

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

**Complaint filed on :** 15.09.2025  
**Date of decision :** 12.03.2026

**Satya Pal Malhotra (HUF) Through its Karta  
Satya Pal Malhotra**  
**Resident of:** 475, Near Palam Vihar Crossing,  
Sector- 23, Carterpuri, Gurugram Haryana-  
122017

**Complainant**

**Versus**

**M/s Ambience Projects & Infrastructure Pvt.  
Ltd.**  
**Regd. office:** L-4, Green Park Extension, New  
Delhi 110016

**Respondent**

**CORAM:**

Shri Phool Singh Saini

**Member**

**APPEARANCE:**

Shri K.K.Kohli (Advocate)  
Shri K.P. Singh (Advocate)

**Complainant  
Respondent**

**ORDER**

1. That the present complaint has been filed by the complainant-allottee 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 allottee as per the agreement for sale executed inter se parties.

**A. Project and unit related details**



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

S.No.	Heads	Information
1.	Name and location of the project	"The Creacions", Sector 22, Gurugram
2.	Nature of the project	Group Housing Project
3.	Project area	14.819 acres
4.	DTCP License	48 of 2012 dated 12.05.2012 valid upto 11.05.2018
	Name of the licensee	Ambience Projects and Infrastructure Pvt. Ltd.
5.	HRERA registered/ not registered	318 of 2017 dated 17.10.2017 valid up to 31.03.2022
6.	Application dated	18.06.2024 (As mentioned in agreement at page 43 of complaint)
7.	Allotment letter dated	10.07.2024 (As per page no. 107 of reply)
8.	Flat buyer's agreement	17.09.2024 (As per page no. 41 of complaint)
9.	Unit no.	601 on 6 <sup>th</sup> floor, tower J (As per page no. 33 of complaint)
10.	Super Area	2781 sq. ft. (As per page no. 33 of complaint)
11.	Payment plan	Subvention payment plan (As per page no. 79 of complaint)
12.	Total sale consideration	Rs.3,11,13,740/- (As per demand letter at page no. 39 of reply)
13.	Total amount paid	Rs.3,12,99,824/- (As stated by the complainant during proceedings dated 12.03.2026)
14.	Possession clause	<b>Clause 7.1 Schedule for possession of the Said Unit.</b>





The Company and Allottee(s) agree and understand that timely payment of installments by the Allottee(s) as per Payment Plan and timely delivery of possession of the Unit along with parking (if applicable) to the Allottee(s) are the essence of the Agreement. **The Company assures to hand over possession of the Unit along with parking (if applicable) as per agreed terms and conditions on or before 31st December 2024**, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is delay due to "force majeure", Court orders, Government policy/ guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority for the said Project for any reason other than the noncompliance by the Company, non-availability of necessary infrastructure facilities viz. roads, water, power, sewer lines to be provided by government for carrying out development activities, strikes, lock out and industrial disputes etc. affecting the regular development of the real estate project. If, however, the completion of the Project is delayed due to the above conditions then the Allottee(s) agrees that the Company shall be entitled to the extension of time for delivery of possession of the Unit. The Allottee(s) agrees and confirms that, in the event it becomes impossible for the Company to implement the project due to "force majeure" and above-mentioned conditions, then this allotment shall stand terminated and the Company shall refund to the Allottee(s) the entire amount received by the Company from the Allottee(s) within ninety days. The Company shall intimate the Allottee(s) about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee(s), the Allottee(s) agrees that he/ she shall not have any rights, claim- etc. against the Company and that the Company shall be released and discharge from all its obligations and liabilities under this Agreement.

