

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

**Complaint no.** : 6019 of 2024  
**Date of filing** : 10.12.2024  
**Date of decision** : 27.01.2026

Nirmala & Rajnish

**Address:** Village Rampura, P.O. Hudina, Tehsil  
Narnaul, District Mahendergarh

**Complainant**

Versus

M/s JMS Buildwell Realty Private Limited

**Regd. office:** Plot no. 10, 3<sup>rd</sup> floor, Sector 44,  
Gurugram-122002

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri P S Saini

**Chairman  
Member**

**APPEARANCE:**

Sh. U K Bharadwaj (Advocate)  
Sh. Pulkit Thareja (Advocate) along with  
Sh. Ashish AR of the Company

**Counsel for Complainant**

**Counsel for Respondent**

**ORDER**

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

made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and Project related details:**

2. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

S. No.	Heads	Information
1.	Name and location of the project	Primeland, Sector 95-A, Gurgaon, Haryana
2.	Nature of the project	DDJAY
3.	DTCP license no.	44 of 2020 dated 29.12.2020
4.	RERA Registered/ not registered	Registered vide no. GGM/435/167/2021/03 dated 18.01.2021
5.	Plot no.	111 (page no. 55 of complaint)
6.	Unit measuring	121.274 sq. yds. (page no. 55 of complaint)
7.	Date of Plot buyer's Agreement	21.09.2021 (page 52 of complaint)
8.	Possession clause	<b>7.1. Possession of the Plot</b> <i>The developer shall endeavor to handover the possession of the sold plot on or before 28.12.2025."</i>  (page 66 of complaint)
9.	Due date of possession	*28.12.2025 (as per possession clause mentioned in BBA at page 66 of the complaint)
10.	Total price	Rs.39,77,787/- (page no. 88 of complaint)
11.	Amount paid by the respondent	Rs. 16,98,000/- (as admitted by respondent in offer of possession at page 97 of the complaint)

12.	Payment plan	Down payment plan at page 44 & 89 of the complaint *40% within 30dyas of booking *50% of BSP at offer of possession
13.	Occupation certificate	Not obtained as per DTCP website
14.	Offer of possession	14.09.2024 along with demand of Rs.26,46,641/- (at page 96 of complaint)
15.	Demand letter	05.07.2021 (page no. 43 of complaint) 06.11.2024 (page no. 101 of complaint)

**B. Facts of the complaint: -**

3. The complainants have made the following submissions: -
- That the respondent advertised about an affordable plotted colony under DDJAY Project called "Primeland" in a land parcel, under the license no. 44 of 2020 dated 29.12.2020, issued by DTCP, Haryana, Chandigarh, situated at Sector 95A, Gurugram, Haryana.
  - That the complainants are the allottee within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. The Respondents Company, are limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
  - That relying various representations and assurances given by the Respondents company and on belief of such assurances, complainants booked a plot/unit in the project by paying a booking amount towards the booking of the said unit/plot bearing no. 111, in Sector 95A, Gurugram having super area 121.274 sq. yards to the respondents dated 16.04.2021 and the same was acknowledged by the respondents.

- d. That the respondents confirm the booking of the unit to the complainants vide allotment letter dated 24.05.2021, providing the details of the project, confirming the booking of the unit dated 16.04.2021, allotting a plot/unit no. 111 measuring super area 121.274 sq. yards. in the aforesaid project of the developer for a basic sale consideration of the unit i.e. Rs. 40,02,042.00 which excluding, Car parking charges, and Development Charges, PLC, Club Membership Charges and other Specifications of the allotted unit and providing the time frame within which the next instalments was to be paid.
- e. That a unit Buyer's Agreement was executed between the Complainants and Respondents on 21.09.2021. As per clause 7.1 of the buyer's agreement the Respondents had -The developer shall endeavour to handover possession of the sold plot on or before 28.12.2025. Therefore, due date of possession comes out to be 28.12.2025.
- f. That as per the demands raised by the respondents, based on the payment plan, the Complainants to buy the captioned unit already paid a total sum of Rs.16,98,000/- towards the said unit against basic sale consideration of the unit i.e. Rs. 40,02,042/-.
- g. Further, the complainants having dream of its own plot/unit in NCR signed the agreement in the hope that the unit will be delivered on or before December,2025. The complainants was also handed over one detailed payment plan which was construction linked plan.
- h. That the time of execution of the agreement the complainants had objected towards the highly titled and one-sided clauses of the agreement, however, the respondents turned down the concerns of the complainants and curtly informed that the terms and conditions in the agreement are standard clauses and thus, no change can be made. The

terms and conditions imposed on the complainants were totally biased in so far as the disparity between the bargaining power and status of the parties, tilted the scale in the favour of the respondents.

