

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

Order pronounced on: 13.12.2023

Name of the Builder		Regional Construction Pvt. Ltd.	
Project Name		Ekam	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/5930/2022	Priyanshu Ahlawat V/s Regional Construction Pvt. Ltd.	Harish Jain and Gaurav Rawat for Complainant Himanshu Singh for Respondent
2.	CR/5931/2022	Vandana Agarwal V/s Regional Construction Pvt. Ltd.	Harish Jain and Gaurav Rawat for Complainant Himanshu Singh for Respondent
3.	CR/5933/2022	M.K. Malik & Sons (HUF) V/s Regional Construction Pvt. Ltd.	Harish Jain and Gaurav Rawat for Complainant Himanshu Singh for Respondent
4.	CR/5934/2022	Renu Jain V/s Regional Construction Pvt. Ltd.	Harish Jain and Gaurav Rawat for Complainant Himanshu Singh for Respondent
5.	CR/5938/2022	Sarthak Saxena V/s Regional Construction Pvt. Ltd.	Harish Jain and Gaurav Rawat for Complainant Himanshu Singh for Respondent
6.	CR/5939/2022	Pratibha Khare V/s Regional Construction Pvt. Ltd.	Harish Jain and Gaurav Rawat for Complainant Himanshu Singh for Respondent
7.	CR/5940/2022	Pankaj Agarwal V/s Regional Construction Pvt. Ltd.	Harish Jain and Gaurav Rawat for Complainant Himanshu Singh for Respondent

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of all the 7 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be

responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ekam" being developed by the same respondent/promoter i.e., **Regional Construction Pvt. Ltd.** The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to refund of unjust/arbitrary amount taken by the respondent/promoter under various heads.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "Ekam" Sector- 05, Sohna, District Gurugram

8. POSSESSION OF THE PLOT

8.1 Schedule of possession of the plot

8.1.1 The promoter agree and understand that timely handover /delivery of possession of the Plot to the Allottee and the handover of common Areas to the Association of Allottees of the Competent Authority, as the case may be, is the essence of the Agreement. Subject to Force Majeure Event, the Promoter shall handover possession of the Plot and the Common areas/services/facilities which are part of the Project on or before as per the date mentioned in the RERA Certificate.

1. Completion certificate- Not obtained

2. DTCP License no. 55 of 2019 dated 08.09.2019 valid upto 07.03.2024- Regional Construction Pvt. Ltd. is the licensee for the project as mentioned in land schedule of the project.

3. Nature of Project- Residential Plotted Colony

4. RERA registration -38 of 2019 dated 08.07.2019, valid upto 08.03.2025

Sr. No.	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasuring	Date of execution of agreement for sale	Due date of possession & Offer of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/5930/2022 Priyanshu Ahlawat V/s Regional Construction Pvt. Ltd. DOF-06.09.2022	Reply received on 21.12.2022	J-9, admeasuring 157 sq. yds. [pg. 39 of complaint]	21.02.2022 (Page 33 of complaint)	Due date-08.03.2025 Offer of possession-21.07.2022 (Page 71 of complaint)	TSC: Rs.44,74,500/- (page 66 of complaint) AP: Rs.40,82,000/- (page 43 of reply)	1. Refund of unjust/arbitrary amount taken by the respondent under various heads. 2. Handover of the physical possession of the unit after execution of sale deed.
2.	CR/5931/2022 Vandana Agarwal V/s Regional Construction Pvt. Ltd. DOF-07.09.2022	Reply received on 21.12.2022	J-15, admeasuring 157 sq. yds. [pg. 34 of complaint]	09.02.2022 (Page 32 of complaint)	Due date-08.03.2025 Offer of possession-21.07.2022 (Page 73 of complaint)	TSC: Rs.40,03,500/- (pg. 64 of complaint) AP: Rs.36,58,100/- (page 41 of reply)	1. Refund of unjust/arbitrary amount taken by the respondent under various heads. 2. Handover of the physical possession of the unit after execution of sale deed.