*Be*

		(Page 56 of complaint)
15.	Due date of possession	31.12.2024 (As mentioned in clause 7.1 of agreement)
16.	Legal notice sent by the complainant for possession and other claims	11.04.2025 (Page 108 of complaint)
17.	Occupation Certificate	21.12.2023 (Page 110 of reply)
18.	Offer of possession	21.09.2024 with a condition to opt for the membership of the club which the complainant does not wish to. (As stated by the complainant at page 36 of complaint) <i>Note: Inadvertently mentioned as "Not Obtained" vide proceedings dated 08.01.2026.</i>

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:
- The complainant, is an 82-year-old gentleman who retired as a Lieutenant General from the Indian Army after rendering decades of distinguished service to the Nation, is being subjected to harassment and undue hardship at the hands of the respondent. Instead of honouring the lawful rights of the complainant, the respondent has adopted coercive and exploitative measures, thereby denying him possession of the flat as well as execution of the conveyance deed.
  - Mr. Satya Pal Malhotra (hereinafter referred to as the "complainant") is a respectable and law-abiding citizen of this nation.
  - In the year May 2024, the real estate project The Creacions, in sector 22, Gurugram being developed by the respondent [hereinafter referred to as "project"] came to the knowledge of the complainant,

through the authorized marketing representatives of the respondent, making tall claims, assurances, and warranties in regard to the project being developed by it, lured by the claims, the complainant convinced to book a residential unit/flat in the project being developed by respondent.

- d. The complainant induced by various advertisements issued by the respondent builder for their housing project "The Creacions" applied for the allotment of a residential apartment unit no. C-1302 on thirteenth floor, tower C admeasuring 78.20 sq. meters, super area 1860 square feet for the total sale consideration of Rs. 3,11,13,740/- and the complainant paid the sum of Rs. 3,12,99,740/- and hence, fell within the definition of an allottee under section 2 (d) of the Real Estate (Regulation and Development) Act.
- e. Relying upon the assurances, representations of the respondent, the complainant agreed to buy an apartment/unit in the aforesaid project thereby, the complainant booked a unit bearing unit no. 1302- thirteenth floor in tower "C" having an area of 78.28 sq. mtrs. in the said project and paid an amount of Rs.11,00,000/- at the time of booking. The respondent executed an apartment buyer's agreement dated 19.09.2024 with the complainant.
- f. On 18.07.2024, the complainant received a request for payment of a sum of Rs.2,67,88,068/- from the respondent. On 16.08.2024 an amount of Rs. 1,13,00,000/- was paid as is evident from the statement dated 16.08.2024 of the respondent. The complainant had paid a sum of Rs. 2,79,00,000/- as per statement dated 21.09.2024 to the respondent. A TDS amount of Rs. 3,11,137/- was deposited on 02.11.2024 which is payable on an amount of Rs. 3,11,13,740/-. The total amount paid by the complainant was Rs.3,12,99,740/- against a total of Rs. 3,11,13,740/-.



- g. As per para 7.1 of the ABA - Schedule for possession of the said unit -  
The company and allottee(s) agree and understand that timely payment of instalments by the allottee(s) as per payment plan and timely delivery of possession of the unit along with parking (if applicable) to the allottee(s) are the essence of the agreement. The company assures to hand over possession of the unit along with parking (if applicable) as per agreed terms and conditions on or before 31st December 2024, however upon receiving the entire payment of sale price and other charges as per this agreement unless there is delay due to "force majeure", court orders, government policy/guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority for the said project for any reason other than the noncompliance by the company, non-availability of necessary infrastructure facilities viz. roads, water, power, sewer lines to be provided by government for carrying out development activities, strikes, lock out and industrial disputes etc. affecting the regular development of the real estate project. If, however, the completion of the project is delayed due to the above conditions then the allottee(s) agrees that the company shall be entitled to the extension of time for delivery of possession of the unit. The allottee(s) agrees and confirms that, in the event it becomes impossible for the company to implement the project due to "force majeure" and above-mentioned conditions, then this allotment shall stand terminated and the company shall refund to the allottee(s) the entire amount received by the company from the allottee(s) within ninety days. The company shall intimate the allottee(s) about such termination at least thirty days prior to such termination. after refund of the money paid by the allottee(s), the allottee(s) agrees that he/she shall not have any rights, claims etc. against the company and



that the company shall be released and discharged from all its obligations and liabilities under this agreement.