- i. That the payment plan was designed in such a way to extract maximum payment from the buyers *viz a viz or done/completed*. The complainants approached the respondents and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- j. That During the period the complainants went to the office of Respondents several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- k. The Complainants after many requests and emails; received the demand letter on account of offer of possession dated 14.09.2024. 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 i.e. PLC, Electrification Charges,

water connection charges, Sewerage charges, Compound wall/ fencing Charges, welfare cess, Advance maintenance @ 24 months, registration and pasting fee, miscellaneous charges refundable IFM against construction and interest Rs. 18,698/-. Furthermore, till date respondent has failed to obtain the CC.

- l.** That raising demand letter by the Respondent on payment of charges which the buyer is not contractually bound to pay, cannot be considered to be a valid demand letter/offer of possession. It would be noticed from the details provided above that those charges were never payable by the Complainants as per the Agreement, by the Complainants and hence the demand letter is not valid. It is pertinent to mention here that at the time of offer of possession respondent failed to provide the copy of CC of the said unit.
- m.** That the complainants have never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA.
- n.** That the respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. Allottee raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- o.** That the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, could not have insisted upon clause 13

of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity”.

- p.** That the Respondent asking for electric meter and electrification charges from the Complainants is absolutely illegal as the cost of the electric meter in the market is not more than Rs. 2,500.00 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.
- q.** That respondent instead of replying to the query of the complainants kept on raising the illegal demands from the complainants. complainants having no option and in hope of getting the physical possession of the plot/unit filling the present complaint. Despite making the entire payment on time till date respondent has failed to hand over the physical possession of the unit. The Respondents have played a fraud upon the Complainants and have cheated them fraudulently and

dishonestly with a false promise to complete the construction over the project site within stipulated period.

- r. That the Complainants being an aggrieved person filing the present complaint under section 31 with the Authority for violation/contravention of provisions of Act.
- s. That the Complainants are entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act. The Complainants is also entitled for any other relief which they are found entitled by this Authority.

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

- 4. The complainants have sought following relief:
  - a. To direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.
  - b. Direct the respondent to handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.
  - c. Quash the illegal offer of possession cum demand letter dated 14.09.2024 and 06.11.2024.
  - d. Direct the respondent not charge penal interest from complainant.
  - e. Restrain the respondent from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking.
  - f. Direct the respondents to provide the exact lay out plan of the unit.

- g.** Direct the respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.
- h.** Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, sinking fund, labour cess, electrical meter charges, Fixed Deposit towards the HVAT, PLC, Electrification Charges, water connection charges, Sewerage charges, Compound wall/ fencing Charges, welfare cess, Advance maintenance @ 24 months, registration and pasting fee, miscellaneous charges refundable IFM against construction and interest Rs. 18,698/-, etc which in any case is not payable by the Complainants.
- i.** Direct the respondent to get the conveyance deed executed.
- j.** Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

**D. Reply filed by the respondent:**

- 5.** The respondent has contested the complaint on the following grounds:

  - a.** That the complaint is not maintainable as the complainant doesn't disclose any cause of action for filing the complaint against the respondent.
  - b.** That the complaint is also liable to be dismissed being premature as respondent has not yet issued the formal Offer of possession Letter to the complainants along with details of final demand of pending dues which will contain remaining part payment of total price/total sale consideration along with other charges and thus at this stage the complainant can't file the complaint pertaining to final demand of

pending dues and also the complainants are alleging delay in handing over of possession and accordingly prayed for possession of the plot. However, the timelines for possession as granted by Authority have not been lapsed and thus at this stage the complainant can't file the complaint for seeking possession and therefore the complaint is a pre mature complaint and is liable to be dismissed.

