one sided heavily loaded in favour of the respondent but even the settlement-cum-

amendment agreement is also heavily loaded in favour of the respondent. Needless to mention that such one-sided agreements have been held to be unconstitutional and hence invalid by the Hon'ble Supreme Court and the Hon'ble High Courts in number of cases.

- j. That the respondent asking for electric meter and electrification charges from the complainant is absolutely illegal as the cost of the electric meter in the market is not more than Rs.2,500/- hence asking for such a huge amount, when the same is not a part of the builder buyer agreement is unjustified and illegal and therefore needs to be withdrawn immediately. so are the other demands required to be withdrawn, as per details provided above and those which are not a part of the BBA.
- k. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why delivery is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc. The complainant went to the respondent's office to ascertain the actual position of the aforesaid unit, and he was shocked to know about some purported intention/cancellation.
- l. That the complainant raised the said issue of change of flat no. from 1401 in Tower B6 having a carpet area of 485.273 sq. ft. along with balcony area of 80.50 sq. ft. on 14th floor together with the two wheeler parking site, to flat no. 1501 in Tower 4, having carpet area of 458 sq. ft. with balcony area of 77.63 sq. ft. with respondent via e-mail dated 21.11.2019, however, no appropriate reply to the said e-mail was received by complainant from respondent. That respondent acted in an arbitrary, uncalled, unprofessional and against the normal business norms by outrightly changing the original allotted flat of





complainant. That the high headedness of respondent is further evident from the fact that the original allotted flat bearing no. 1401 in tower B6 of Complainant was with a carpet area of 485.273 sq. ft. along with balcony area of 80.50 Sq. ft. on 14th floor together with the two wheeler parking site but the newly allotted flat bearing no. 1501 in Tower 4, having carpet area of 458 sq. ft. with balcony area of 77.63 sq. ft. was even smaller in size to the allotted original flat and was on the top floor of the proposed building.

- m. That it is further pertinent to mention herein that with the change in the allotment of complainant from flat no. 1401 in Tower B6 having a carpet area of 485.273 sq. ft. along with balcony area of 80.50 sq. ft. on 14th Floor together with the two wheeler parking site, to flat no. 1501 in Tower 4, having carpet area of 458 sq. ft. with balcony area of 77.63 sq. ft., complainant was constrained to inspect the site of respondent and was astonished to see that respondent did not even start the construction of the original allotted flat in Tower B6 and further the newly allotted flat no. 1501 in Tower 4, having carpet area of 458 sq. ft. with balcony area of 77.63 sq. ft., was in depilated condition and the material used was of sub-standard. That the complainant duly measured the said flat no. 1501 in presence of one of your executives and to the further dismay of complainant, it was observed that the actual measured carpet area of the said flat was not even 458 sq. ft. to what was being assured and claimed by respondent. After measurement of the said flat no. 1501, the actual carpet area of the flat came to 446.9 sq. ft. with balcony of 68.72 sq. ft.
- n. That on 15.04.2022, the complainant was in utter shock and dismay when he got a letter from the respondent stating that his unit has been cancelled by the respondent. That thereafter, when complainant visited the office of the respondent it was shocking for the complainant that representatives of the

respondent informed the complainant that their unit has already been stands cancelled. It is pertinent to mention here that it was very shocking to complainant if the said unit was cancelled, no intimation was sent to the complainant. Hence, the said demands are void, illegal and needs to be quashed. Till date even after the cancellation no amount till has been refunded nor bank loan amount has been settled. Hence, the said cancellation is in violations and against the spirit of the Act, 2016. Furthermore, the complainant has been raising the above said issues with respondent since 20.11.2019, however, no satisfactory reply has been received from respondent end. The complainant has been running from pillar to post since 20.11.2019 for addressing his concerns on one issue or the other but the repeated requests and reminders of complainant have fallen into deaf ears of respondent. Rather than addressing the concerns of complainant, respondent further in an arbitrary and uncalled manner issued a notice of demand cum termination letter dated 01.05.2023 to complainant thereby calling him to pay an additional amount of Rs.51,236/- or else the tentative booking/allotment of the said flat shall be cancelled, however, in contrary complainant has already paid a total amount of Rs.17,75,354/- plus input tax credit of Rs.21,095/-, totalling to Rs.17,96,449/- as per the scheduled plan/demand of respondent which in excess to the actual measured area of the flat no. 1501, carpet area 446.09 sq. ft. with balcony of 68.72 sq. ft.