- h. There was continuous insistence by the staff of the respondent Shri Amit Malhotra mobile no. 09999365556 and Ms. Nisha mobile no. 08445262860 verbally insisting on payment of the membership of the club in the complex, which the complainant never opted for. The complainant was clearly denied the possession and execution of the conveyance deed till the time he accepts the membership of the club which the complainant was not interested and being optional was well within his rights to deny.
- i. The complainant was repeatedly being coerced to accept the membership and pay Rs. 15 lakhs which the complainant denied. The respondent replies to the notice through the advocates PK Agrawal Advocates vide letter dated 25.05.2025. Para 3 of the said reply reads as under:

*"3. Alleged Coercion Regarding Club Membership*

*It is vehemently denied that any coercive tactics have been adopted by our client or its staff to compel your client into accepting club membership.*

*Our client does encourage the allottees to avail the facilities for their benefit, which is a routine commercial practice, but no insistence or precondition has been imposed linking possession or execution of the conveyance deed to such membership.*

- j. Moreover, clause 10 of the provisional allotment letter dated 10.07.2024 mentioned that "club membership will be charged at the time of possession on the applicable charges", is applicable to those opting for membership.
- k. Subsequently vide this letter dated 19.07.2025 the respondent has changed the stand regarding the membership of the club and has replied as under:

*"Our client strongly denies any coercion or compulsion regarding club membership. As per Clause 10 of the Provisional Allotment Letter, it was expressly agreed by you that club membership charges shall be payable*



*at the time of possession, at the applicable rates. The said clause/point forms an integral part of the contractual terms accepted by you at the time of booking of unit".*

- l. Statement of the respondent has been significantly changed and speaks volumes of the respondent "Blowing Hot & Blow Cold" depending on his convenience. The complainant, an 82-year-old gentleman who retired as a Lieutenant General from the Indian Army after rendering decades of distinguished service to the Nation, is being subjected to harassment and undue hardship at the hands of the respondent. Instead of honoring the lawful rights of the complainant, the respondent has adopted coercive and exploitative measures, thereby denying him possession of the flat as well as execution of the conveyance deed.
- m. It is most unfortunate and regrettable that, rather than showing due regard, courtesy, and fairness to a decorated senior armed forces officer who is also a senior citizen, the respondent has chosen to exploit his vulnerable position. The respondent is coercing the complainant to pay an arbitrary and illegal demand of ₹15 lakhs towards so-called club membership charges a demand which has no legal basis, is not part of the builder-buyer agreement, and is contrary to the mandatory provisions of law.
- n. The so-called "club membership" stipulation is void and unenforceable under Section 29 of the Indian Contract Act, 1872, as it leaves all essential terms consideration/fee, facilities, tenure, eligibility and timing to be fixed in future, at the sole discretion of the company and subject to availability, without any objective standard or mechanism capable of making them certain. The Supreme Court has clarified that only those terms are saved which are capable of being made certain by an external standard (e.g., trade usage/by-laws).

- o. The delivery of possession has been inordinately delayed for no fault of the complainant, and despite repeated requests, the same has still not been handed over. The respondent is unlawfully withholding possession on the pretext that the complainant must first accept the club membership, which condition is neither part of the apartment buyer's agreement nor legally enforceable. This ground has also been reiterated in the respondent's reply dated 19.07.2025.
- p. Any attempt to impose compulsory membership constitutes an unfair trade practice and an oppressive, one-sided variation of the contract, impermissible in law.

**C. Relief sought by the complainants: -**

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

- a. Direct the respondent to hand over possession of the premises in a habitable condition, and kindly ensure that the order specifically records this requirement, as the omission of such a mention is being misused by the respondent at the stage of execution.
- b. Direct the respondent not to create third party rights till the disposal of the matter by this Hon'ble Authority.
- c. Direct the respondent not to cancel the unit, till the disposal of this matter.
- d. Direct the respondent not to insist on taking the membership of the club at all as the complainant does not wish to opt for the same.
- e. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the actual handing over of possession, in a habitable condition and the unit should be habitable as per the conditions laid down in the judgement of this Honourable Authority in Varun Gupta & Ors. Versus Emaar India Ltd.