- c. That the complainant is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and the sole purpose of the complainant behind filing the complaint is to extract unlawful gains from the respondent.
- d. That the complaint is devoid of any merits and as such is liable to be outrightly dismissed with heavy and exemplary costs in favour of the respondent.
- e. That as per clause no 7.1 of the Plot Buyer's agreement the respondent promoter assured to offer the possession of the allotted plot as per agreed terms and conditions on or before 28-12-2025 i.e. the time granted under the registration by the HRERA or such extension thereof as extended by HARERA subject to receiving the entire payment of Total Price and other charges and thus the present complaint is a pre mature complaint because the time for handing over of possession has not been reached yet.
- f. That the facts as regard payment of Rs. 16,98,000/- by the complainant is matter of record.
- g. That the tentative date of handing over of possession of Plot has not yet reached and as such the present complaint on presumption and imagination that Plot will not be delivered by said date, is neither tenable nor the present complaint could be proceeded further being pre mature

complaint. There is no dishonest or unethical attitude of the respondent, as alleged.

- h.** That it is also denied that complainants ever objected to any clause of the Plot Buyer Agreement at the time of its execution or said clauses are tilted or one sided favouring the respondent, as alleged. It is submitted that the Plot Buyer Agreement has been designed in terms of principles laid down by the HRERA, Gurugram and same has been duly approved by the concerned branch of RERA, Gurugram and as such is neither tilted nor one sided, as alleged. After ready, understanding and accepting the terms of agreement, the complainant had signed off the agreement for sale and as such the terms of the same are binding on the parties and legally enforceable.
- i.** That the as respondent has not yet issued to the complainant the formal Offer of possession Letter alongwith details of final demand of pending dues which will contain remaining part payment of total price/total sale consideration alongwith other charges and thus at this stage the complainant can't file the complaint pertaining to final demand of pending dues being pre mature complaint. However, and only a intimation regarding the prior arrangement of funds was made to the complainant as because the respondent is near to get the completion certificate and only upon receiving the Completion Certificate of the Project, the respondent will issue a formal letter of Offer of Possession alongwith account statement showing the payments made and the balance amount to be payable by the complainant as per the payment plan opted by the complainant. Thus, the present complaint being premature is liable to be outrightly dismissed. Further, once the offer of possession alongwith final demand letter/account statement is being

issued to the complainant, complainant has every right to object the same, which stage has not yet reached. Further, the complainant is well aware about the fact that CC of the project has not been received yet then in such case he should also aware about that after getting the CC the respondent will issue a formal offer of possession and till that time the complaint are not compelled to pay the final demand.

- j. That the final offer of possession along with final account statement is yet to be issued to the complainants and as such the present complaint is premature and is liable to be out rightly dismissed. The respondent will handover the copy of CC with the formal offer of possession letter as and when the same is received from the competent Authority. That any amount as mentioned in Letter dated 14.09.2024 is not payable by the allottees including the complainants or can be termed to illegal or unjustified.
  - k. That the development of the project is as per under the policy Affordable residential plotted colony under DDJAY-2016 and with the amenities as mentioned in the agreement for sale. Further once the formal offer of possession alongwith final demand letter/account statement is being issued to the complainant, complainant has every right to object the same, which stage has not yet reached.
  - l. That the present complaint is also liable to be dismissed as there is no cause of action in favour of the Complainant and against the Respondent, to file the present complaint. The Complaint is premature and is without any cause of action.
6. Copies of all the relevant documents have been filed and placed on 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**

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

#### **E.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

#### **E. II Subject matter jurisdiction**

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

*"Section 11(4)(a)*

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

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

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation

which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings regarding relief sought by the complainants.**

**F.I. To direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.**

**F.II. Direct the respondent to handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.**

**F.III. Quash the illegal offer of possession cum demand letter dated 14.09.2024 and 06.11.2024.**

**F.IV. Direct the respondent not charge penal interest from complainant.**

11. The above-mentioned reliefs sought by the complainants, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.

12. In the present matter the complainants purchased a plot bearing no.111, admeasuring 121.274 sq. yds. in the project Primeland, Sector 95-A, Gurugram. The complainant paid an amount of Rs.16,98,000/- against the total sale consideration of Rs.39,77,787/-. An agreement was executed between the complainants and the respondent on 21.09.2021 and according to clause 7.1 of the agreement the respondent was obligated to complete the construction of the project and hand over the possession of the subject unit by 28.12.2025. The occupation certificate for the project has not yet been obtained from the competent Authority.

13. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

***"Section 18: - Return of amount and compensation***

*(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”*

**14.** Clause 7.1 of the agreement for sale is reproduced below: -

***7.1 possession of the Plot.***

*The promoter assures to offer possession of the allotted Plot as per agreed terms and conditions on or before 28.12.2025 unless there is delay due to ‘force majeure’ .....*

*(Emphasis supplied)*

**15. Due date of possession and admissibility of grace period:** The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. The agreement was executed between the parties on 21.09.2021 and as per terms and conditions of said agreement the due date of handing over of possession comes out to be 28.12.2025. The events such as various orders by NGT in view of weather condition of Delhi NCR region, were for shorter duration of time. Further, the grace period on account of Covid-19 is not allowed as the agreement was executed between the parties after the outbreak of Covid-19. The Authority has allowed six-month covid relaxation from 01.03.2020 to 01.09.2020 only but the above agreement is executed much after above covid relaxation period and hence no benefits of same can be extended to the respondent. As per clause 7.1 of the agreement, the possession of the allotted unit was to be offered on or before 28.12.2025. Hence, the due date of possession comes out to be 28.12.2025. The Occupation Certificate for the project was not obtained from the competent Authority.

- 16. 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."*

- 17.** The definition of term 'interest' as defined under section 2(z) 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:

*"(z) "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;"*

18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 27.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
19. **Rate of interest to be paid by complainant/allottee for delay in making payments:** 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.
20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
21. Further the Authority is of view that the offer of possession made by respondent on 14.09.2024 lacks legal sanctity as same was offered without obtaining Occupation Certificate from the Competent Authority. Consequently, the said letter is set-aside. It is significant to mention that Occupation Certificate is a legal document that authorizes the construction of the building in the **eyes of the law**. It certifies that the building plan is in accordance with the construction laws approved by the concerned authorities, and the place is fit to be occupied. Without an Occupancy Certificate, a builder cannot guarantee basic civil amenities. Thus, obtaining an Occupancy Certificate is important before moving into a place to eliminate the risk of lawful eviction and demolition, which the

respondent-promoter have not obtained. The Authority is of view that the offer of possession dated 14.09.2024 be quashed.

22. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7.1 of the agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 28.12.2025. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the agreement executed between the parties. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.80% p.a. w.e.f. 28.12.2025 till date of valid offer of possession plus 2 months or actual handing over of possession, whichever is earlier at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

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

24. The respondent shall not charge anything from the complainants which is not the part of the agreement.

**F.VI. Direct the respondents to provide the exact lay out plan of the unit.**

25. The Authority, having considered the prayer of the complainant and the statutory obligations of the respondent under Section 11(3) of the Act, hereby respondent is directed to disclose and hand over the sanctioned building plan, Layout Plan, and floor plan pertaining to the concerned unit in the project.

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

**F.VIII. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, sinking fund, labour cess, electrical meter charges, Fixed Deposit towards the HVAT, PLC, Electrification Charges, water connection charges, Sewerage charges, Compound wall/ fencing Charges, welfare cess, Advance maintenance @ 24 months, registration and pasting fee, miscellaneous charges refundable IFM against construction and interest Rs. 18,698/-, etc which in any case is not payable by the Complainants.**

26. The above-mentioned reliefs sought by the complainants, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.

27. It is to be noted that the respondent, vide its offer of possession letter dated 14.09.2024 along with Annexure-A has raised various demands upon the complainant towards HVAT, PLC, Electrification Charges, water connection charges, Sewerage charges, Compound wall/ fencing Charges, welfare cess, Advance maintenance @ 24 months, registration and pasting fee, miscellaneous charges refundable IFM against construction

and interest, etc. Upon perusal of the record and the applicable contractual documents, this Authority observes that while certain statutory and development-related charges may be leviable strictly in accordance with the terms of the agreement and subject to actual proof of payment to the competent authorities, the respondent cannot raise blanket or composite demands without placing on record any justification, calculation sheet, or documentary evidence substantiating the same. Further, it is settled that interest on delayed payment cannot be charged in a mechanical manner, particularly when the delay, if any, is attributable to the respondent itself on account of non-handover of possession and non-fulfilment of its contractual obligations.

#### **Labour cess**

28. 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 26.09.1996. 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 as "**Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited**" wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The Authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant 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.

### **Maintenance charges**

29. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is right in demanding maintenance charges at the rates' prescribed in the buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

### **HVAT**

30. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only. In the present case the agreement was executed 21.09.2021. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST but builder has to pass the benefit of input tax credit to the buyer. That in the event the respondent-promoter has not passed the benefit of ITC to the buyers of the unit which is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter. The concerned SGST Commissioner is advised to take necessary action to

ensure that the benefit of ITC is passed on to the allottee in future. The respondent-promoter is directed to adjust the said amount, if charged from the allottee with the dues payable by the allottee or refund the amount if no dues are payable by the allottee.

31. With respect to the relief of service tax, advice of service tax expert should be taken about the quantum of service tax payable in given circumstances of the allottee up to the due date of offering of possession of the plot. Accordingly, whatever service tax is payable up to the due date of offer of possession shall be demanded by the promoter and will be paid by the allottees.

**Electrification Charges’/ ‘Electricity Connection Charges’/ ‘Water Connection Charges’/ ‘Sewerage Connection Charges’**

32. The complainant submitted that on 14.09.2024, the respondent sent a letter of possession to complainant and asked to deposit amount under various heads. The said demand includes following: external electrification charges /electricity facility, water connection charges and sewerage charges amounting to Rs.3,11,674/-, Compound wall/fencing charges/IAC amounting to Rs.49,116/-, Building other construction welfare cess amounting to Rs.6,064/- and advance monthly charges for 24 months amounting to Rs.1,16,423/-. The said components were also part of builder buyer’s agreement, and the respondent wants to get unreasonable enrichment. On the other hand, the respondent submitted that all the dues mentioned in the notice of possession are legal and valid and are as per the terms and conditions of the builder buyer’s agreement and were duly explained to the complainant at the time of offer of possession.

33. It is the duty of the colonizer to arrange the electric connection from the outside source for electrification of their colony from Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of internal electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer, for which the colonizer will be required to get the "electric(distribution) services plan/estimates" approved from the agency responsible for installation of "external electrical services" i.e., Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana and complete the same before obtaining completion certificate for the colony.
34. Occupation certificate is always provided by the competent authority to the promoter only after the completion of the building when the same is ready for possession and occupation. Unless and until the building has the electricity which also includes the power back up system and water connections, how can the same be said to be fit for occupation. Electricity is an eye and water is the soul of a dwelling unit. Therefore, if these two facilities are not provided to the allottee in the unit, the allottee himself cannot survive. Hence, charging under these heads is not justifiable for these reasons as well.
35. In view of the above discussion, the Authority reaches to the conclusion that the promoter should not charge electrification charges from the allottees while issuing offer of possession letter as same was offered without Occupation Certificate.

**F.IX. Direct the respondent to execute Conveyance Deed.**

- F.X. Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.**
36. The above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.
37. The Authority observes that the conveyance has been subjected to all kinds of terms and conditions of agreement and the complainants not being in default under any provisions of agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:-

***“Section 17: - Transfer of title***

*17(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.”*

38. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. The respondent is directed to execute the conveyance deed within one months after obtaining Occupation certificate from the competent Authority.

**G. Directions of the Authority**

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

- a. The respondent is directed to pay the interest at the prescribed rate i.e. 10.80 % per annum for every month of delay on the amount paid by the complainants from the due date of possession i.e., 28.12.2025 till the date of valid offer of possession plus 2 months or actual handing over of possession, whichever is earlier, after obtaining occupation Certificate as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. The respondent is directed to hand over the actual physical possession of the unit to the complainants.
- c. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
- d. The respondent is directed to provide the layout of the plot to the complainants.
- e. The respondent is directed to executed conveyance deed of the allotted unit after obtaining occupation certificate in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable. 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.
- f. The respondent shall not charge anything from the complainant which is not the part of the agreement. The respondent is not entitled to charge FTTH, holding charges and Labour cess from the complainant/ allottee

at any point of time even after being part of the builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.*

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

40. Complaint stands disposed of.

41. File be consigned to registry.



**(P S Saini)**  
Member



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 27.01.2026**

**HARERA**  
GURUGRAM