- o. That since then until now the complainant had been in touch with the respondent and meeting the respondents but no solution has been reached. Not only this but the complainant sent various reminders emails dated: 26.07.2021, 12.08.2021, 08.10.2021, 01.11.2021, 09.11.2021, 13.12.2021, 03.03.2022, 06.10.2022, 08.12.2022, 04.07.2023, 08.07.2023. Further last email communication on 25.07.2024. A personal visit to the respondent company



office on 18.11.2023. Despite these reminders, the respondent company has either ignored the complainant's requests or made false assurances.

- p. That the complainant without wasting any time, got legal notice dated 26.06.2024 sent through counsel to respondent to which respondent reply from the bare reading of the reply of the respondent it can be construed that Respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent is unable to handover a possession even after a delay of many years. The respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent is unable to handover a possession even after a delay of many years.
- q. That the complainant sent various communications to the respondents raising various issues in relation to the said unit and asking the reason but respondents till date has failed to provide any satisfactory response to the complainant. That respondent charged huge interest from the complainant, though, it was delayed at their own end. The complainant was forced to pay Rs.66,644/- as delay interest charges. (This payment was made under protest as respondent company was not giving the Input Credit of GST to the complainant and complainant hold the payment of the respondent company.
- r. That complainant requested to the respondents raising the concern with respect to prior inspection/visit of the unit, asking the respondents to pay the dues arising on the part of the respondents, further to provide the copy of the occupation certificate, asking for the details of the TDS plus the details of the

taxes paid by complainant, and the draft copy of the conveyance deed but respondent till date failed to reply to aforesaid concerns.

- s. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of the Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act, 2016 and the provisions of the Rules, 2017.
- t. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time. Hence the present complaint.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
- Direct the respondent to execute the sale deed and hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.
 - Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA Act, 2016 from the due date of possession till date of execution of sale deed and actual physical



- possession thereof being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.
- c. Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA Act, 2016 before execution of the Conveyance Deed/ sale deed.
 - d. To restrain the respondent from raising fresh demand for payment under any head, as the complainant has already paid the sale considerations and to set aside one-sided demand letters.
 - e. To order the respondent to set side cancellation letter dated 15.04.2022 and 01.05.2022.
 - f. To restrain the respondent from creating third party rights.
 - g. Direct the respondent, not to cancel the allotment of the Unit.
 - h. To quash the illegal offer of possession cum demand letter dated 05.07.2021.
 - i. Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
 - j. Direct the respondent to execute the sale deed and handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
 - k. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc., which in any case is not payable by the Complainant.
 - l. Direct the respondent to provide the exact lay out plan of the said unit and execute the conveyance deed and deliver the actual physical possession.



5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The counsel for the respondent no. 1 has filed an application dated 18.09.2024, with regard to setting aside the order dated 04.07.2025 along with application for dismissal of complainant and has contested the complaint on the following grounds:
- I. That the Government of Haryana was pleased to notify on August 19, 2013, "Affordable Group Housing Policy - 2013" under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975. It is respectfully submitted that the Policy was issued with the intention of encouraging the planning and completion of 'Group Housing Projects', wherein apartments of 'pre-defined size' were to be made available at 'pre-defined rates' as mentioned in the Policy to ensure increased supply of 'Affordable Housing' in the Urban Housing Market to the deserving beneficiaries. A strict criterion for allotments of flat, payment plan, cancellation of allotment has been provided under the Policy.
 - II. That the respondent was granted license no. 49 of 2014 dated 18.06.2014, in prescribed form for development of Affordable Group Housing Colony, over the project land. Upon the grant of aforesaid license, the zoning plan was approved vide drawing no. DGTCP-4724 by the competent authority. The building plans were approved on 05.09.2014. Thereafter, the respondent, applied for obtaining prior environmental clearance of the project, vide application dated 29.08.2014, and the same was granted on 05.01.2015, vide Letter No. SEIAA/HR/2015/11. The respondent has constructed and developed an



affordable group housing project named "MVN Athens Sohna" on the land admeasuring 6.50625 acres or 52 Kanaals 1 Marla, situated in Sector-5 of Revenue Estate of Sohna, District Gurugram.