- f. Direct the respondent not to ask for any holding charges, as has been held by this Hon'ble Authority in the judgement of Varun Gupta & Ors Versus Emaar India Ltd.
  - g. Direct the respondent to pay the arrears till the date of actual habitable handing over of possession within a period of 90 days from the date of the order.
  - h. Direct the respondent to provide the calculations for the super area vis a vis carpet area.
  - i. Direct the respondent to provide the details of the GST input credit and provide the input benefit to the complainants.
  - j. Direct the respondent to restrain from charging maintenance charges till actual handing over the possession in a habitable condition.
  - k. Direct the respondent to provide for third party audit to ascertain/measure accurate areas of the flat and facilities, more particularly as to the "super area" and "built-up area".
  - l. It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the respondent from raising any fresh demand with respect to the project.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds:
- a. The complainant applied for allotment of a flat in 'Ambience Creacions', a project of the respondent. Various documents were submitted / executed by the complainant in compliance of the requirement of allotment of a flat including apartment buyer's agreement (ABA) dated 19.09.2024. The apartment no. C-1302, Block

- C, Ambience Creacions, sector 22, Gurugram (unit) was allotted to the complainant. The agreed cost of the unit was Rs. 3,12,99,740/- (without GST, if applicable) and Interest Free Non-Refundable Security Deposit (IFMSD) amounting to Rs. 1,86,000/- inclusive of GST. The said cost was to be paid in tranches as decided and opted by the complainant in the payment plan. under the schedule payment plan as captured in apartment buyer's agreement, the complainant needed to pay a booking amount of Rs. 11,00,000/- (exclusive of GST) in the first tranche payment. Admittedly, the payment of the first tranche was paid by 18.06.2024.
- b. The allottee was required to pay Rs. 82,89,922/- more in addition to the payment made at the time of booking the unit, within 30 days of booking (i.e. by 18.07.2024). Subsequently, the allottee made payments of second tranche in parts of sum of Rs. 20,00,000/- on 16.07.2024 and Rs. 62,00,000/- on 22.07.2024, thereby deposited the amount after a delay of 4 days and the balance amount of Rs. 89,922/- remained unpaid as of that date and was subsequently carried forward to be adjusted against the next instalment/tranche.
- c. The allottee was then required to pay Rs. 1,87,79,844/- more in addition to the payment made in first tranche and second tranche within 60 days of booking (i.e. by 18.08.2024). Subsequently, the allottee made payments of third tranche in parts of sum of Rs. 20,00,000/- on 01.08.2024 and Rs. 1,66,00,000/- on 05.09.2024, thereby deposited the amount after a delay of 18 days and the balance amount of Rs. 1,79,844/- remained unpaid as of that date and was subsequently carried forward to be adjusted against the next instalment/tranche.
- d. It was agreed between the parties that upon the offer of possession, the complainant was obligated to pay the due amount i.e. Rs.

31,29,974/- as the final tranche of payment. Subsequently, the respondent issued offer of possession cum demand letter vide letter dated 21.09.2024 demanding RS. 30,88,603/- (excluding TDS) along with the proof of TDS amount of Rs. 3,11,137 deposited by the complainant within 30 Days. Thereafter, the complainant paid Rs. 30,88,603/- on 24.10.2024.

- e. The complainant is liable to pay interest on the delayed payment made by him as per the payment plan agreed between the parties. The respondent obtained the occupation certificate (OC) from the Directorate of Town and Country Planning, Haryana, on 22.12.2023. After obtaining the OC, the respondent issued a formal offer of possession to the complainant on 21.09.2024, which was three months prior to the tentative possession date mentioned in the ABA, i.e., 31.12.2024. Since the complainant did not take possession despite having been offered possession on 21.09.2024 for the reasons best known to them, they are liable to pay holding charges after 30 days of offer of possession.
- f. In terms of the ABA, the possession was tentatively agreed to be delivered to the complainant on or before 31.12.2024 subject to the receipt of the entire payment of the sale consideration and other charges as stated above. That the possession was offered on 21.09.2024, 3 months before the tentative date mentioned in the ABA. Admittedly, the last tranche of payment was made on 24.10.2024 and therefore, he was not eligible to take possession prior to this date.
- g. In terms of the ABA, the promoter offered possession of the unit to the complainant by letter dated 21.09.2024. By the said letter, the promoter formally issued its "offer of possession" of the unit and also communicated the particulars of the payments due from the



complainant to be paid to the promoter for receiving physical possession of the unit.