3.	CR/5933/2022 M.K Malik & Sons(HUF) Vs. Regional Construction Pvt. Ltd. DOF-06.09.2022	Reply received on 21.12.2022	J-16, admeasuring 157 sq. yds. [pg. 34 of complaint]	14.02.2021 (Page 32 complaint)	Due date-08.03.2025 Offer of possession-21.07.2022 (Page 69 of complaint)	TSC: Rs.34,54,000/- (Page 63 of the complaint) AP: Rs.31,63,550/- (Page 43 of reply)	1. Refund of unjust/arbitrary amount taken by the respondent under various heads. 2. Handover of the physical possession of the unit after execution of sale deed.
4.	CR/5934/2022 Renu Jain V/s Regional Construction Pvt. Ltd. DOF-06.09.2022	Reply received on 21.12.2022	J-18, admeasuring 157 sq. yds. [pg. 35 of complaint]	08.03.2022 (Page 33 complaint)	Due date-08.03.2025 Offer of possession-21.07.2022 (Page 59 of complaint)	TSC: Rs.54,16,500/- (Page 39 of the complaint) AP: Rs.49,29,800/- (Page 44 of reply)	1. Refund of unjust/arbitrary amount taken by the respondent under various heads. 2. Handover of the physical possession of the unit after execution of sale deed.

5.	CR/5938/2022 Sarthak Saxena V/s Regional Construction Pvt. Ltd. DOF-06.09.2022	Reply received on 21.12.2022	K-11, admeasuring 156 sq. yds. [pg. 34 of complaint]	08.03.2022 (Page 32 of complaint)	Due date-08.03.2025 Offer of possession-21.07.2021 (Page 75 of complaint)	TSC: Rs.35,10,000/- (Page 65 of the complaint) AP: Rs.32,13,600/- (Page 42 of reply)	1. Refund of unjust/arbitrary amount taken by the respondent under various heads. 2. Handover of the physical possession of the unit after execution of sale deed.
6.	CR/5939/2022 Pratibha Khare V/s Regional Construction Pvt. Ltd. DOF-07.09.2022	Reply received on 21.12.2022	K-12, admeasuring 156 sq. yds. [pg. 34 of complaint]	14.02.2022 (Page 32 of complaint)	Due date-08.03.2025 Offer of possession-21.07.2022 (Page 72 of complaint)	TSC: Rs.36,66,000/- Page 65 of the complaint) AP: Rs.33,54,000/- (Page 45 of reply)	1. Refund of unjust/arbitrary amount taken by the respondent under various heads. 2. Handover of the physical possession of the unit after execution of sale deed.

7.	CR/5940/2022 Pankaj Agarwal V/s Regional Construction Pvt. Ltd. DOF- 07.09.2022	Reply received on 21.12.2022	J-17, admeasuring 157 sq. yds. [pg. 35 of complaint]	09.02.2022 (Page 33 complaint)	Due date- 08.03.2025 Offer of possession- 21.07.2022 (Page 70 of complaint)	TSC: Rs.40,03,500/- (Page 63 of the complaint) AP: Rs.36,58,100/- (Page 44 of reply)	1. Refund of unjust/arbitrary amount taken by the respondent under various heads. 2. Handover of the physical possession of the unit after execution of sale deed.
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:
Abbreviations Full form

DOF- Date of filing complaint
TSC- Total Sale consideration
AP- Amount paid by the allottee(s)

- The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
- The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/5930/2022 titled as Priyanshu Ahlawat V/s Regional Construction Pvt. Ltd.** are being taken into consideration for determining the rights of the

allottee(s) qua refund of the unjust/arbitrary amount taken by the respondent under various heads.

A. Project and unit related details

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

CR/5930/2022 titled as Priyanshu Ahlawat V/s Regional Construction Pvt. Ltd.

S.N.	Particulars	Details
1.	Name of the project	"Ekam" Sector- 05, Village Sohna, Tehsil Sohna, District Gurugram, Haryana.
2.	Nature of the project	Residential plotted colony
3.	DTCP license no. and validity status	55 of 2019 dated 08.09.2019 valid upto 07.03.2024
4.	Name of licensee	Regional Construction Pvt. Ltd.
5.	RERA Registered/ not registered	Registered vide no. 38 of 2019 dated 08.07.2019
6.	RERA registration valid up to	08.03.2025
7.	Plot no.	J-9, admeasuring 157 sq. yds. [pg. 39 of complaint]
8.	Date of execution of agreement for sale	21.02.2022 (Page 33 of complaint)
9.	Date of allotment letter	07.02.2022 [page 29 of complaint]
10.	Possession clause	8. POSSESSION OF THE PLOT 8.1 Schedule of possession of the plot 8.1.1 The promoter agree and understand that timely handover /delivery of possession of the Plot to the Allottee and the handover of common Areas to the Association of Allottees of the Competent Authority, as the case may be, is the essence of the Agreement. Subject to Force Majeure Event, the Promoter shall handover possession of the Plot and the Common areas /services /facilities which are part of the Project on or before as

		per the date mentioned in the RERA Certificate. (Page 44 of complaint).
11.	Due date of possession	08.03.2025 [As per registration certificate issued by this authority]
12.	Total sale consideration (Basic sale price)	Rs.44,74,500/- (As per payment plan page 66 of complaint)
13.	Total amount paid by the complainant	Rs.40,82,000/- (As per receipt information page 43 of reply)
14.	Offer of possession	21.07.2022 (Page 71 of complaint)
15.	Completion certificate	18.07.2022 (Page no. 39 of the reply)