- III. That the complainant applied for the allotment of a flat in the above-mentioned project of the Respondent vide application dated 30.10.2014. That, as per the applicable rules the concerned government department /agency was to carry out a draw of lots for the allotment of the unit in the project. Pursuant to the draw of lots held on 04.02.2015, in the presence of a committee headed by the representative of the Deputy Commissioner, Senior Town Planner, DTP, Gurugram, the Complainant was allotted flat no. 1401, 14th floor in Block/Tower-B6 having 485.2734 sq. ft. along with one two-wheeler parking for a total consideration of Rs.17,87,236 /-. In pursuance of the said allotment, parties entered into flat buyer's agreement dated 05.03.2015.
- IV. That during the execution of its obligations under the license it had come to the notice of the respondent that certain works were being carried out on the land near the project, for erection of two electrical poles for the installation of High-Tension Lines. The location of these electrical poles was such that in the event the High-Tension lines were to connect the two poles, the HT Lines would have run through a portion of the project, that too in a manner that it would have come in the way of the buildings that were planned and approved to be constructed over the said project land. This state of affairs could not have been allowed considering the well-being and health related issues of the allottees of the project as any HT Line passing over the edifice of the allottees would have played havoc with their health and life.
- V. Under such emergent and pressing circumstances, the respondent approached the Haryana Vidyut Prasaran Nigam Limited and other relevant/concerned

authorities by way of various correspondences, requests and representations to change the alignment of the HT lines running through the project. The respondent had even met the officials of the Department of Town and Country Planning, Haryana, as license and all necessary approvals had been granted by this Department, apprising them of the milieu in which the respondent had got embroiled. but the said requests were not acceded to and the respondent was granted no relief by HVPNL or any other authority. Apparently, there was a direct conflict between the obligations of the respondent and the health and safety of the allottees of the project. Under such circumstances and being an ethical developer who is not driven by profit motive and who always puts the interests and the well-being of its buyer at the forefront the respondent decided to take legal recourse in the matter for the benefit and well-being of its buyers.

- VI. That the respondent being left with no other alternative filed Civil Writ Petition No.18929 of 2014 before the Hon'ble Punjab and Haryana High Court. Significantly, in the said writ petition, a short reply was filed by Chief Town Planner, Department of Town and Country Planning, acting on behalf of the Director, Town and Country Planning, Haryana. In the reply, while acknowledging the fact that the High Tension Wires would affect the project, it was inter-alia, stated that if the realignment of the proposed Electric Poles cannot be avoided by the executing agency, the respondent herein could get the zoning plans and building plans revised from the office of said department so as to avoid passing of high tension wires over the buildings proposed to be constructed by the respondent.
- VII. That accordingly, the respondent, under such force majeure circumstance, submitted request for revision of the building plan(s)/Zoning Plan(s) on July 13, 2015 and the revision was approved provisionally vide Memo No.14925



dated 12.08.2015, for the purpose of inviting objections/suggestions. After considering all the objections raised against such provisional approval with to respect to revision of the building plan(s) the revised building plans were approved vide Memo No. ZP-981/SD (BS)/2016/9626 dated May 16, 2016. The said fact which stands recorded in the records and order of the competent authority i.e. Director, Town and Country Planning, Haryana. The complainant did not submit any objection to the revision of building plan and, as a matter of fact, the complainant made further payments even after the aforesaid revision of the plan.

- VIII. That in the writ petition then pending before the Hon'ble High Court, the respondent had submitted that due to the process involving the change and revision of the building pan certain period has elapsed during which the respondent could not continue the development of the project and therefore prayed that such period which was lost during this period in the interregnum be removed from the limited time of completion provided under the policy. Considering the plea of the respondent the Hon'ble High Court disposed of the said writ petition vide order dated 26.07.2017 with a direction thereby granting liberty to the respondent to make a representation before the Department of Town and Country Planning, Haryana in that regard.
- IX. Accordingly, the respondent submitted its representation and the Department of Town and Country Planning considered the same on merits. It was duly noticed by the Director, Town and Country Planning, Haryana while deciding the representation of the respondent that the project of the respondent had been stalled for approximately a period of one year and eight months, for reasons beyond the control of the respondent. The Department therefore legally ordered to consider the period from 05.09.2014, to 16.05.2016, to be