- h. That as per clause/point 10 of allotment letter dated 10.07.2024, it was expressly agreed by the complainant that club membership charges shall be payable at the time of possession, at the applicable rates. The said clause/point forms an integral part of the contractual terms accepted by the complainant at the time of booking of unit. Furthermore, in order to maintain uniformity and parity across the residential project, all allottees have been uniformly requested to obtain club membership, and without exception, all other allottees have accordingly taken the same. In line with this standard practice and the agreed terms. The complainant was also requested to pay club membership charges. The said amount duly justified, contractual, and binding upon the complainant, and is to be paid prior to or at the time of physical possession of the unit.
- i. The possession was offered vide letter dated 21.09.2024 against payment of all dues, completion of formalities but the allottee failed to pay interest for delayed payment and other charges and did not file any document required for taking possession of flat. Pertinently, the complainant failed to make complete payment and undertake possession or initiate the process of the submission of requisite documents, indemnities or registration formalities which are mandatory preconditions for conveyance and physical handover. The complaint lacks evidence demonstrating the complainant's actual steps to formally comply with the possession process, such as submitting required deeds, indemnities, or statutory forms after the offer of possession on 21.09.2024. The complainant has miserably and deliberately failed to take possession of the flat and is now

making false accusations that the flat is not in habitable condition without providing any evidence/documents to support their claim.

- j. As per clause 7.3 sub clause B of the ABA in case the allottee fails to take the possession of the said unit within 30 days from the date of offer which is 21.09.2024 in writing by the company to take such possession, the allottee shall be liable to pay the holding charges to the company @ Rs 20/- per sq. ft. per month on the entire super area of the said unit. In case the allottee fails to take possession within 3 months from the date of offer of possession (i.e. 21.12.2024) of the said unit, the company shall be entitled at its own discretion to cancel the allotment of the said unit to the allottee and refund the amount paid by the allottee after deduction of EMD, brokerage, interest payable, holding charges, maintenance charges till the date of such cancellation or any other amount which is non-refundable in nature.
- k. The complaint is not *bonafide* as it is not the case of delayed possession as application for allotment was made by the complainant on 18.06.2024 after the respondent had obtained occupation certificate from the concerned authority on 22.12.2023. The Respondent had agreed to give possession on or before 31.12.2024 but instead, offered possession vide letter dated 21.09.2024, three months ahead of the date of giving possession. Finding no other reason, the complainant has vaguely raised the issue of the flat being non habitable to arm twist the respondent and to extort money from the promoter. Pertinently, there is no explanation as to what were the defects and/or deficiencies on which he alleges the said flat to be uninhabitable. Pertinently, under the garb of such allegations, the complainant is trying to cover up his own inefficiencies and failure to take timely possession upon completion of the required formalities, which is an abuse of the process of law. The flat so offered is complete



in all respect and therefore the complainant cannot take shelter of unhabitable flat refusing to take possession.

- i. The complainant was required to take possession of the allotted Unit within 30 days from the date of offer of possession, subject to payment of the dues, execution of necessary indemnities, undertakings, and other requisite documents. The complainant, however, failed to comply with this essential condition and due payment which disentitles him of any right to claim physical possession. The complainant cannot take advantage of his own wrong. Having been offered possession in September 2024, he neither took possession nor raised contemporaneous, substantiated objections. Instead, he continued to delay compliance and later filed this complaint to evade the payment and penalties. The first notice from the complainant was issued many months after the possession offer on 21.04.2025, which shows his intention to stall and to manufacture a dispute. Such conduct amounts to abuse of process and warrants dismissal of the complaint with costs.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by 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.1 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.*

***(Emphasis supplied)***

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 the relief sought by the complainants.**

**F.I Direct the respondent to hand over possession of the premises in a habitable condition, and kindly ensure that the order specifically records this requirement, as the omission of such a mention is being misused by the respondent at the stage of execution.**

**F.II Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the actual handing over of possession, in a habitable condition and the unit should be habitable as per the conditions laid down in the judgement of this Honourable Authority in Varun Gupta &Ors. Versus Emaar India Ltd.**



12. The aforesaid reliefs are being taken up and adjudicated conjointly, inasmuch as the same are interlinked and arise out of a common set of facts and cause of action.
13. The complainant was allotted a unit in the project of respondent "The Creacions" in Sector-22, Gurugram for a total sale consideration of Rs.3,11,13,740/-. The buyer's agreement was executed on 17.09.2024 between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.2,79,00,000/-.
14. As per clause 7.1 of the buyer's agreement dated 17.09.2024, due date of possession is specified as May, 2024. The possession clause is reproduced below for the ready reference:

*The Company and Allottee(s) agree and understand that timely payment of installments by the Allottee(s) as per Payment Plan and timely delivery of possession of the Unit along with parking (if applicable) to the Allottee(s) are the essence of the Agreement. **The Company assures to hand over possession of the Unit along with parking (if applicable) as per agreed terms and conditions on or before 31st December 2024**, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is delay due to "force majeure", Court orders, Government policy/ guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority for the said Project for any reason other than the noncompliance by the Company, non-availability of necessary infrastructure facilities viz. roads, water, power, sewer lines to be provided by government for carrying out development activities, strikes, lock out and industrial disputes etc. affecting the regular development of the real estate project. If, however, the completion of the Project is delayed due to the above conditions then the Allottee(s) agrees that the Company shall be entitled to the extension of time for delivery of possession of the Unit. The Allottee(s) agrees and confirms that, in the event it becomes impossible for the Company to implement the project due to "force majeure" and above-mentioned conditions, then this allotment shall stand terminated and the Company shall refund to the Allottee(s) the entire amount received by the Company from the Allottee(s) within ninety days. The Company shall intimate the Allottee(s) about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee(s), the Allottee(s) agrees that he/ she shall not have any rights, claim-etc. against the Company and that the Company shall be released and discharge from all its obligations and liabilities under this Agreement.*

**(Emphasis supplied)**

15. Therefore, the due date for possession is 31.12.2024. In the present complaint, the complainants intend to continue with the project the

project and are seeking interest on the amount paid by them in respect of subject unit. Section 18(1) of the Act is reproduced below for ready reference :-

***"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)*

16. As per the documents placed on record by the respondent, the Authority has observed that the due date of possession was 31.12.2024 but the occupation certificate of the project has not been obtained by the respondent on 21.12.2023. The complainant took a plea that offer of possession was to be after obtaining occupation certificate and respondent has offered possession on 21.09.2024, but the respondent has failed to handover the physical possession of the allotted unit till date.
17. The Authority has examined the documents placed on record by both the parties. From the record, it is observed that the stipulated date of possession as per the buyer's agreement is 31.12.2024. It is further observed that the respondent has obtained the occupation certificate for the project from the competent authority prior to the stipulated date of possession. In view of the same, the Authority is of the considered opinion that the respondent cannot be held liable for delay in obtaining the statutory approvals necessary for offering possession.
18. In light of the above facts, since the occupation certificate was obtained by the respondent prior to the due date of possession as stipulated in the buyer's agreement, the Authority finds no delay attributable to the respondent for the purpose of awarding delay possession charges/interest under section 18(1) of the Act. Accordingly, the relief

sought by the complainant for grant of delay possession charges is not sustainable and the same is hereby declined.

**F.III Direct the respondent to not to create third party rights till the disposal of the matter by this Hon'ble Authority.**

19. The complainant has sought a direction restraining the respondent from creating any third-party rights in respect of the unit in question till the disposal of the present complaint. In this regard, the Authority observes that the present complaint is being adjudicated and decided vide this order itself. Therefore, the prayer seeking interim protection during the pendency of the proceedings does not survive for consideration. Consequently, the said relief has become infructuous and no direction is required to be passed.

**F.IV Direct the respondent not to cancel the unit, till the disposal of this matter.**

20. With regard to the prayer seeking restraint upon the respondent from cancelling the allotment of the unit during the pendency of the present complaint, the Authority notes that the complaint has been decided vide this order. Accordingly, the said relief being in the nature of an interim protection during the pendency of the proceedings does not survive for adjudication at this stage and is therefore rendered infructuous.
21. Section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC. Accordingly, the respondent shall execute and get the conveyance deed registered in favour of the complainants, subject to the complainants making payment of the due amount, if any, along with applicable stamp duty and registration charges within a period of 90 days



from the date the obtaining occupation certificate, strictly in accordance with the provisions of the Act and the terms of the buyer's agreement.

**F.V Direct the respondent to not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the agreement.**

22. It is observed that the financial obligations of the parties are governed by the terms and conditions of the buyer's agreement and the mutually agreed payment plan. The respondent-promoter is bound to raise demands strictly in accordance with the agreed terms and cannot unilaterally impose charges that are not contemplated therein or are otherwise contrary to the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Rules framed thereunder. Accordingly, the respondent shall ensure that all demands are raised strictly in conformity with the agreed payment plan and contractual stipulations. Any charge not forming part of the buyer's agreement shall not be recovered from the complainants.

**F.VI Direct the respondent to not to ask for any holding charges, as has been held by this Hon'ble Authority in the judgement of Varun Gupta & Ors Versus Emaar India Ltd.**

23. In this regard, the Authority observes that the levy of holding charges is governed by the terms and conditions of the Buyer's Agreement executed between the parties as well as the applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules framed thereunder. In the present case, the respondent has obtained the Occupation Certificate prior to the stipulated date of possession and has thereafter offered possession of the unit to the complainant.
24. In view of the above, the issue of levy of holding charges, if any, shall be governed strictly in accordance with the provisions of the Act and the terms of the buyer's agreement. The respondent shall not levy holding charges from the complainant for any period during which the occupation



certificate had not been obtained or where possession could not legally be handed over.

**F.VII Direct the respondent to pay the arrears till the date of actual habitable handing over of possession within a period of 90 days from the date of the order.**

25. In this regard, the Authority has already observed in the preceding paragraphs that the respondent has obtained the occupation certificate for the project prior to the stipulated date of possession as provided in the buyer's agreement. Consequently, no delay on the part of the respondent in completion of the project or obtaining the statutory approvals has been established on record.

26. In view of the above findings, the Authority is of the considered opinion that the complainant is not entitled to delay possession charges/interest or any arrears under the provisions of the Real Estate (Regulation and Development) Act, 2016. Accordingly, the relief sought by the complainant for payment of arrears till the date of handing over of possession is not sustainable and the same is hereby declined.

**F.VIII Direct the respondent to provide the calculations for the super area vis a vis carpet area.**

27. In this regard, the Authority observes that the details relating to carpet area and the basis of calculation thereof are ordinarily reflected in the Buyer's Agreement, sanctioned building plans, and the disclosures made by the promoter at the time of registration of the project under the Real Estate (Regulation and Development) Act, 2016. The Authority further notes that under the Act, sale of units is primarily based on carpet area and the same is required to be clearly disclosed to the allottee. In the present case, the complainant has not placed on record any material to demonstrate that the respondent has misrepresented or concealed the carpet area of the unit or that the same is inconsistent with the disclosures made in the buyer's agreement or the registered project details.

28. In view of the above, the Authority finds no specific deficiency established on record warranting issuance of directions in this regard. Accordingly, the relief sought by the complainant is disposed of with the observation that the respondent shall adhere to the disclosures made in the buyer's agreement and the registered project details under the Act.

**F.IX Direct the respondent to provide the details of the GST input credit and provide the input benefit to the complainant.**

29. In this regard, the Authority observes that matters pertaining to the availment and passing on of input tax credit fall within the domain of the tax authorities constituted under the Central Goods and Services Tax Act, 2017 and the relevant State GST enactments. The issue of passing on the benefit of input tax credit is governed by the anti-profiteering provisions contained under the GST laws and is adjudicated by the competent authority constituted for that purpose.

30. In view of the above, the Authority is of the considered opinion that the present issue does not fall within the adjudicatory jurisdiction of this Authority under the Real Estate (Regulation and Development) Act, 2016. Accordingly, the complainant is at liberty to approach the appropriate authority under the applicable GST laws for redressal of the said grievance, if so advised. Consequently, the relief sought in this regard is disposed of for want of jurisdiction.

**F.X Direct the respondent to restrain from charging maintenance charges till actual handing over the possession in a habitable condition.**

31. The Authority observes that the levy of maintenance charges is generally governed by the terms and conditions of the buyer's agreement executed between the parties. It is also a settled position that maintenance charges ordinarily become payable once possession of the unit is offered after obtaining the occupation certificate and the allottee becomes entitled to take possession of the unit. In the present case, it has already been observed that the respondent has obtained the occupation certificate prior to the stipulated date of possession and has offered possession of the unit



thereafter. In such circumstances, the issue relating to levy of maintenance charges shall be governed by the terms and conditions of the buyer's agreement and the applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules framed thereunder.

32. Accordingly, the respondent shall ensure that any maintenance charges are levied strictly in accordance with the terms of the buyer's agreement.

**F.XI Direct the respondent to provide for third party audit to ascertain/measure accurate areas of the flat and facilities, more particularly as to the "super area" and "built-up area."**

33. The complainant has sought a direction to the respondent to conduct a third-party audit for the purpose of ascertaining and measuring the accurate area of the flat and the facilities, particularly with regard to the "super area" and "built-up area". In this regard, the Authority observes that under the Real Estate (Regulation and Development) Act, 2016, the sale of apartments is required to be based on carpet area and the same is to be disclosed in the buyer's agreement and the project registration details. In the present case, the complainant has not placed any cogent material on record to establish any discrepancy in the area of the allotted unit or to demonstrate that the disclosures made by the respondent are inconsistent with the sanctioned plans or the buyer's agreement. In the absence of any such substantiated discrepancy, the Authority does not find any ground to direct a third-party audit for measurement of the unit area. Accordingly, the relief sought by the complainant is not found sustainable and stands declined.

**F.XII It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the respondent from raising any fresh demand with respect to the project.**

34. The complainant has sought a direction to restrain the respondent from raising any fresh demand in respect of the unit allotted in the project. In this regard, the Authority observes that the demands to be raised by the promoter are governed by the terms and conditions of the buyer's

agreement executed between the parties as well as the provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules framed thereunder. The promoter is entitled to raise demands strictly in accordance with the agreed payment plan and the contractual terms executed between the parties. Accordingly, the Authority does not find any ground to restrain the respondent from raising legitimate demands in accordance with the buyer's agreement. However, the respondent shall ensure that no demand is raised which is contrary to the terms of the buyer's agreement or the provisions of the Act and the rules framed thereunder.

**F.XIII Direct the respondent not to insist on taking the membership of the club at all as the complainant does not wish to opt for the same.**

35. The complainant has sought a direction to restrain the respondent from insisting upon the complainant to take membership of the club, stating that the complainant does not wish to opt for the same. In this regard, the Authority observes that the applicability of club membership charges is governed by the terms and conditions of the buyer's agreement executed between the parties. A perusal of clause 1.2 (v)(a) of the buyer's agreement dated 17.09.2024 reveals that the club membership charges are applicable only if the allottee opts for the facility and applies for membership of the club. Clause is reproduced below for ready reference:

*1.2 (v)(a) "Club Membership charges, if the allottee(s) opts for the facility and takes membership of the club at the time of Application for club membership."  
(Emphasis supplied)*

36. Therefore, from the plain reading of the aforesaid clause, it is evident that the club membership is optional in nature and not mandatory. In view of the above, the respondent cannot compel the complainant to opt for the club membership, and any charges in this regard can be levied only if the complainant voluntarily applies for the same in accordance with the terms of the buyer's agreement.



**G. Directions of the Authority**

37. 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 respondent is directed to hand over possession of the subject unit to the complainant/allottees, upon payment of outstanding dues, if any, after obtaining the occupancy certificate.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii. The respondent is directed to not to levy, demand, or recover any amount from the complainant which is not expressly stipulated in the builder buyer agreement dated 04.11.2023.
- iv. The respondent is directed to not compel the complainant to opt for the club membership, and any charges in this regard can be levied only if the complainant voluntarily applies for the same in accordance with the terms of the buyer's agreement dated 17.09.2024.
- v. The respondent is directed to execute the conveyance deed registered in favour of the complainants within 90 days after obtaining occupation certificate as per section 17 of the Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.
- vi. The respondent is directed to not to levy or recover maintenance charges for any period prior to the date of offer of possession.



vii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

38. Complaint as well as applications, if any, stand disposed of accordingly.

39. Files be consigned to registry.



**(Phool Singh Saini)**

Member

Haryana Real Estate Regulatory Authority,  
Gurugram

**Dated: 12.03.2026**



**HARERA**  
**GURUGRAM**