B. Facts of the complaint

8. The complainant has made the following submissions :-

- I. That the complainant was allotted a residential plot bearing No. J-09, admeasuring 157 sq. yds. in the project of respondent named "Ekam", Sohna, Gurugram under the deen dayal Jan Awas Yojna, 2016 vide allotment letter dated 07.02.2022. Thereafter, a buyer's agreement dated 21.02.2022 was executed between the parties for a total sale consideration of Rs.39,25,000/- and the respondent has already taken 100% payment from the complainant and has offered possession of the plot vide "offer for possession" letter dated 21.07.2022.
- II. That the complainant was shocked to find out that the respondent company vide its letter dated 21.07.2022 titled as "offer of possession" raised unjust/ illegal/ arbitrary demand for Rs.8,22,795/- under various heads and a demand of Rs.73,394/- under the head of "maintenance charges" without signing of the BBA.

- III. That the complainants tried to raise this issue of arbitrary demand with the executives of respondent company telephonically and informed the respondent that they can't raise such demands without signing of the BBA, but the response of the respondent was evasive and unsatisfactory.
- IV. That the demand of Rs.5,49,500/- raised by the respondent towards "EDC" and "IDC" is totally unlawful and the same is also in violation of RERA Act by the respondent while creating the clause of the agreement dated 21.02.2022. That IDC was also waived off vide memo dated PF-27A/2700 dated 08.02.2016 as issued by the DTCP, Chandigarh, Haryana. Furthermore, there is no clause as per the allotment letter dated 07.02.2022, which entitles the respondent company to charge any EDC whatsoever.
- V. That the respondent company has further took a demand for Rs.14,160/- towards "prepaid electrical charges" which is also unlawful, arbitrary.
- VI. That the respondent company has failed to discharge its contractual obligations and failed on the assurances and promises made by its representatives. Further, the respondent has failed to provide the complainant a copy of OC/completion Certificate and has made an offer of possession without necessary NOC/clearance from concerned Govt. departments as per Section 11(4)(b) of the RERA Act. That the respondent company has also breached its contractual obligations and not complied with Clause 2.11 of the agreement dated 21.02.2022.
- VII. That the respondent company has also failed in providing to the complainant, a copy of maintenance agreement, whereby the respondent is demanding Rs.73,364/- under the head "maintenance charges" to be paid to one "Paras RE Facilities Management Pvt. Ltd." without showing the agreement/documentary proof to the complainant. Therefore, the complainant is seeking refund the unlawful and arbitrary demand took by

the respondent along with the interest @18% till the realization of the amount.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the unjust/arbitrary amount taken by it from the complainant under various heads against the unit/Restrain the respondent from raising any unjust/arbitrary demands.
- ii. Direct the respondent to execute conveyance deed in favour of complainant.

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

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds.

- i. That the complainant has suppressed the vital facts of non-payment of entire consideration in terms of offer of possession letter dated 21.07.2022 and on this ground alone, the complaint is liable to be dismissed as not maintainable.
- ii. That the complainant is not a genuine plot purchaser or consumer and has purchased the said plot for commercial and investment purposes for which the jurisdiction of this Authority cannot be invoked, since the object of the RERA Act and Rules is to protect the interests of the consumers and not the investors.
- iii. It is further submitted that the complainant himself has been guilty of not adhering to the payment schedule and has made most of the payment after passing of the respective due dates.

- iv. That the present complaint is filled prematurely as the due date of the completion of the project is still not arrived. Therefore, the same is liable to be dismissed.
 - v. That the complainant is liable to pay EDC, IDC and other statutory charges like any other allottee(s) as the said amount goes to the government. Similarly, the respondent is entitled to pay one time additional charge, maintenance charges etc. in terms of agreement as these are service charges which are charges for the services availed/to be availed by the complainant presently or in near future.
 - vi. That the respondent has received completion certificate for the plotted colony vide letter dated 18.07.2022 from the competent authority and the project is already complete in all respect. Accordingly, the physical possession of the plot is already offered to the complainant on 21.07.2022.
 - vii. That the complainant has not been able to point out a single provision of either the Act of 2016 or the Haryana Real Estate (Regulation and Development) Rules, 2017 which has been violated by the respondent. Thus, the complainant is not entitled to any relief at all.
 - viii. That the respondent even as on date is ready and willing to deliver the physical possession of the plot to the complainant provided, the complainant clearing his dues in terms of letter dated 21.07.2022 and the respondent is even ready to execute the conveyance deed in his favour on payment of stamp duty, registration charges etc. in this regard.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

13. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

14. 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

15. 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.