treated as zero period for the purposes of commencement of Project and extension in the period of the license. The said order was passed on the basis of the undisputed facts and applicable law as the respondent was prevented from undertaking development works of the said project due to installation of HT Line by HVPNL. It was duly appreciated in the said order that in case the development works were executed by the respondent, as per the original approved building plans, the HT Line would have passed through the constructed area putting the life of the inhabitants at risk. It was also noticed that the route of Wires of HT Line is to be kept as per IS Code. Needless to mention that as per the said direction of The Director General, Town and Country Planning the date of commencement of the project shall be deemed as 16.05.2016 and the project is required to be completed on or before 15.05.2020.

- X. That as per the revised building plan the area of the flat allotted to the complainant decreased to 457.997 sq. ft. from the original 485.2734 sq. ft. and total sale consideration was also reduced to Rs.17,29,805/-. Further submitted that the complainant accepted the aforesaid changes without any objection and made further payment accordingly. Due to the revision in the building plan, the tower numbers in the project were changed from alphabetical to the numerical and a clarification note dated 02.06.2016 was issued by the respondent in this regard.
- XI. That the respondent has duly carried out the construction and/or development as per the terms of the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 and the Rules framed there under. The application dated 16.06.2020 for granting of occupation certificate with respect to the second phase of the project has been duly accepted by the concerned department and



after subsequent declaration on 21.09.2020 and 01.10.2020, Occupancy Certificate (OC) for the second phase of the project for the towers 01-04 of the project has been granted in 02.07.2021. The delay occasioned in granting the occupancy certificate was not intentional but because of countrywide lockdown due to Covid -19 pandemic. However, due to the spread of Covid-19 pandemic the State Government as well as this Authority have granted various concessions to the home buyers as well as the developers. This Authority has specifically extended the completion date of all the projects by 6 months vide its Order bearing No.9/3-2020 HARERA/GGM (Admn.) dated 26.05.2020. Thereafter, the Government of Haryana (Town and Country Planning Department) has granted a moratorium period of 9 months for various compliances by way of Notification No. Misc-1025/2020/13188 dated 28.07.2020.

- XII. That the building plan of the project was approved by the competent authority of DTCP who had further inspected the project site on completion of the construction and only after complete satisfaction did the competent authority of DTCP have granted occupancy certificate of the project. That, the flat was duly inspected by the complainant in the presence of the officials of the respondent and was found to be in excellent condition. Despite these facts the complainant has chosen to make false allegations against the respondent. It is respectfully submitted that the occupation certificate of the Tower in which the unit of the complainant is situated has already been granted and pursuant to the said occupation certificate the respondent had issued offer of possession vide letter dated 05.07.2021.
- XIII. That the flat was ready in all aspects and respondent have issued several remainders to the complainant for taking physical possession of the unit after





clearing all the dues including reminder dated 30.08.2021, 10.09.2021, 09.10.2021, 13.12.2021, 15.04.2022 and 29.04.2023. However, no steps were taken by the complainant, contrary the complainant had raised false and frivolous grounds with a view to arm twist the respondent. It is further submitted that flat has been developed by the respondent as per the agreement between the parties and flat is free from all such defects as alleged by the complainant. Further the complainant was clearly informed that if complainant feels that there are such defects as alleged by them, respondent is calling them for joint inspection and if such defects are found respondents are ready to remove them. The respondent further called upon the complainant to immediately take possession of the flat even the complainant has any issue with the size of the flat and if any deficiency is found in the size of the flat the complainant will have to make payment as per the actual size of the flat. Instead of taking proper steps the complainant was doing lip service by writing mails to avoid taking the possession of the booked unit. numerous other similarly placed people have taken possession in their units and are happily living there for the last 5 years.

- XIV. That the complainant willfully failed to take possession of the flat and make outstanding payment of balance consideration and user charges cum operating cost despite issuance of several notices and reminders thereof the respondent had issued to the complainant a final notice of demand through publication in the newspaper on dated 02.05.2023 in terms of the Affordable Housing Policy 2013 thereby the complainant had been granted clear 15 days' time to take possession over his flat on or before 16.05.2023. Despite clear intimation regarding termination of allotment and the agreement to sell the complainant failed to make payment and get possession over his flat. It seems that the

complainant had booked the unit with profit/commercial motive and was just extending the time to take possession to suit its illegal purposes. Considering willfull negligence of the complainant to get possession of the flat the respondent was bound to terminate the allotment of flat and agreement to sell.

