

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

Complaint no. : 232 of 2025
Date of first hearing: 01.05.2025
Date of Decision : 23.07.2026

Praveen Kumar Goel

**R/o-H.no. 187, Phase-2, Surender Nagar, Jansath
Road, Muzaffarnagar, U.P-251001**

Complainant**Versus****VSR Infratech Pvt. Ltd.**

Registered office: Plot no.-14, Ground floor,
Sector-44, Gurugaon-122003

Respondent**CORAM:****Shri Phool Singh Saini****Member****APPEARANCE:**

Shri. Gauarv Rawat (Advocate)
Shri. Udit Saini & Ms. Kanika Kapoor (Advocates)

**Complainant
Respondent****ORDER**

1. The present complaint dated 23.01.2025 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. Unit and project related details

2. The particulars of unit details, 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:

Sr. No.	Particulars	Details
1.	Name of the project	"114 Avenue", at Sector 114, Gurugram.
2.	Nature of project	Commercial complex
3.	Project Area	2.968 acres
4.	DTCP license	72 of 2011 dated 21.07.2011 Valid upto 20.07.2024
5.	Name of the Licensee	M/s AMD Estates Developers Pvt. Ltd.
6.	RERA registered/ not registered and validity status	Registered Vide no. 53 of 2019 dated 30.09.2019 Valid upto 31.12.2019
7.	Unit no.	6B-19, (Service Apartment) at 6 th Floor, (page no. 39 of complaint)
8.	Unit admeasuring	784.700 sq. ft. (super area) (page no. 39 of complaint)
9.	Allotment Letter	30.07.2012 (page no. 39 of the complaint)
10.	Date of start of construction	01.03.2012 (as per para 9.a at page 4 of reply also as mentioned in demand letter dated 01.03.2012 at page 63 of reply)
11.	Date of execution of buyer agreement	20.10.2012 (page no. 44 of complaint)
12.	Possession clause	32. "That the company shall gave possession of the said unit within 36 months from the signing of this agreement or within 36 months from the date of start of construction of the said building, whichever is later. " (Emphasis Supplied) (page no. 54 of complaint)
13.	Due date of delivery of possession	20.10.2015 (Note: the due date of possession is calculated from the date of execution of buyer's agreement, being later)





14.	Clauses w.r.t leasing	23. That the Allottee acknowledges that he has full knowledge that the company has already entered in to a Term sheet with Royal Orchid Hotels Ltd on dated 3.06.2011 for the operation and Management of all Service apartments in the said project and the allottee is fully conversant with all the terms and condition of this term sheet including but not limited to sharing of Revenue/profit and he has no objection and gives its consent for the company to enter into any agreement with the operator/third party for Management of service apartments. 24. That the Allottee agrees and undertakes that the service apartment being sold to him will be leased back to the Company or operator or any other agency/third party that may be appointed by the Company for such period and on such terms and conditions including initial Lock-in period as may be finalized by the Company. 25. The Allottee further confirms and agrees to execute a separate detailed agreement v the company/ third party/ operator nominated/appointed by the company at the time of final call notice of full and final dues. (page no. 52 of complaint)
15.	Basic sale price	Rs.49,02,806/- (as per clause 3 of BBA at page no. 47 of complaint)
16.	Total sale consideration [BSP + EDC/IDC + IFMS]	Rs.53,89,320/- (as per clause 3 of BBA at page no. 47 of complaint)
17.	Total amount paid by the complainant	Rs.41,68,753/- (As per SOA annexed with intimation for fit outs at page 71 of complaint and as per SOA annexed with offer of possession at page 114 of reply)
18.	Occupation certificate	17.02.2021 (page 109-111 of reply)
19.	Intimation for fit out possession	20.02.2021 (page no. 70 of complaint) (page 87 of reply)
20.	Offer of possession	23.03.2021 (inadvertently mentioned)

		as 02.02.2021 in pod dt. 23.07.2026) (page 112-113 of reply)
21.	Lease Term Sheet for commercial property on 8 th floor and not that of the allottee	30.01.2024 (page 115-116 of reply)
22.	Leasing offer to complainant	23.02.2024 "....You, all the concerned Allottees may kindly deliberate on the given offer and please give your assent and dissent within 10 days of receiving this letter..... " (page 117-120 of reply)
23.	Notice for revocation of lease offer	04.04.2024 "This is reference to our earlier communication and subsequent discussions held with you regarding leasing offer of above cited unit in the aforesaid Project to a Prospective Lessee ie. "BLACK VIGOR GYM" As per the last communication duly communicated to you for taking your assent for leasing of your subject unit to "BLACK VIGOR GYM", you have to provide your assent to proceed with the signing of the Lease Agreement with the Prospective Lessee. However, despite of giving you more than desired time to decide we have not received your assent/ consent till date and due to your inability to respond us on this very lucrative offer, the offer of prospective lessee has lapsed. By way of this communication, we hereby inform you that in absence of any response from your side, the company has not only lost the above opportunity but has also incurred a financial loss and Company reserves all its rights of recovery in this regard and due to above referred breach committed, you become immediately ineligible for enjoying the Assured Return/ Lease Return/ Pre-Possession Rental/ Post-Possession Rental/ Guaranteed Rental to be paid by the company. Due to lack of your performance and default



		<i>in complying with the terms of documents signed inter-se, we are hereby absolved from all our liabilities to pay you any Assured Return/ Lease Return/ Pre-Possession Rental/ Post-Possession Rental/Guaranteed Rental for the said unit.</i> <i>In case we get any other offer of Lease, we will be happy to share with you and you can evaluate the proposal. But from now onwards the company is not under any obligation to find a suitable tenant for you in terms of the MOU or as per any other document and is further discharged from paying you any Assured Return/Lease Return/ Pre-Possession Rental/ Post-Possession Rental/Guaranteed Rental (if any).</i> <i>(page 121-122 of reply)</i>
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B. Facts of the complaint:

3. The complainant has made following submissions by filing the present complaint: -

- i. That in 2011, the respondent issued an advertisement announcing a commercial colony project "114 Avenue" situated in the Sector 114, Village Bajghera, Haryana, in a land parcel admeasuring a total area of approximately on the 2.97 acres of land, under the license no. 72 of 2011 dated 21.07.2011, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the Authority.
- ii. That the complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a commercial in their project namely 114 Avenue. the respondent told about the moonshine reputation of the



company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region. 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.

- iii. That relying on various representations and assurances given by the respondent and on belief of such assurances, complainant, booked a commercial unit/fully furnished studio apartment in the project by paying a towards the booking of the said unit bearing no. 6B-19, 6th floor, in Sector 114, having super area measuring 784.700 sq. ft. to the respondent dated 14.07.2011 and the same was acknowledged by the respondent.
- iv. That the respondent sent an allotment letter dated 30.07.2012 to complainant confirming the booking the said unit and also mentioning the moonshine reputation of the company and the location of project. Further, providing the details of payment to be made by the complainant.
- v. That the respondent sent allotment letter dated 30.07.2012 to original allottee, confirming the booking of the unit dated 14.07.2011, allotting a unit no. 6B-19, 6th floor, (hereinafter referred to as 'unit') measuring 784.700 Sq. Ft (super built up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.55,33,240/-, which includes basic price, Plus EDC and IDC, and other Specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.



- vi. That the respondent sent a letter dated 15.02.2018 on account of change in basic sale price of unit: - please refer to the letter of allotment dated 30th July 2012, allotting thereby in your favour, the unit no- 6B-19 on sixth floor in our project "114 Avenue" in Sector 114, Gurgaon. We wish to bring to your kind attention that the Basic sale price of the said unit has been changed from INR 6248/- sq. ft. to INR 5000.00 per sq. ft. The rate has been revised as per the discount offered to you. Now for all contractual purposes the basic sale price for the said unit shall be considered as INR 5000/- per sq. ft. This letter is being sent in duplicate. Please sign the copies and send back to us as a token of your acceptance. The other terms and conditions of the allotment letter dated 30th July 2012 remain unaltered. Please note that if we do not receive the duplicate copy duly signed as a token of your acceptance within 15 days from the date of this letter, it will be presumed that you have accepted the aforesaid decrease Basic Sale Price of your unit and shall make the payments, etc., based on this decreased Basic Sale Price. Hence, the total consideration of the said unit got revised from Rs. 55,33,240.00 to Rs.42,92,309/- as the complainant never delay the payment to the respondent.
- vii. That a space buyer's agreement was executed between complainant and respondent on 20.10.2012.
- viii. That as per clause 32 of the space buyer's agreement the respondent had to deliver the possession within a period of 36 months from the date of signing of the agreement or the date of start of construction, whichever is later. The date of start of construction is 01.01.2012. Therefore, the due date of possession is calculated from the date of



agreement i.e. 10.10.2012. Hence, the due date of possession comes out to be 10.10.2015.

- ix. That 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.42,33,178/- towards the said unit against the total sale consideration of Rs.42,92,309/-.
- x. That though the payment to be made by the complainant was to be made based on the construction on the ground but unfortunately the demands being raised were not corresponding to the factual construction situation on ground.
- xi. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent 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.
- xii. That During the period the complainant went to the office of respondent several times and requested them to allow them to visit the site but it was never allow saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying



amounts still received nothing in return but only loss of the time and money invested by them.

- xiii. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and were never definite about the delivery of the possession. 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 construction 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.
- xiv. That in terms of clause 32 (a) of the said buyer's agreement (as already referred above), respondent was under dutiful obligation to complete the construction and to offer the possession within 36 months from the date of start of construction. That complainant approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to complainant that the construction will get completed soon.
- xv. That complainant requested the respondent to show/inspect the unit before complainant pay any further amount but respondent failed to reply.
- xvi. That the respondent despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees.



xvii. That the respondent has completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

xviii. That the complainant after many request and emails; received the offer of possession on 20.02.2021.

xix. That along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the Space Buyer Agreement:

- Advance monthly maintenance for 18 months of Rs.1,69,495.00
- Electric connection charges of Rs. 58,853.00
- Air condition charges of Rs. 1,56,940.00.
- GST
- Administrative charges of Rs. 15,000.00
- Contingency of Rs. 1,56,940.00

xx. That offering possession by the respondent on payment of charges which the buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainant as per the agreement, by the complainant and hence the offer of possession.

xxi. That it has been held by the Honourable NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not



contractually bound to pay is illegal and unjustified and therefore not a valid offer of possession. In fact, it is a letter for demand of money rather than being an offer of possession.

- xxii. That advance maintenance being charged for 18 months from the complainant by the respondent which is illegal and unjustified and against the LAW. That the respondent is asking for 18 months of advance maintenance charges amounting to Rs.1,69,495/- from the complainant which is absolutely illegal and against the laws of the land. That the definition of what is common area is and what are maintenance charges generally called CAM charges is as under:
- xxiii. That the responsibility for upkeep and maintenance of these areas is collective. The contributions made for the same are in the form of a stipulated fee to manage expenses for the management and repair of any damage to the same. This amount contributed for operational expenditure on the common areas of the premises is called common areas maintenance.
- xxiv. That the common area maintenance charges are calculated on monthly basis, based on actual charges and are then paid by the owners of the units to the maintenance agency or to the Association which manages the complex where the units are situated.
- xxv. That Hence these are paid monthly once the expenses have been incurred and billed to the owner of the unit and therefore demanding an amount of Rs.1,69,495/- as a deposit of annual common area maintenance charges along with the final payment is unjustified and illegal and therefore needs to be withdrawn immediately as the same is not payable by the complainant at all.
- xxvi. That the respondent asking for electric connection charges of Rs.58,853/- 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 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 SBA.

- xxvii. That the respondent asked the complainant to sign the indemnity bond as perquisite condition for handing over of the possession. complainant 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.
- xxviii. That 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.
- xxix. That the allottee has approached the 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.
- xxx. That 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 in valid



by the Honourable Supreme Court and the Honourable High Courts
in number of cases.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. 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 SBA.
- II. 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 due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.
- III. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
- IV. 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 signing the conveyance deed/ sale deed.
- V. Direct the respondent not to charge anything which not the part of the payment plan as agreed upon.
- VI. Direct the respondent to set aside demand letter dated 20.02.2021 on account of offer of possession for fit outs.
- VII. Direct the respondent to quash the illegal demand on account of delay payment interest charged @ 18% p.a. from the complainant.
- VIII. Direct the respondent to provide the exact lay out plan of the said unit.
- IX. 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
- X. Direct the respondent to lease out the said unit in terms of the clause 23, 24 and 25 of the space buyer agreement.



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:
- i. That the complainant had wilfully agreed to the terms and conditions of the agreement and are now at a belated stage after the offer of possession (admitted that offer of possession has been received in the complaint), are attempting to wriggle out of their obligations by filing the instant complaint before the Authority.
 - ii. That the issue so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the respondent into succumbing to the pressure so created by the complainant in filing this complaint before this forum and seeking the reliefs which the complainant is not entitled to.
 - iii. That the respondent has acted in accordance with the terms and conditions of the space buyer's agreement executed between the parties on their own free will.
 - iv. That the respondent wants to bring to the kind knowledge of the authority that the complainant has not approached this hon'ble regulatory authority with clean hands and is guilty of suppression of material facts absolutely relevant for just and proper adjudication of this complaint. The complainant after being completely satisfied by all the aspects of the project, applied for provisional allotment of the retail unit in the commercial project being developed by the respondent in the name and style of '114 Avenue' and submitted the



application form after reading and understanding all the clauses stated therein.

- v. That the respondent vide demand letter dated 01.03.2012 raised its first demand on the start of excavation and requested the complainant to pay an amount of Rs.5,02,906/-. Since, the complainant failed to make timely payment, the respondent company vide reminder letter dated 26.03.2012 requested to make good the previous outstanding dues of Rs. 5,02,906.19/-.
- vi. That in or around the month of April, the complainant approached the respondent with a request for waiver of the interest levied on account of delayed payments. So, the respondent being a customer-oriented company as a gesture of goodwill gave a discount of Rs.25,172/- from the total interest amount of Rs.31,458/- and only charged Rs. 6,286/- from the complainant as interest.
- vii. That the respondent vide demand letter dated 15.07.2012, raised a demand of Rs.8,811/-, towards service tax post adjusting the discount extended by way of interest waiver.
- viii. That in due consideration of the complainant's commitment to make timely payments, the respondent allotted service apartment bearing No. 6B-19 (hereinafter referred as the unit), 6th floor, having carpet area of 784.700 sq. ft. in the project "114 Avenue" for a sale consideration of Rs. 55,33,240/- exclusive of IMFS, taxes, duties and other charges vide allotment letter dated 30.07.2012 and paid an amount of Rs.15,02,430/- towards sale consideration. The complainant opted for the construction linked payment plan on his own free will and after due understanding of the legal import and effect.



- ix. That in furtherance of the allotment, the respondent vide cover letter dated 15.09.2012 sent two copies of space buyer's agreement for due execution at the complainant's end.
- x. That the space buyer's agreement was executed between the complainant and the respondent on 20.10.2012, the complainant till date had made a payment of Rs.15,02,430/- towards total sale consideration. It is submitted that the space buyer's agreement covers all rights and liabilities of both the parties. The price of the unit in question as per the agreement was Rs.52,71,615/- plus taxes, levies and other charges. The complainant had opted for the development linked payment plan and the respondent raised all the demands as per the payment plan opted. As per clause 32 of the space buyers agreement dated 20.10.2012, the respondent was supposed to hand over the possession within a period of 36 months of signing of this agreement i.e. 20.10.2012 or within 36 months from the date of start of construction of the said building i.e. in the year 2012 whichever is later and the possession date comes out to be 20.10.2015.
- xi. That the construction and development of the project was affected due to force majeure conditions beyond the control of the respondent. The demands were raised by the respondent were raised as per the payment plan opted by complainant on the achievement of relevant construction milestone.
- xii. That the respondent vide demand letter dated 20.12.2013 raised the demand due on casting of the 2nd floor basement slab for an amount of Rs.4,77,560/- and also requested that the previous dues also be cleared.



- xiii. That the respondent vide demand letter dated 13.03.2013 raised the demand due on casting of 1st basement floor for an amount of Rs.9,51,107.11/-. Further, the complainant vide the aforesaid letter was also requested to pay his previous outstanding dues.
- xiv. That the respondent vide demand letter dated 01.06.2013 raised the demand due on casting of ground floor slab for an amount of Rs.4,73,653/-.
- xv. That the respondent vide demand letter dated 20.12.2013 raised the next demand due on casting of the 2nd Floor slab for an amount of Rs.4,76,025.42/-.
- xvi. That the respondent vide demand letter dated 14.05.2016 raised the demand due on casting of 4th floor slab as per the payment plan opted by the complainant.
- xvii. That the respondent vide demand letter dated 10.05.2017, again on achieving of a construction milestone raised a demand amounting to Rs.3,83,598.07/-. All the demands raised by the respondent are in accordance with the construction linked payment plan which the complainant by his free will chose it.
- xviii. That around in year 2017, in view of current market situation many allottees came with a request to the respondent, that the market feasibility of serviced apartments was very low. So, in view of the same allottees requested to convert the allotted units to office space, the respondent being customer-oriented company accepted the request as a goodwill gesture.
- xix. That around April 2017, the complainant and the respondent had a meeting at the office of the respondent and post discussion it was decided that the designated unit is to be converted from a serviced apartment to an office space and the same was agreed between both



the parties. It is submitted that the building plans were reverted after following due process of law.

- xx. That vide letter dated 24.05.2017, the respondent conveyed the same request to the complainant.
- xxi. That as per the terms of the space buyer agreement, the serviced apartment was to be delivered in a fully furnished condition, whereas the office space, as stipulated in the same agreement, was to be delivered in a bare-shell condition. In order to ensure that no prejudice is caused to either party due to the change in the nature of the unit, and to maintain fairness and transparency, the respondent accordingly revised the price of the unit from Rs.6,248/- per sq. ft. to Rs.5,000/- per sq. ft., reflecting the change in specifications and deliverables.
- xxii. That the respondent vide demand letter dated 12.01.2018 raised demand due on completion of superstructure of the project for an amount of Rs. 4,11,835.26/-.
- xxiii. That the complainant vide e-mail dated 26.08.2020 requested the respondent to add a nominee to the unit in question and the same was acknowledged by the respondent vide e-mail dated 27.08.2020 and informed the complainant to provide affidavit for nomination on Rs.100/- Stamp paper, KYC of the nominee and Bank verification for both applicant and co-applicant/nominee.
- xxiv. That after making sincere efforts despite the force majeure conditions, the applicant/respondent completed the construction and thereafter applied for the occupancy certificate on 15.07.2020.
- xxv. The project was also affected due to COVID – 19 pandemic and after completing the project and accordingly, the respondent is entitled to extension of time for the same. The OC for the project was granted



by the competent authorities on 17.02.2021 i.e. almost after a period of 7 months from the date of application for grant of OC.

- xxvi. That this delay of the competent authorities in giving Occupation Certificate cannot be attributed in considering the delay in delivering the possession of the unit, since on the day the respondent applied for OC, the unit was complete in all respects. The Occupation Certificate with respect to the tower where the unit is situated was only granted after inspections by the relevant authorities and after ascertaining that the construction was completed in all respect in accordance with the approved plans and that the unit was in a habitable condition.
- xxvii. That immediately after the receipt of the OC on 17.02.2021, the complainant visited the office of the respondent on 20.02.2021 and requested for possession and same was provided to him on the same day but the complainant failed to clear his dues and take possession. Thereafter, the respondent vide letter dated 23.03.2021 again issued an offer of possession and same was sent to the complainant. The complainant till date has made a payment of Rs.41,68,753/- and an amount of Rs.14,42,229/- towards due instalment was pending at the time of offer of possession.
- xxviii. That the respondent offered possession of the said unit on 20.02.2021 and again on 23.03.2021, but to no avail and since the complainant did not come forward to clear their dues and take possession of the unit.
- xxix. That the complainant failed to make timely payments as per the agreed terms and payment plan. Consequently, the respondent, having no alternative, was constrained to issue demand and reminder letters dated 01.01.2012, 15.07.2012, 01.01.2013,



13.03.2013, 22.03.2013, 01.06.2013, 20.12.2013, 14.05.2016, 10.05.2017 and 12.01.2018. It is pertinent to mention that the complainant has full information about the timely payment was the essence of the agreement as per Clause 18 which was duly signed by both the parties.

xxx. That the complainant was very well aware that he was under an obligation to make timely payments, however under the guise of raising false and fictitious issues, have been delaying the payment of legitimate dues of respondent as raised under the offer of Possession dated 23.03.2021. Despite receiving various reminders, the complainant failed to clear their outstanding dues and perform their contractual obligations. The amount paid by the complainant till date is Rs. 41,68,753/-. An amount of Rs. 14,42,229/- plus interest is still outstanding towards their dues. The complainant chose to approach this hon'ble authority with a frivolous complaint only with a malafide intention to unjustly enrich himself and in one way or the other cover-up their own breaches and non-performance of his contractual obligations. Hence, the complainant is not entitled to any relief whatsoever from the Authority. It is the well settled law as held by the Hon'ble Supreme Court of India, a defaulter is not entitled to get any equitable relief. Thus, the complaint must be dismissed.

xxxi. That without prejudice to rights and contentions and without admission of facts, it is humbly submitted that Section 19 of the Act clearly puts an obligation upon the complainant to make the payments, and it has been clearly prescribed even in the model agreements as prescribed under the HARERA. As per the clause 18 under the said buyer's agreement, the allottee is considered to be in



default in case the payments are not made as per the agreement. Wherein in addition to the penalty liability in case of default, the promoter has also been given an option to cancel the allotment in case of default and in such cases, the allottee is only entitled to the refund of the amount after deducting the booking amount and interest liabilities. The complainant is in default of their obligation under Sec 19(10) of the RERA Act.

- xxxii. That the respondent came into talking with a gym namely 'black vigor' and on 30.01.2024 decided the terms for leasing approximately 12000 sq. ft. with black vigor. The rent was decided as 15% revenue share for 24 months and after 3 years minimum guarantee of Rs. 45 per sq. ft.
- xxxiii. That the respondent vide letter dated 23.02.2024, informed and requested the complainant for their consent about leasing the unit in question to 'Black Vigor Gym' and shared the brief terms of lease deed. It is pertinent to note that it was now the complainant who have to come forward and give their consent to the respondent so that they can move forward the process of fit-out i.e., the rate of fit out was decided of Rs.2500/- per sq. ft. which was to be paid by the allottees whose unit were being leased out. It is pertinent to note that all the allottees had to give their assent or dissent within 10 days of receiving this letter.
- xxxiv. That the complainant failed to provide its assent or dissent. So, vide letter dated 04.04.2024 the respondent intimated revocation of leasing offer to the complainant as the complainant even in 2 months approximately failed to give its consent.
- xxxv. That all the demands raised by the respondent are as per the schedule of payment opted by the complainant. Hence, being totally



aware about the payment as per the payment plan, he failed to make timely payments and therefore are a chronic defaulter and are liable to pay interest to the respondent for the delay in payment under Section 19 (6) RERA which states that the complainant are responsible to make necessary payments in the manner and within time as specified in the agreement and in case of default the complainant are liable to pay interest for delay under Section 19(7) of RERA.

xxxvi. That timely payment was the essence of the agreement entered into between the parties and in case of default on part of the complainant, the respondent is liable to charge interest on the pending amount as per the provisions of the space buyer's agreement.

7. All other averments made in the complaint were denied in toto.
8. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority

9. 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

10. 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

11. 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.

12. 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 complainant

F.I. 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 SBA.

F.II. 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 due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.

F.III. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.

13. That the above-mentioned reliefs no. F. I, F.II and F.III as sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

14. In the present complaint, the allottee intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

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

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

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. 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.

16. 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.
17. 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., **23.07.2026** is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
18. The definition of term 'interest' as defined under section (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;"*
19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent /promoter which is the same as is being granted to them in case of delayed possession charges.



20. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The buyer agreement was executed between the parties on 20.10.2012. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered on or before 20.10.2015. Accordingly, the due date of possession comes out to be 20.10.2015. Occupation certificate was granted by the concerned authority on 17.02.2021 and thereafter, possession letter was offered on 23.03.2021. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 20.10.2012 to hand over the possession within the stipulated period.
21. Section 19(10) of the Act obligates the allottee(s) 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 17.02.2021. The respondent offered the possession of the unit in question to the complainant only on 23.03.2021, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 month of 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 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 (20.10.2015) till the expiry of 2 months from the date of offer of possession (23.03.2021) which comes out to be 23.05.2021.

22. Further, as per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainant is directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 2 months. Also, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.

F.IV. 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 signing the Conveyance Deed/ sale deed.

23. The respondent is directed to give adjustment towards the delay interest charges, as may be applicable in accordance with law. Upon giving such adjustment, the complainant shall pay the balance amount, if any, payable by it. The respondent shall, thereafter, issue a revised/fresh Statement of Account, duly incorporating and reflecting the aforesaid adjustment.

F.V. Direct the respondent to set aside demand letter dated 20.02.2021 on account of offer of possession for fit outs.

F.VI. Direct the respondent to quash the illegal demand on account of delay payment interest charged @ 18% p.a. from the complainant.

F.VII. Direct the respondent not to charge anything which not the part of the payment plan as agreed upon.



24. 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 relief and the same being interconnected.
25. The respondent is directed not to raise or recover any demand from the complainant which is not in accordance with the terms and conditions of the buyer's agreement. The respondent shall not levy or recover any charges that are not contractually permissible or otherwise authorized under the applicable law and shall not raise any illegal or arbitrary demand against the complainant.

F.VIII. Direct the respondent to provide the exact lay out plan of the said unit.

26. As per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide details layout plan of the allotted unit in question to the complainant within a period of 30 days from the date of this order.

F.IX. 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.

27. The respondent is directed not to place any condition or ask the complainant 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. *4037 of 2019 titled ss Varun Gupta Vs Emaar MGF Land Ltd.*

F.X Direct the respondent to lease out the said unit in terms of the clause 23, 24 and 25 of the space buyer agreement.



28. As per the record, the subject unit was initially leased out, but the said lease was subsequently revoked by the respondent on account of the complainant's default. The complainant is presently seeking handing over of possession of the subject unit under the buyer agreement and is not seeking continuation of the lease. Therefore, the relief sought with respect to the lease of the subject unit cannot be granted and is accordingly declined.

G. Directions of the Authority

29. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- I. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of a delay from the due date of possession, i.e., 20.10.2015 till the date of offer of possession (23.03.2021) plus two months i.e., 23.05.2021, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
 - II. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
 - III. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs



as per above within a period of 30 days from the date of this order.

The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

- IV. The respondent is directed to handover the physical possession of the allotted unit to the complainant completes in all aspects of the buyer's agreement.
 - V. The respondent-builder is directed not to charge anything which is not part of buyer agreement.
 - VI. The respondent is directed to execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 subject to payment of stamp duty and registration charges as applicable, within three months from the date of this order.
 - VII. 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.
30. Complaint stands disposed of.
 31. File be consigned to registry.


Phool Singh Saini
(Member)

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 23.07.2026