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding the complainant being investor.

17. The respondent has taken a stand that the complainant is an investor and not a consumer and therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is a buyer and paid total price of Rs.40,82,000/- to the promoter towards purchase of a plot in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and

includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the unit application for allotment, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant:

G. I Direct the respondent to refund the unjust/arbitrary amount taken by it from the complainant under various heads against the unit/Restrain the respondent from raising any unjust/arbitrary demands.

19. In the present matter, the respondent has obtained completion certificate of the project in question from the competent authority on 18.07.2022. Thereafter, possession of the unit was offered to the complainant vide offer of possession letter dated 21.07.2022.
20. The complainant has submitted that the respondent company vide its letter dated 21.07.2022 titled as "offer of possession" has illegally/arbitrarily charged an amount of Rs.8,22,795/- under various heads and a demand of Rs.73,364/- was charged under the head of "maintenance charges" from the complainant. The complainant is seeking refund of the unjust/arbitrary

amount taken by the respondent from him under various heads against the unit in question vide offer of possession letter dated 21.07.2022.

21. Clause 2.1 of the buyer's agreement dated 22.02.2022, deals with total sale consideration of the subject plot and the same is reproduce as under: -

Terms

2.1 "Subject to the terms and conditions as detailed in this Agreement, the Promoter hereby agrees to sell, transfer and convey to the Allottee and the Allottee agrees to purchase from the Promoter, Plot No. J-9, admeasuring 157 square yards ("Plot") for a total price of Rs.44,74,500/- (Rupees Forty Lakh Seventy Four Thousand Five Hundred Only) ("Total Price"), at the Rate of Rs.28,500 Per square yards, which comprises of:

2.1.1 Base price of Rs.25,000/- (Rupees Twenty Five Thousand Only) per square yards:

2.1.2 EDC and IDC

22. The findings of the authority on charges levied by the respondent vide offer of possession letter dated 21.07.2022 are as follows:
23. **EDC/IDC:** The complainant has submitted that the respondent has illegally charged an amount of Rs.5,49,500/- towards "EDC" and "IDC" as the fees on account of IDC has already been waived off by the DTCP, Chandigarh, Haryana vide memo PF-27A/2700 dated 08.02.2016. Furthermore, there is no clause as per the allotment letter dated 07.02.2022, which entitles the respondent company to charge any EDC whatsoever. The policy parameters and provisions applicable under the Affordable Plotted Housing Policy 2016 vide memo PF-27A/2700 dated 08.02.2016 is reproduced as under for ready reference:

6. APPLICABLE FEES & CHARGES:

(i) Taking into account the fact that a limited number of projects shall be allowed under this policy, the licence fees shall be levied at the following rates:

1. For medium potential towns: Rs. 1 lakh per acre
2. For low potential towns: Rs.10 thousand per acre

(ii) The scrutiny fees at prescribed rates shall be levied.

(iii) **The Conversion Charges and IDC shall stand waived off.**

(iv) The bank guarantee to the tune of 25% on account of IDW shall be submitted or the applicant has to mortgage 15% salable area.

(v) **EDC shall be payable at the rate of Rs.10 Lacs per acre for Medium Potential Zone, Rs.7.5 Lacs per acre for all the District Headquarters falling within Low Potential Zone and Rs. 5 Lacs per acre for all other towns falling**

within Low Potential Zone. The bank guarantee to the tune of 25% on account of EDC shall be submitted by the applicant.

24. However, the provision w.r.t. EDC has been amended vide memo no. PF-27A/2018/7/22/2018-2TCP dated 05.12.2018. The amendment in Deen Dayal Jan Awas Yojana Policy- Affordable Plotted Housing Policy, 2016 is reproduced as under:

Memo No. PF-27A/2018/7/22/2018-2TCP

Dated:-05.12.2018

Subject: Amendment in Deen Dayal Jan Awas Yojana Policy- Affordable Plotted Housing Policy 2016.

In continuation of the policy instructions issued vide memo no. PF-27A/2700 dated 08.02.2016, memo no. PF-96/PA(SN)/2017/7/1/2017-2TCP dated 07.02.2017, memo no. PF-27A/3429 dated 24.01.2018 and Memo No. PF-27A/2018/8/2/2018-2TCP dated 09.07.2018, it is informed that the said policy is further amended under the provisions of Section 9-A of the Haryana Development and Regulation of Urban Areas Act, 1975 and any other corresponding statute governing development of Affordable Plotted Colony under Deen Dayal Jan Awas Yojna 2016.

The payment terms of External Development Charges (EDC) in various potential towns shall be as under:-

Sr. No.	Zone	Rates of EDC for DDJAY cases	Payment Terms
1	<u>High-I Potential Zone:</u> Faridabad Ballabhgarh Urban Complex and Sohna	75% of the applicable rates of Residential Plotted Colony in the same town	25% recovery before grant of licence and balance in 6 half yearly instalments with interest
2	<u>High-II Potential Zone:</u> Panchkula, Sonipat-Kundli Urban Complex and Panipat	75% of the applicable rates of Residential Plotted Colony in the same town	25% recovery before grant of licence and balance in 6 half yearly instalments with interest
3	<u>Medium Potential Zone:</u>	50% of the applicable rates of Residential Plotted Colony in the same town	25% recovery before grant of licence and Balance in 3 half yearly instalments with interest
4	<u>Low Potential Zone:</u>	25% of the applicable rates of Residential Plotted Colony in the same town	Complete recovery before grant of licence.

2. All other policy parameters and provisions as presently applicable under the aforementioned policy dated 08.02.2016, dated 24.01.2018, dated 09.07.2018 and as amended from time to time, shall continue to remain applicable.

25. Therefore, the amount charged by the respondent on account of IDC, if any, shall be refunded to the complainant in view of the aforesaid letter dated 08.02.2016. Further, the promoter shall charge EDC from the

complainant/allottee as provided under memo dated 05.12.2018, on pro-rata basis in proportion to the super area of her plot to the total super area of the project, subject to the respondent furnishing proof of having paid the same to the competent authority. The calculation with regard to the proportionate share of the complainant on pro rata basis to be supplied to the complainant within a period of two weeks and the excess amount paid if any, shall be refunded to the complainant.

26. **Electrification Charges:** - This issue has already been dealt by the authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited wherein** it is held that the promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.
27. **Maintenance charges:** - This issue has already been dealt by the authority in complaint titled as **Varun Gupta Vs. Emaar MGF Land Limited (supra)**, wherein; it is held that the respondent is right in demanding advance maintenance charges at the rates prescribed in the builder 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 allottees 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.
28. In the present complaint, the respondent is demanding a sum of Rs.73,364/- on account of advance maintenance charges for a period of two years. In view of the order in **Varun Gupta Vs. Emaar MGF Land Limited (supra)**, the respondent is directed to charge the advance maintenance charges for a period of one year only.

29. **Electric, water and sewerage connection charges:** The promoter is entitled to charge the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the plot allotted to the complainant vis-à-vis the area of the project, subject to the respondent furnishing proof of having paid the same to the competent authority. The calculation with regard to the proportionate share of the complainant on pro rata basis to be supplied to the complainant within a period of two weeks and the excess amount paid if any, shall be refunded to the complainant.

G. I Direct the respondent to execute conveyance deed in favour of the complainant.

30. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas, as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
31. The possession of the subject unit has already been offered to the complainant after obtaining completion certificate on 21.01.2020. Therefore, the respondent/builder is directed to handover the possession of the unit on payment of outstanding dues if any, within 30 days to the complainant/allottee and to get the conveyance deed of the allotted unit executed in his favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order. Further, only administrative charges of upto Rs.15000/- can be charged by the promoter-developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard vide circular dated 02.04.2018.

H. Directions of the authority

32. 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):

- i. The respondent/promoter is directed to refund the amount received by it from each of the complainant(s) on account of IDC, if any, to the complainant(s).
- ii. The promoter shall charge EDC from each of the complainant(s) as per memo dated 05.12.2018, on pro-rata basis in proportion to the super area of their plot(s) to the total super area of the project. The excess amount paid if any, shall be refunded to the complainant(s).
- iii. The respondent/promoter shall not charge any amount from the complainant(s) on account of electrification charges.
- iv. The respondent is directed to charge the advance maintenance charges for a period of one year only.
- v. The respondent is directed to handover the possession of the unit on payment of outstanding dues if any, within 30 days to the complainant(s) and to get the conveyance deed of the allotted unit executed in his favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- vi. The respondent shall not charge anything from the complainant(s) which is not the part of the buyer's agreement or provided under Affordable Plotted Housing Policy, 2016.
- vii. Out of the amount so assessed, the respondent is directed to pay interest on the refundable amount at the rate of 10.75% p.a. as



prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

- viii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
34. The complaints stand disposed of.
35. Files be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.12.2023

HARERA
GURUGRAM