- XV. That the termination was done in terms of the Affordable Housing Policy and the provisions of Act, 2016 and the Rules 2017, the respondent had called upon the complainant to receive back his balance sale consideration left after forfeiture of the earnest money. As the Allotment was cancelled after about two years since the complainant was offered the possession, the complainant was further liable to pay the operating cost cum user charges up to date of such cancellation to the respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by both the parties.
- E. Jurisdiction of the authority**
8. 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.**
9. 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**



10. 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.

11. 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 objections raised by the respondent:

F.1 Objection regarding force majeure conditions:

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, revision of zoning plans and layout plans due to HT line passing through the project, orders of various courts, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a



shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is earlier. In the present case, the date of approval of building plans is 05.09.2014 and date of grant of Environmental Clearance is 05.01.2015. Thus, the due date of subject unit is to be calculated from the date of environmental clearance i.e., 05.01.2015, being later which comes out to be 05.01.2019. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020** dated 29.05.2020 which has observed that:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

13. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 05.01.2019 i.e., before 25.03.2020. Therefore, an extension of 6 months is not to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account



of force majeure conditions due to outbreak of Covid-19 pandemic. The due date of subject unit comes out to be 05.01.2019, prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant.

G. I Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA, from the due date of possession till date of execution of sale deed and actual physical possession thereof being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.

G. II Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before execution of the Conveyance Deed/ sale deed.

G.III To order the respondent to set side cancellation letter dated 15.04.2022 and 01.05.2022.

14. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
15. The complainant was allotted a unit bearing no. 1401, 14th floor, in tower/block-B6, in the project "MVN Athens" situated in sector- 05, Sohna Gurugram by the respondent/builder under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the complainant and the respondent on 05.03.2015. As per clause 3.1 of the buyer's agreement read with clause I(IV) of the Affordable Housing Policy, 2013, the possession of the unit was to be offered within 4 years from approval of building plans (05.09.2014) or from the date of environment clearance (05.01.2015) whichever is later. The due date of possession is calculated from date of approval of environment clearance i.e., 05.01.2015, being later. Therefore, the due date of possession comes out to be 05.01.2019. The complainant has paid a sum of Rs.18,21,000/- against the total sale consideration of Rs.17,87,236/-. The complainant has always been ready and willing to retain the



allotted unit in question and ready to pay the outstanding dues as per buyer's agreement if any, after adjustment of delay possession charges.

16. The respondent company has offered the possession vide letter dated 05.07.2021 after obtaining the occupation certificate on 02.07.2021. It is important to note that at the time of offer of possession the respondent offered possession in lieu of unit bearing no. 1501 15th floor, in tower-4, area admeasuring 458 sq. ft. (carpet area) and 77.63 sq. ft. (balcony area) instead of the originally allotted unit bearing no. 1401, 14th floor, in tower-B6, area admeasuring 485.2734 sq. ft. (carpet area) and 80.50 sq. ft. (balcony area). The respondent has issued various reminders regarding offer of possession and taking over the possession making payment of the outstanding dues as well as taking over the physical possession, but the complainant failed to adhere the same. The respondent has also issued a final notice of demand -cum-cancellation letter on 15.04.2022, thereafter, the unit of the complainant was cancelled on 01.05.2023 and due to the continuous default on the part of the complainant to make payment of outstanding dues, which constrained the respondent to make a publication of the same in the newspaper on 02.05.2023.
17. It is observed that the complainant failed to make payment of the outstanding dues as per schedule of payment which led to the issuance of final cancellation notice dated 01.05.2021 by the respondent/builder. In line with the aforesaid facts, and submission filed by the parties and documents placed on record, the main question which arises before the Authority for the purpose of adjudication is that "Whether the said cancellation is a valid in the eyes of law?"
18. Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below: -

"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the



payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs.25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

19. In the present case, the agreement to sell was executed inter-se the parties on 05.03.2015, and the complainant/allottee has paid an amount of Rs.18,21,000/- which constitutes more than of the sale consideration. Accordingly, the respondent issued numerous reminder/demand letters dated 26.07.2021, 12.08.2021, 30.08.2021, 08.10.2021, 01.11.2021, 09.11.2021, 13.12.2021, 03.03.2022, 06.10.2022, 08.12.2022, and final notice of demand -cum-cancellation letter dated 15.04.2022, to the complainant. The respondent published a list of defaulters for payments in the daily Hindi newspaper on 02.05.2023. Finally, the cancellation letter has been issued by the respondent on 01.05.2023.
20. On the basis of the documents placed on record and the submissions made by both parties, the Authority observes that the cancellation by the respondent is unfair and invalid for the following reasons: *Firstly*, as per the admitted facts of the case, the complainant was originally allotted Unit No. 1401 on the 14th floor in Tower B6, admeasuring 485.2734 sq. ft. (carpet area) and 80.50 sq. ft. (balcony area). However, at the time of the offer of possession, the respondent offered an alternative unit, namely Unit No. 1501 on the 15th floor in Tower 4, admeasuring 458 sq. ft. (carpet area) and 77.63 sq. ft. (balcony area). The Authority notes that the respondent company intimated the complainant about the change of unit for the first time only at the stage of offering possession. The complainant repeatedly requested the respondent to hand over physical possession of the originally allotted unit, but the respondent failed to do so. In this regard, the complainant also issued a legal notice to the respondent seeking possession of the original unit. Despite this, the respondent issued multiple reminders and demand letters to the



- complainant, calling upon them to take possession of the substituted unit and clear the outstanding dues. Subsequently, a final notice of demand-cum-cancellation dated 15.04.2022 was issued, followed by the cancellation letter dated 01.05.2023.
21. *Secondly*, in the instant case, the cancellation notice was issued by the respondent on 01.05.2023 and publication of the defaulters list in the newspaper was published on 02.05.2023. However, no formal cancellation letter was issued after publication of the list of defaulters. It is to be noted that in clause 5(iii)(i) of the Policy, 2013, it is specified that in case the allottee fails to clear the outstanding dues within 15 days of publication in the newspaper, then his allotment may be cancelled by the promoter. The word 'may' here does not mean that post 15 days of publication, the allotment shall deem to be cancelled rather it means that some action is required to be taken by the promoter towards cancellation of the allotment. Moreover, post cancellation of the unit, the respondent has failed to refund of the amount paid by the complainant till date. Seeing, various illegalities on part of the respondent in this particular case, the Authority is of view that the respondent should not be allowed to get unfair advantage of its own wrong. In view of the above, the said cancellation is bad in law and is hereby set aside.
22. Herein, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."



23. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

1 (iv)

"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."

24. **Due date of handing over of possession:** As per clause 3.1 of the flat buyer agreement dated 05.03.2015 read with clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.* The respondent has obtained building plan approval and environment clearance in respect of the said project on 05.09.2014 and 05.01.2015 respectively. The due date of possession is calculated from date of approval of environment clearance i.e., 05.01.2015, being later. Therefore, the due date of possession comes out to be 05.01.2019.

25. **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.

26. 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.
27. 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., 05.02.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
28. 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;"*
29. Therefore, interest on the delayed 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 her in case of delay possession charges.
30. On consideration of documents available on record as well as 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 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject apartment was to be delivered by 05.01.2019.



The occupation certificate has obtained the occupation certificate on 02.07.2021 from the competent authority. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period.

31. 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. In the present complaint, the occupation certificate was granted by the competent authority on 02.07.2021. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have 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 the fact 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., 05.01.2019 till the expiry of 2 months from the date of offer of possession, (05.07.2021) plus two months i.e., up to 05.09.2021 or actual handing over of possession, whichever is earlier.
32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on part of the respondent is established. As such, the allottee shall be paid by the promoter, interest for every month of delay from the due date of possession i.e., 05.01.2019 till the expiry of 2 months from the date of offer of possession, (05.07.2021) plus two months i.e., up to 05.09.2021 or actual



handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G. IV Direct the respondent to execute the sale deed and hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.

G. V Direct the respondent to execute the sale deed and handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.

33. The respondent/promoter is directed to restore the unit in question within a period of one month from the date of this order. In case the respondent has already created third party rights on the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the buyer's agreement dated 05.03.2015 in the said project to the complainant.

34. The complainant is further seeking relief w.r.t execution of conveyance deed of the unit in question in his favour and handover the physical possession of the unit. The Authority observes that as per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. 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. The occupation certificate has not been obtained by the respondent/promoter till date from the competent authority. Therefore, the respondent/promoter is directed to handover the possession of the unit after obtaining the occupation certificate on payment of outstanding dues if any, after adjustment of delay possession charges, and to get the conveyance deed of the allotted unit executed in her favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

G. VI To restrain the respondent from creating third party rights.

G. VII Direct the respondent, not to cancel the allotment of the Unit.



35. As the Authority is allowing the handover the physical possession of the unit as well as execution of conveyance deed in the para 32 of this order, thus the above-sought relief becomes redundant.

G. VIII. To restrain the respondent from raising fresh demand for payment under any head, as the complainant has already paid the sale considerations and to set aside one-sided demand letters.

G. IX To quash the illegal offer of possession cum demand letter dated 05.07.2021.

36. In the above-mentioned reliefs of the complainant, the complainant sought to restrain the respondent from raising fresh demand for payment under any head, as the complainant has already paid the sale considerations and to set aside one-sided demand letters and quash the offer of possession letter dated 05.07.2021.

37. As per documents available on record, the respondent has offered the possession of the allotted unit on 05.07.2021 after obtaining occupation certificate from competent authority on 02.07.2021. The complainant took a plea that offer of possession was made in 2021, but the respondent has failed to handover the physical possession of the allotted unit. In view of the above, the respondent/promoter is directed to complete the work of the subject unit in all aspect and handover physical possession of the unit to the complainant within a period of one month from the date of this order. Further, the respondent shall not charge anything from the complainant which is not part of the flat buyer's agreement.

G.X Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

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



G. XI Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc., which in any case is not payable by the complainant.

39. The complainant has sought the relief to restrain the respondent from demanding Labour Cess, Electrification charges and maintenance charges. As per clause 4.2 (of the buyer's agreement dated 05.03.2015, it has been mentioned that the allottee is liable to pay separately the above-said charges as per the demands raised by the respondent company. Therefore, in the interest of justice and to avoid further litigation, the Authority is deliberating its findings on the above said charges.

- **Labour Cess:** - The Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no. 962 of 2019 titled *Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited* wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be separately charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

40. **Maintenance charges:** - The authority observes that clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project: A commercial component of 4% is being allowed in the project to enable the coloniser to



maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The coloniser shall not be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983.

41. As per the order issued by DTCP, Haryana vide clarification no. PF 27A/2024/3676 dated 31.01.2024, it has been very clearly mentioned that the utility charges [which includes electricity bill, water bill, property tax waste collection charges or any repair inside the individual flat etc.] can be charged from the allottees as per consumptions. Accordingly, the respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per clarification by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

G. XII Direct the respondent to provide the exact lay out plan of the said unit and execute the conveyance deed and deliver the actual physical possession.

42. As per section 19(1) of Act of 2016, the allottees shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent/promoter is directed to provide details of license and statutory approvals to the complainants within a period of 30 days.

H. Directions of the authority



43. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The cancellation letter dated 01.05.2023, is hereby set aside. The respondent is directed to restore the unit in question within a period of 30 days from the date of this order. In case the respondent has already created third party rights on the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the buyer's agreement dated 05.03.2015 in the said project to the complainant.
- ii. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.80% per annum for every month of delay from the due date of possession i.e., 05.01.2019 till the expiry of 2 months from the date of offer of possession, (05.07.2021) plus two months i.e., up to 05.09.2021 or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules. 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 supply a copy of the revised statement of account after adjusting the delay possession charges within a period of 30 days to the complainant. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of revised statement of account.



- iv. The respondent shall handover possession of the unit on payment of outstanding dues if any, after adjustment of delay possession charges within a period of 30 days from the date of this order as the occupation certificate has already been obtained by the respondent company and to get the conveyance deed of the unit of the complainant executed in his favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- 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., 10.80% 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 delay possession charges as per section 2(za) of the Act
- vi. The respondent shall not charge anything from the complainant which is not provided under the flat buyer's agreement and the Affordable Housing Policy, 2013.
- vii. The respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per clarification by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.
44. Complaint as well as applications, if any, stand disposed off accordingly.
45. Files be consigned to registry.

Dated: 05.02.2026



(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram