



## Real Estate Regulatory Authority, Punjab

First Floor, Block-B, Plot No. 3, Sector-18 A, Madhya Marg, Chandigarh - 160018

### Before the Real Estate Regulatory Authority, Punjab

1. **Complaint No.** :- GC No. 0336/2021
2. **Name & Address of the complainant (s)/ Allottee** :-
  1. Sh. Krishan Lal Bishnoi
  2. Ms. Raj Bala

(Both residents of D-2/22, 2<sup>nd</sup> Floor, DLF Valley, Behind Amravati Enclave, Sector 3, Kalka-Pinjore, Urban Complex, Panchkula, Haryana - 134107)
3. **Name & Address of the respondent (s)/ Promoter** :-
  1. Barnala Builders  
At Opp. McDonald's, NH-22, Zirakpur-Ambala Highway, Zirakpur, SAS Nagar-140603
  2. Sh. Satish Jindal  
Barnala Builders Opp. McDonald's, NH-22, Zirakpur-Ambala Highway, Zirakpur, SAS Nagar-140603
  3. Sh. Deepak Aggarwal  
Barnala Builders Opp. McDonald's, NH-22, Zirakpur-Ambala Highway, Zirakpur, SAS Nagar-140603
4. **Date of filing of complaint** :- 31.08.2021
5. **Name of the Project** :- Maya Garden Magnesia
6. **RERA Registration No.** :- PBRERA-SAS79-PC0022
7. **Name of Counsel for the complainant, if any.** :- Sh. Vagesh Marwaha, Advocate for the complainant
8. **Name of Counsel for the respondent, if any.** :- Sh. Jatin Bansal, Advocate for respondents.
9. **Section and Rules under which order is passed** :- Section 31 of the RERD Act, 2016 r.w. Rule 36 of Pb. State RERD Rules, 2017.
10. **Date of Order** :- 30.04.2025

**Order u/s. 31 of Real Estate (Regulation & Development) Act, 2016 read with Rule 36 of Pb. State Real Estate (Regulation & Development) Rules, 2017.**

The instant complaint has been preferred by Sh. Krishan Lal Bishnoi and Ms. Raj Bala (hereinafter referred as the 'Complainants') u/s 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the '**RERD Act, 2016**') read with Rule 36 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred as the 'Rules') before the Real Estate Regulatory Authority, Punjab (hereinafter referred as 'Authority') relating to the project 'Maya Garden Magnesia' at Opp. McDonald's, NH-22, Zirakpur-Ambala Highway, Zirakpur, SAS Nagar-140603 (project area 17140 sq. meters)





against the respondent-promoter Barnala Builders. It is noteworthy that the present complaint was initially heard by the Bench of the then Member, Sh. Ajay Pal Singh, RERA, Punjab and was subsequently referred to the Full Authority.

2. The complainants submitted that they have booked a Unit No. 9, Lower Ground, Type Showroom situated within the real estate project named "Maya Garden Magnesia" being developed by the respondent at the above stated address, by submitting Application No. 694 dated 28.07.2018. Consequently, the Buyer's Agreement (hereinafter referred to as "**Agreement**") was entered into between the complainants and the respondent-promoter on 22.02.2021 @ Rs.56,58,515/-. The complainants made total payment of Rs.42,13,505/- against the said booking out of the total sale consideration as mentioned above. Thereafter, the respondent-promoter had issued a letter for offer of possession dated 27.04.2021 and had asked the complainants to clear the pending dues of Rs.12,00,121/-. It has been alleged by the complainants that the respondent-promoter has illegally offered possession vide letter dated 27.04.2021 as the unit and project in question are not complete in all respects. The complainants have stated that various amenities in the project in question are missing and remains incomplete, which *inter alia* includes structure in some areas, plastering, hanging wires, no electricity connection, basement multi-level parking facility, water connection, drinking water, toilets & other utilities in common areas not functional, elevators between buildings are not ready to use, paint/white washing, fire extinguishers, smoke detectors, fire safety equipment, fountain & swimming pool have not been constructed, no security staff, etc. It has also been mentioned by the complainants that these shortcomings were also admitted by the respondent promoter in a meeting held with the allottees, which bears the signatures of the managing director. Further, the complainants have stated that the possession can only be offered after obtaining of occupancy certificate and as per Clause 9.1 (i) of the Agreement, the promoter shall be in default if it fails to provide ready to move in possession of the unit, which shall mean that the unit shall be in a habitable





condition and complete in all respect. Furthermore, the complainants have mentioned in the complaint that the obtaining of a partial completion certificate by the respondent-promoter is insufficient to offer possession of the unit as the project remains incomplete and also the project has been developed as a single unit, thereby the promoter is required to obtain occupancy certificate for providing proper offer of possession. They further stated that they are being forced by the respondent-promoter to pay maintenance and holding charges due to illegal offer of possession. As a result, it is the prayer of the complainants that the letter regarding offer of possession dated 27.04.2021 be set aside and declared as illegal, null and void, and consequently, any financial obligations on the complainants arising out of the said letter of offer of possession be declared as illegal, null and void. It is further prayed by the complainants that the respondent-promoter be directed to complete the construction and development in all respects with the development of all specifications, facilities, amenities, etc. as promised and to obtain a completion certificate / occupancy certificate, and all other necessary approvals, and thereafter offer possession to the complainants. It was also prayed that a local commissioner / commissioner be obtained to verify the actual status of construction at the project site.

3. In response to notice, the learned counsel for the respondent-promoter filed its reply dated 04.01.2022. The learned counsel for the respondent-promoter contended that the complainants intentionally and deliberately withheld the fact that the respondent has already acquired the Partial Completion Certificate – cum – Occupancy Certificate on 25.02.2021 consisting of the complainants' unit in question and only after obtaining the same, the respondent has offered the possession of the unit to the complainants vide offer of possession letter dated 27.04.2021. It is further stated that after issuance of the aforesaid offer of possession letter, the complainants had inquired the respondents about obtaining occupancy certificate and the same was duly provided to the complainants with the request to take the possession of the unit as





per the terms and conditions of the Agreement. However, instead of taking the possession of their unit, the complainants mischievously filed the present frivolous, vexatious and misconceived complaint, in an illicit attempt to wriggle out their obligation to pay the pending dues towards the total amount of the unit in question. The learned counsel for the respondents referred Section 11(4)(b) and Section 17 of the RERD Act whereby the promoter is liable to obtained occupancy certificate from the competent authority and hand over possession of the unit to the respective allottee within 3 months from the date of obtaining the said occupancy certificate. In the case, the respondent obtained the occupancy certificate on 25.02.2021 and offered possession of the unit in question to the complainants on 27.04.2021 in a time bound manner as per the provisions of the RERD Act, 2016 and as per Clause 7.2 of the Buyer's Agreement and the complainant was bound to take the possession of the unit, as per Section 19(10) of the RERD Act, 2016. In the reply, it is further stated that the present unit in question is complete in all respects and the Partial Completion – cum – Occupancy certificate is a valid proof of the same and this Authority does not have the jurisdiction to go into the legality of the issuance of valid occupancy certificate. It is further contended that the respondents have obtained the occupancy certificate and issued the offer of possession without any delay and the complainants are bound to take the possession of the unit, as per the provisions of RERD Act as well as specific terms and conditions of the Buyers' Agreement. The learned counsel for the respondent while reproducing Section 19(10) of RERD Act and Clause 33(i) of the Agreement stated in its reply that the complainants have intentionally and deliberately violated their obligations and duties without any justification in failing to take over the possession of the unit in question.

4. It is further contended in the reply that the complainants deliberately concealed the factum of availing benefits from the respondent with respect to investment benefits / returns as per the mutual understanding between the





parties. Notably, the complainant received a substantial amount of Rs.8,23,583/- towards the investment benefits / returns from the respondent. It is further asserted in the reply that the complainants are the actual defaulter in the instant case, having failed to pay the pending dues of Rs.12,00,121/- due towards the total sale consideration of the unit, excluding maintenance, holding, delayed interest charges, thereby breaching Section 19(6) of the RERD Act, 2016 and relied upon Section 33(h) of Buyer's Agreement specifically states that *"It will be the absolute duty of the allottee to deposit remaining cost of allotted unit along with all other dues and taxes within last week before completion of September, 2022 or the time as specified in offer of possession letter, whichever is earlier"*. The learned counsel for the respondents also referred Section 19(6) of the RERD Act and also Clause 7.3 of the Buyer's Agreement which clearly states that *"Failure of Allottee to take Possession of Commercial Unit / Plot – Upon receiving a written intimation from the Promoter as per Clause 7.2, the Allottee shall take possession of the Commercial Unit / Plot from the Promoter by executing necessary indemnities, undertakings and such other documentation as prescribed in this Agreement, and the Promoter shall give possession of the Commercial Unit / Plot to the allottee. In case the allottee fails to take possession within the time provided in Clause 7.2, such Allottee shall continue to be liable to pay maintenance charges as applicable."* Thus, as per the provisions of Clause 33(j) of the Buyer's Agreement, the complainants are liable to pay holding charges of Rs.3,27,300/- at the time of filing the present reply, which are further accruing. It is further submitted that it is the complainants who were in default, not only of the terms and conditions of the Agreement, but also of the specific provisions of the RERD Act, 2016. It is further contended that the complainant is not a genuine buyer and merely entered into the Agreement to avail the returns / interests. It is further submitted that the actual reason for delaying the payment of the pending dues and taking the possession of the unit was that under the terms and conditions of the Agreement, the allottee was bound to start the business in the allotted commercial unit within the prescribed time failing which the complainants





would be liable to pay penalty to the respondent and in support of this plea relied upon Clause 33 (l) of the Agreement. It is further pleaded that the complainants have challenged the construction and development work done on the site. The averments raised by the complainants related to agreement and the performance of obligations contained therein can only be decided under the provisions of the Specific Relief Act and the Indian Contract Act.

5. The learned Counsel for the respondents further stated that regarding the validity of agreement to sale as per the RERD Act, 2016, involved complicated questions of fact and required evidence from both sides, and is purely to be dealt by a Civil Court. It is further contended that the transaction being continuous in nature, this Authority cannot put supervision to ensure the compliance of the terms and conditions of the Agreement which is signed by the complainants and relied upon its Clause 33(w). It is further stated that there is no deficiency in service or any unfair trade practice on the part of the respondents rather the complainants have failed to adhere to the terms and conditions of the Agreement.

6. On parawise reply to the complaint, the respondents reiterated and reproduced the contents of above preliminary submissions of its reply. The respondents denied the contentions of the complainants that the respondent has illegally offered possession vide Letter dated 27.04.2021 (Annexure C-3) and further denied that the unit in question is neither complete nor habitable condition. It is stated that the unit in question is entirely complete and partial completion – cum – occupancy certificate has already been obtained by the respondent and as per the law, after obtaining the occupancy certificate, the possession of the unit in question was offered to the complainants. The respondents further denied that any specifications, particulars and amenities are missing and have not been developed as most of the specifications mentioned therein, comes under the purview of common area facilities and the answering respondent has time till September, 2022 as per the permission granted by the RERA registration certificate, to complete such common area facilities and pendency of any common





area facility (if any) does not automatically render the offer of possession as invalid. Respondents relied upon the judgment of full bench of this Authority in the matter of "*Maj. Deepak Chauhan and Anr. vs. ATS Estates Pvt. Ltd.*", GC No. 1425 of 2019, decided on 23.04.2021, wherein in a similar matter directed the allottee to take possession of the unit and further held that the allegations pertaining to pendency of common area facilities are premature as the due date for completion as per RERA Registration is yet to expire. Even otherwise, non-completion of specifications of the project is a separate issue and the complainant has a right to raise it through a separate complaint. However, the present complaint is limited to the extent of issuance of the offer of possession letter dated 27.04.2021 (Annexure C-3), for which only requisite condition is procuring and obtaining the Occupancy Certificate from the competent authority. In the present matter, the respondent has offered the possession after obtaining the occupancy certificate, therefore, the present complaint is liable to be dismissed. It is also denied by the respondents that any shortcomings were admitted by the Managing Director in any meeting held with allottees as referred in Annexure C-4. It is further denied that there is no electricity provision at the project. It is stated that Annexure C-5 fails to support any of the averments as wrongly alleged by the complainants. Rather, a bare perusal of Annexure C-5 establishes and proves that there are adequate provisions of electricity connections by the respondents. Reliance has been placed on Clause 33(r) of the Agreement, which states that the responsibility for getting the individual electricity connection from the concerned authorities in the unit in question is that of the complainants and the respondent cannot be held accountable or liable for the same. Respondents also relied upon Recital (I), Clause 33(i) and 33(w) of the Agreement to Sell. It is further contended by the respondents that the complainants are liable to pay maintenance charges, holding charges, pending dues along with interests thereupon and relied upon the judgment of this Authority in the matter of "*Nitin Pargal v. M/s Hero Realty Pvt. Ltd.*", GC No. 0033 of 2021, wherein directions were issued to the allottee to take the possession of the unit along with payment of pending dues along with interest





thereupon. Therefore, it is the prayer of the respondents that the present complaint be dismissed and complainant be directed to take the possession of the Unit; to pay the pending dues towards the total sales consideration along with interest thereupon from the date of offer of possession till date of actual payment; to pay the maintenance charges and holding charges along with interest thereupon and pendente lite interest.

7. The learned counsel for the complainants submitted rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. However, while refuting the claim that the complainants received assured returns amounting to Rs.8,23,583/-, the complainant in their rejoinder clarifies that actually, they have only received a total amount of Rs.1,04,944/-. It is further contended that since the respondents are admitted to having an arrangement of assured investment returns, the respondents are liable to pay the same till legal possession is offered after obtaining the legally valid Occupancy Certificate.

8. That representatives for parties addressed arguments on the basis of their submissions made in their respective pleadings as summarised above.

9. During the arguments, Sh. Vagesh Marwaha, Ld. Counsel for the complainants submitted that the complainants have entered into a Commercial Unit Buyer's Agreement whereby the respondent promised to develop possession of Unit No. 9, Lower Ground Floor, Type Showroom. The complainants have paid Rs.42,13,505/- towards the total sale consideration of Rs.56,58,515/-. It was argued that the respondents unlawfully offered possession of the unit in question vide letter dated 27.04.2021 to the complainants even though the unit and the project are incomplete. It was further argued that the respondents, in a meeting with the allottees, admit the shortcomings and provided a written commitment with timelines as to when they will complete the unit and the project. The learned counsel for the complainants argued that the project remains in an uninhabitable





condition and moreover, various amenities have not even been completed by the respondent-promoter in the project. It was further argued that the respondents have offered possession before completion of the project and before obtaining the occupancy certificate in order to stop paying assured returns to the complainants and to charge holding and maintenance charges. It is also argued that since the respondents have admitted there was an assured return arrangement between the parties, this admission amounts to acceptance on their part that they are liable to pay assured returns even today and are liable to pay the same until they complete the entire project. Further, while relying on Section 3 of the RERD Act, it is argued that a partial completion certificate / occupancy certificate cannot be granted in the present case as it is a single project having one registration number. It is also argued that the partial completion / occupancy certificate dated 25.02.2021 was granted subject to various conditions mentioned in the said Certificate and non-compliance/non-fulfillment of any of those conditions would render the Certificate ineffective and nugatory. Condition No.8 thereof states that there should be no dues outstanding pertaining to the project. However, the respondents have huge outstanding dues pertaining to electricity which is evident from the letter issued by PSPCL (Annexure C-5) and another letter dated 18.04.2022 (Annexure C-11). Further, the respondents have failed to comply with the conditions of the Punjab Pollution Control Board as per condition no. 10. As such, the respondents have failed to comply with the conditions listed in the said Certificate, thus, it cannot be said there is a valid partial completion / occupancy certificate for the project in question as on date. Thus, it is the prayer of the complainant that the said letter dated 27.04.2021 pertaining to the offer of possession and any financial obligations on the complainants arising therefrom, be declared illegal, null and void and the respondent promoter be directed to complete the construction and development of the unit in question and the project in all respects and to obtain a valid Completion / Occupancy Certificate.





10. On the other hand, Sh. Jatin Bansal, Ld. Counsel for respondents argued that the respondent-promoter after obtaining the Partial Completion Certificate – cum – Occupancy Certificate (PCC/OC) on 25.02.2021 from the Competent Authority i.e. Municipal Council, Zirakpur, District SAS Nagar offered possession to the complainants vide letter dated 27.04.2021. However, the complainants did not come forward to take possession. It is further argued that the project in question is complete in all aspects and more than 700 allottees have already taken possession of their respective units. The respondent –promoter has obtained the PCC/OC from the competent authority as per applicable rules and regulations and if the complainants have any objection in any manner qua the same, they can avail its appropriate legal remedies and challenge the same before the concerned authority. There is no provision under the RERD Act, which empowers the RERA to adjudicate on the issue of validity of any PCC/OC obtained from the competent authority. The said PCC/OC has not been cancelled by any Competent Authority and is still valid. It is further argued that the huge amount of dues is pending against the complainants. It is also argued that the complainants and the respondent-promoter had an agreement outside the scope of the Buyer's Agreement of monthly assured returns, which were to be paid by the respondent-promoter till the offer of possession. The complainants deliberately concealed the fact that the lakhs of rupees have been received towards the assured returns.

11. The learned counsel for the respondents further argued that the instant complaint was pre-mature as the same was filed on 31.08.2021 whereas as per clause 7.1 of the Buyer's Agreement dated 22.02.2021 possession was to be delivered on or before September 2022 and as per RERA registration, the respondent-promoter was to complete the entire project including all the common facilities by March, 2023. The learned Counsel for the respondents further argued that the unit in question is complete in all respects and relied upon the following





judgments of this Authority and the Adjudicating Officer of this Authority as well of the Hon'ble REAT, Punjab as quoted in the written reply and during arguments:-

- i. *Rakesh Rastogi v. M/s Citi Centre Developers* (GC No. 1509 of 2019)
- ii. *Maj. Deepak Chauhan and Anr. v. ATS Estates Pvt. Ltd.* (GC No. 1425 of 2019).
- iii. *Pradeep Upadhyaya vs. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.*
- iv. *Ireo Grace Real Tech Pvt. Ltd. vs. Abhishek Khanna & Ors.* (Civil Appeal No. 5785 of 2019).
- v. *Sudha & Ors. vs. Jaiprakash Associates Ltd.* (CC No. 2804 of 2017, decided on 29.04.2021).
- vi. *Anjali Verma v. Barnala Builders* (Adc No.0030/2022)
- vii. *Rama Luthra and Anr. v. Barnala Builders* (Adc No. 0142 if 2021)
- viii. *Madan Lal Chaudhary v. RERA, Punjab* (Appeal No. 99 of 2022)

12. The learned counsel for the respondents further relied upon the provisions of Section 11(4)(b) and 17 of the RERD Act and on Clause 7.2 of the Buyer's Agreement which provides that the developer is to offer possession to allottees after obtaining occupancy certificate. In this case, the possession has been offered after obtaining valid Occupancy Certificate from the competent authority. Therefore, it is the prayer of the respondents that the present complaint be dismissed and complainant be directed to take the possession of the Unit; to pay the pending dues towards the total sales consideration along with interest thereupon from the date of offer of possession till date of actual payment; to pay the maintenance charges and holding charges along with interest thereupon and pendente lite interest.

13. We have duly considered the arguments of both the counsels of the parties, also gone through the documents available on record as well as considered the written & oral submissions of the parties, and also perused the judgments noted above. The complainants have booked a Unit No. 9, Lower Ground, Type Showroom in the real estate project namely "Maya Garden Magnesia" being developed by the respondent-promoter, which is registered with this Authority. Consequently, the Buyer's Agreement was entered into between the complainants and the respondent-promoter on 22.02.2021 and as per the said





Agreement, the total sale consideration of the unit in question is Rs.56,58,515/- plus service tax as applicable. Out of the total sale consideration, the complainants already paid an amount of Rs.42,13,505/- against the said Unit. Subsequently, the respondent-promoter had issued a possession offer letter dated 27.04.2021. The complainant, however, contends that the said offer of possession issued vide letter dated 27.04.2021 is illegal and is not in conformity with the promised standards as the project in question are not complete in all respects and that essential amenities were incomplete. It is contended by the complainants that the alleged Occupancy Certificate could not be considered as valid document as many of the amenities in the project are not complete.

14. Pursuant to the directions of this Authority issued vide order dated 04.10.2023 in the present matter, Director (TP), RERA, Punjab was directed to inspect the Unit in question in order to verify its specifications and amenities. Director (TP) of this Authority has since submitted her report, the contents of which are reproduced below:-

"Sr. No.	Items/Specifications as per complaint	Status as on date 01.11.2013	Remarks
1.	Plastering	Done	
2.	Hanging Wires	Area of such hanging wires is not specified in the complaint, however, no hanging wires in public area have been noticed.	
3.	No electricity Connection	Many of the units are occupied and running their activities in their respective units, which indicates that their units are supplied with the electricity connection. Moreover, in the said unit also, the electricity wires have been installed.	However, evidence regarding the source of electricity in the project may be sought from the promoter
4.	Basement Multi-level Parking facility	The basement parking has been proposed in the Basement 2, as per the approved Building Plans, which has been kept reserved for the said purpose. However, the demarcation and numbering of the Parking Lots has not been done.	
5.	Water Connection	The Complainant has not mentioned the specific area for not providing the water connection by the Promoter. However, Borewell for the water supply to the project was there and the supply of water in the public toilets etc. was seen.	





6.	Drinking Water	The representative of the promoter apprised that they shall provide the Water Coolers or Drinking Water points in common areas of the project which have not yet been provided.	
7.	Toilets & other utilities in common areas not functional.	On random inspection of some of the toilet units, it was observed that the inspected units are functional.	
8.	Elevators not functional	On random inspection of many of the lifts, it was observed that all of the inspected elevators were functional.	
9.	Sewage system not operational	The inspected units of the public toilets were seen functional. However, the operational status of the whole sewage system can not be ascertained due to want of the expertise.	
10.	Escalators not installed/operational	Same as stated at sr. no. 8.	
11.	Connecting bridges between building are not ready to use	The inspected bridge was functional and being used by users.	
12.	Paint/White Washing	Walls of the unit are white washed but roof was without paint/finishing.	
13.	Fire Extinguishers (out of ) are not operational	Cannot be ascertained due to want of the expertise.	
14.	Ramps & other infrastructure for persons with disabilities as mandated under the 1995 PWD Act	Matter of approval of Building Plans	
15.	Attachments/fittings in Washrooms missing	Random checking of Washrooms	
16.	No Safety railings on sky bridges & side walls	Further the matter relates to approval of Building Plan	
17.	AC not working	Not provided in the said unit.	
18.	No signs indicating unit numbers etc.	Not provided in most of the units as well as on the said unit.	
19.	Lighting	Public Street Lighting has been installed.	
20.	GYM	Functional	
21.	Swimming Pool	Provided	
22.	Rain Water Harvesting	Provided	
23.	Emergency Evacuation	Matter of Building Plan Approval.	
24.	Fountain	Provided and Functional	
25.	Security Staff	On day of spot visit security staff was there on the project site.	
26.	Construction Debris	Not seen during the visit.	
27.	Ramps and other infrastructure for persons with disabilities	Matter of Building Plan Approval."	





15. While glancing through the Partial Completion / Occupancy Certificate dated 25.02.2021 issued by the Competent Authority i.e. Municipal Council, Zirakpur for the project 'Maya Garden Magnesia', Village Singhpura, Zirakpur revealed that it was issued for Block Nos. 4 and 5 and it is the case of the respondents as per para 4 of the reply dated 04.01.2022 that this certificate is with respect to Block Nos. 4 and 5 wherein the unit of the complainants is situated. *Per contra*, it is the case of the respondents that the date of delivery of possession was September, 2022 and they obtained the Partial Completion Certificate / Occupancy Certificate from the Competent Authority on 25.02.2021 and after obtaining the same, the respondents offered possession vide their letter dated 27.04.2021. However, the complainants have not taken possession of their Unit in question. Instead, the complainants have filed the present complaint on 31.08.2021 which was thus pre-mature. We find that the issuance of the Partial Completion Certificate-cum- Occupancy Certificate is a conclusive legal proof that the project has met the minimum standards of habitability as per applicable building norms and laws. As such, the act of offering possession after issuance of the Occupancy Certificate cannot be disregarded as a mere formality.

16. Further, it is noted that the complainants continued to remain silent and did not take possession of the unit despite the alleged offer being made after obtaining the Occupancy Certificate. Given the issuance of the Occupancy Certificate, the offer of possession, and the existence of pending dues, it cannot be conclusively held that the promoter was in breach of delivery obligations after giving offer of possession vide letter dated 27.04.2021.

17. From the above discussion, it is clear that possession of the unit in question was to be delivered to the complainants on or before September, 2022 as per the terms and conditions of the Buyer's Agreement dated 22.02.2021. It is also apparent from record that the respondent-promoter has offered possession to the complainants after obtaining the PCC/OC vide letter dated 27.04.2021 – which





date is prior to the date of September, 2022 – the date stipulated in the Buyer's Agreement dated 22.02.2021, for handing over possession of the unit in question. As per Clause 7.2 of the Buyer's Agreement, it is incumbent upon the promoter to offer possession of the Unit after obtaining the Completion Certificate from the competent authority. In the present case, the promoter has duly obtained the Occupancy Certificate from the competent authority on 25.02.2021 i.e. well before the date on which the offer of possession was made to the complainants on 27.04.2021. It is a trite law that once the Occupancy Certificate is issued by the Competent Authority, the allottee is required to take possession within two months in terms of Section 19(10) of the RERD Act, 2016. Further, in accordance with the terms and conditions of the Buyer's Agreement as defined under clause 7.2, the possession must be taken by the allottee within three months from the date of offer of possession; nonetheless, the complainants have not taken the possession till date. Thus, it is held that the respondents offered the valid possession of the unit within the timeline agreed between the parties after obtaining the PCC/OC. The complainants after receiving the offer of possession filed the online complaint on 31.08.2021 almost 4 months after obtaining the offer for possession.

18. It is further noted that the complainants have not been able to place on record any documentary evidence that they have challenged the said Partial Completion / Occupancy Certificate before the Competent Authority. This implies that the said PCC/OC has been issued correctly by the Municipal Council, Zirakpur on 25.02.2021 and stands valid and unopposed.

19. According to Clause 7.2 and Clause 33 (i) of the Buyer's Agreement, in the event the allottee fails to take possession of unit within 3 months from the date of offer of possession letter, the allottee shall be liable to pay maintenance charges and holding charges. The extract of Clause 7.2 and Clause 33(i) of the said Agreement are reproduced hereinafter as follows for ready reference:-

*"7.2 Procedure for taking possession- The Promoter, upon obtaining the occupancy certificate from the competent authority shall offer in writing the possession of the Commercial Unit/Plot, to the Allottee in terms of this Agreement to be taken within three months from the date of issue of such notice and the Promoter shall give possession of the Commercial Unit / Plot to the Allottee. The Promoter agrees and undertakes to indemnify the*





*Allottee in case of failure of fulfillment of any of the provisions, formalities, documentation on part of the Promoter. The Allottee agrees to pay the maintenance charges as determined by the Promoter/association of allottee in case, as the case may be. The promoter on its behalf shall offer the possession to the Allottee in writing within 30 days of receiving the occupancy certificate of the Project."*

**"33 i) In any case if the allottee fails to take possession of unit within 3 months after receiving offer of possession letter than the allottee will liable to pay holding charges @ Rs.50/- per sq. ft. of area of the Unit PM for first six months of the such delay and after that Rs.100/- per sq. ft. PM from the date of offer of possession letter, till the date of actual possession of allotted unit."**

The possession has already been offered by the respondent-promoter vide letter dated 27.01.2021, but the complainants have still not taken the possession of the Unit in question despite having been obtained Occupancy Certificate. Thus, it is held that the respondent-promoter is entitled to receive maintenance and holding charges as per Clause 7.2 and 33(i) of the Buyer's Agreement mentioned *supra*.

20. The agreement provides that possession will be offered on or before September, 2022. The promoter could achieve its promise even after the outbreak of COVID-19. The payment schedule clearly provides that a sum of Rs.10,79,907/- is to be paid at the time of offer of possession for FITOUTS. It is not linked with any time period schedule. The certificate clearly mentioned in *Gurmukhi* that it is Partial / Occupation Certificate as given below:-

# OFFICE OF THE MUNICIPAL COUNCIL, ZIRAKPUR

(Distt. S.A.S. Nagar)

**ਦਫਤਰ ਨਗਰ ਕੌਂਸਲ, ਜੀਰਾਕਪੁਰ (ਸਿਧੂਆਂ ਅੰਸ਼ ਦੇ ਅੰਸ਼ ਨਗਰ)**

ਸਕ. 25/12/2021

ਸਕ. 25/12/2021

ਮਿਸਟਰ M/s Barnala Builders,  
Project Name :- Moya Garden Magnesia,  
VIII, Singhpura, Zirakpur

ਮਿਸਟਰ M/s Barnala Builders, Project Name :- Moya Garden Magnesia, VIII, Singhpura,  
Zirakpur ਦੇ ਕਾਰਜਸ਼ੀਲ ਪ੍ਰੋਜੈਕਟ ਲਈ ਪਾਬਲਤ ਹੋਂਦਵਾਲਾ ਸਰਟੀਫਿਕੇਟ ਲਈ ਕਰਨ ਵਾਲੇ।  
ਮਿਸਟਰ ਬਾਨਲਾ ਬਹਾਦਰ, ਸਿਧੂਆਂ ਅੰਸ਼ (ਜਿਹੜਾ ਹੁਣਕਾਰਾ) ਪੰਜਾਬ ਰਿਪ੍ਰੇਜੇਂਟ ਆਫ  
ਇੰਸਟੀਚਿਟਿਓਨ ਪ੍ਰੋਜੈਕਟ ਲਈ ਦਫਤਰ ਦੇ ਪੋਰਟ ਨੰ. ਜੀ.ਟੀ.ਪੀ (ਸਕ.)-0021-747 ਹਿੱਸੀ  
23-02-2021 ਸੰਬੰਧੀ।

ਦੁਪਹਿਰੇਕਤ ਵਿਖੇ ਦੇ ਸੰਸਦ ਵਿੱਚ ਮਾਇਆ ਗਾਰਡਨ ਮਗਨੇਸ਼ੀਆ ਦੇ ਕਮਜ਼ੋਰੀਅਤ  
ਪ੍ਰੋਜੈਕਟ ਦੇ ਅੰਦਰ ਬੁਨਿਆਦੀ ਢਾਂਚੇ ਦੇ ਟਾਕਰ ਦੇ ਚਾਲਾਕ ਨੰ. 4 ਅਤੇ 5 ਦੇ ਕੰਪਲੀਟ ਹੋਣ ਨੂੰ ਹੁਣ  
ਅੰਤਿਮ ਪੌਰਾ ਲਈ ਸੁਪਰ ਪੋਰਟ ਵਿੱਚ ਦਸਤ ਹਟਾਇਆ ਦੇ ਅਸਰ ਤੇ ਪਾਬਲਤ ਕੰਪਲੀਟ ਕਰਨਾ।

1. ਕਿ ਬਾਇਲ ਸਿਧੀ ਅਤੇ ਬਾਇਲਟਰ ਅਲੀਓਸ ਸਾਈਟੀ ਮਾਇਆ ਦੇ ਕੰਪਲੀਟ ਹੋਣ ਵਿੱਚ ਸਿੱਧੂਆਂ ਅੰਸ਼ ਦੇ ਪਾਬਲਤ ਹੋਵੇਗੀ। ਅਤੇ ਹਾਇਲ ਸਿਧੀ ਸਰਟੀਫਿਕੇਟ ਹਰ ਸਾਲ  
ਚਲਦੇ ਕਰਕੇ ਦੇ ਹੋਣਾ ਅਪ ਦੀ ਨਿੱਜੀ ਸਿਮਿਧੀ ਹੋਵੇਗੀ।
2. ਸਰਕਾਰ ਦੀਆਂ ਹਦਾਇਤਾਂ ਅਨੁਸਾਰ ਸਿੱਧੂਆਂ ਅੰਸ਼ ਦੇ ਕੰਪਲੀਟ ਹੋਣ ਵਿੱਚ ਸਿੱਧੂਆਂ ਅੰਸ਼ ਦੇ ਪਾਬਲਤ ਹੋਵੇਗੀ ਅਤੇ ਸਰਕਾਰ ਵੱਲੋਂ ਸਾਈਟੀ ਸਿੱਧੂਆਂ ਅੰਸ਼ ਦੇ  
ਹਦਾਇਤਾਂ ਦੀ ਪਾਲਣਾ ਕਰਨੀ ਜਾਰੀ ਹੋਵੇਗੀ।
3. ਇਸ ਸਿਮਿਧੀ ਵਿੱਚ ਸਿੱਧੂਆਂ ਅੰਸ਼ ਦੀ ਕੰਪਲੀਟ ਹੋਣ ਵਿੱਚ ਅਲੀਓਸ ਅਨੁਸਾਰ ਹੋਵੇਗੀ।
4. The Person with disability equal opportunities protection of right &  
full participation Act, 1955 ਅਤੇ ਟੀਐਨ ਹਾਇਲਟਰ ਸਿਮਿਧੀ ਅਤੇ ਸਿਮਿਧੀ ਦੀ  
ਜਾ ਪ੍ਰਤਿ ਹੁਣਕਾਰਾ ਹਾਲਤ ਵਿੱਚ ਹੋਵੇਗੀ ਅਪ ਦੀ ਨਿੱਜੀ ਸਿਮਿਧੀ ਹੋਵੇਗੀ।
5. ਸਰਕਾਰ ਦੀਆਂ ਹਦਾਇਤਾਂ ਅਨੁਸਾਰ ਪਾਬਲਤ ਸਾਈਟੀ ਹਦਾਇਤਾਂ ਅਤੇ ਸਰਕਾਰ  
ਵੱਲੋਂ ਸਾਈਟੀ ਸਿੱਧੂਆਂ ਅੰਸ਼ ਦੇ ਪਾਬਲਤ ਹੋਵੇਗੀ।
6. ਕਾਰਜਸ਼ੀਲ ਪ੍ਰੋਜੈਕਟ ਨੂੰ ਹੋਵੇਗਾ ਕਰਨ ਦੇ ਪਾਬਲਤ ਪ੍ਰੋਜੈਕਟ ਸਾਈਟੀ ਹੋਵੇਗੀ ਅਤੇ  
ਅਤੇ ਸਿਧੀ, ਸਿਧੀਆਂ, ਸਿਧੀਆਂ, ਬਾਇਲ ਬਾਇਲਟਰ ਸਿਮਿਧੀ ਹਾਲਤ ਹਾਲਤ ਵਿੱਚ ਹੋਣਾ ਅਪ ਦੀ ਨਿੱਜੀ ਸਿਮਿਧੀ ਹੋਵੇਗੀ।
7. ਇਸ ਦੀ ਸਮੇਂ ਸਿਰ ਅਪ ਦੇ ਪ੍ਰੋਜੈਕਟ ਸਾਈਟੀ ਹੋਵੇਗੀ ਅਤੇ ਸਰਕਾਰ ਅਪ ਦੇ  
ਜਾ ਅਪ ਉਸ ਨੂੰ ਜਾਰੀ ਕਰਵਾਉਣ ਦੇ ਪਾਬਲਤ ਹੋਵੇਗੀ।
8. ਅਪ ਅਪ ਦੇ ਪ੍ਰੋਜੈਕਟ ਲਈ ਹੋਵੇਗੀ ਦੇ ਨਿਯਮਾਂ/ਰੂਲਾਂ/ਹਦਾਇਤਾਂ ਅਤੇ ਸਿਮਿਧੀ  
ਕਮਿਧੀ/ਕਮਿਧੀ ਲਾਇਸੈਂਸ ਵੀਆਂ ਹਦਾਇਤਾਂ ਦੀ ਪਾਲਣਾ ਕਰਨੀ ਅਪ ਦੀ ਨਿੱਜੀ  
ਸਿਮਿਧੀ ਹੋਵੇਗੀ।
9. ਪੰਜਾਬ ਪ੍ਰਦੂਸ਼ਣ ਕੰਟਰੋਲ ਵੱਲੋਂ ਸਾਈਟੀ ਹਦਾਇਤਾਂ ਦੀ ਪਾਲਣਾ ਕਰਨਾ ਅਪ ਦੀ  
ਨਿੱਜੀ ਸਿਮਿਧੀ ਹੋਵੇਗੀ।
10. ਸਰਕਾਰ ਦੇ ਪੋਰਟ ਮਿਸਟਰ ਜੀ.ਟੀ.ਪੀ (ਸਕ.)-0021-747 ਹਿੱਸੀ 23-02-2021 ਵਿੱਚ  
ਦਸਤ ਹਟਾਇਆ ਦੀ ਬਿਨੁ-ਬਿਨੁ ਪਾਲਣਾ ਕਰਨ ਦੇ ਪਾਬਲਤ ਹੋਵੇਗੀ।

ਦੁਪਹਿਰੇਕਤ ਅਨੁਸਾਰ ਪਾਬਲਤ ਜਾ ਕਰਨ ਨੂੰ ਸੁਪਰ ਵਿੱਚ ਅਪ ਜਾ ਪਾਬਲਤ  
ਕੰਪਲੀਟ ਕਰਨਾ ਸਰਟੀਫਿਕੇਟ ਹੋਵੇਗਾ ਅਤੇ ਇੱਥੇ ਜਾਵੇਗਾ।

ਕਾਰਜ ਸਿਧੀਆਂ ਅੰਸ਼,  
ਨਗਰ ਕੌਂਸਲ ਜੀਰਾਕਪੁਰ।



In this case, the complainant has accepted receiving of assured return of Rs.1,04,944/- while respondent stated it has paid Rs.8,23,583/-. The amounts are not important but the fact is established that there was assured return being paid although it is not the matter of adjudication in the present complaint. However, it does play role in the relationship of allottee and promoter as the allottee received the assured return money per month than the rent will be received by allottee if given on rent. Therefore, early handing over may be financially detrimental to the allottee. In many cases, the allottee(s) tend to delay taking possession because of assured returns.

21. The property is lying vacant and neither promoter nor allottee has utilized it. The promoter is entitled to maintenance charges after reasonable time once it is offered for possession as per agreement. We do not find any reason for allottee to refuse possession. It was desirable after receiving occupation certificate by respondent-promoter that in case of any deficiency, the same should have been communicated and allottee may ask compensation for the same. From the report of Director (TP), RERA, Punjab (*supra*), it is also evident that there were definite deficiency in the amenities made available. In view of it, and not to be considered as a reference in other cases, it is held that the promoter will not charge maintenance and related charges. However, the other terms and conditions of "Agreement for Sale" are held to be enforceable by promoter. We held that in the facts and circumstances, the allottee takes over the possession immediately and avoid further delay. The promoter will be entitled to maintenance charges after two months of giving offer again to allottee although it is considered to be in continuation of the earlier offer. The allottee is not entitled to any interest or any compensation for the period of delay in taking possession since the offer was made originally on 27.04.2021 and the occupation certificate obtained on 25.02.2021 as the possession was otherwise due in September, 2022. Since the respondent-promoter has already completed the Unit and offered possession, therefore, it is entitled to interest on the balance amount as per the payment plan





given in Schedule C of the Agreement as was payable and is still balance to be paid on taking possession as per the terms and conditions of "Agreement for Sale". The payment schedule is as given below:-

**SCHEDULE C**  
**(Payment Plan)**

<b>BASIC COST OF SAID UNIT (Rs.)</b>	<b>Rs. 52,22,115.00</b>
Professional Location Charges (PLC) If applicable	Rs. 0.00
<b>TOTAL (BSP+PLC).....(A)</b>	<b>Rs. 52,22,115.00</b>
<b>ADDITIONAL CHARGES (Rs.)</b>	
External Electrification Charges(EEC)	Rs. 1,63,610.00
Fire Fighting Charges (FFC)	Rs. 1,00,100.00
Power Backup Charges	Rs. 1,00,100.00
Escrow fund	Rs. 54,550.00
<b>TOTAL COST OF ADDITIONAL CHARGES.....(B)</b>	<b>Rs. 4,18,360.00</b>
<b>TOTAL COST OF SAID UNIT (A+B)</b>	<b>Rs. 56,40,475.00</b>

**PLAN OF PAYMENT**

<b>Payment Schedule :</b>		
At the time of Booking	Rs. 25,11,504.00	+Taxes
OR 18.02.2021	Rs. 20,65,104.00	+Taxes
OR OFFER OF POSSESSION FOR FITOUTS	Rs. 10,79,907.00	+Taxes+OTHER CHARGES IF ANY

Please Note: That above stated is a general schedule of payment. In case possession is offered earlier then entire outstanding amount shall be required to be completed on or before the said offer of possession offered.

The occupation certificate was obtained on 25.02.2021 and offer was made on 27.04.2021. We held that the respondent-promoter is entitled to interest on balance amount recoverable at the time of handing over of the possession. The rate of interest is as provided in Section 18 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017. The interest is held to be payable from 1<sup>st</sup> July, 2021 i.e. after giving two months period from the date of offer i.e. 27.04.2021. The rate of interest is determined at 11.10% (today's highest MCLR rate of 9.10% plus 2%) payable by allottee to the respondent-promoter on the balance amount from the date on which it was payable to the date of payment.

22. Considering the facts and circumstances of the case, the applicable legal provisions, and the principles laid down by higher judicial authorities, it is held that there is no merit in the complaint. We are of the view that the promoter has fulfilled its obligations by obtaining the necessary approvals and offering possession after obtaining Partial Completion/Occupancy Certificate on





25.02.2021 when offer of possession on 27.04.2021 was given. Therefore, the complainants are directed as follows:-


- (i) to take possession of the Unit immediately by paying the balance amount, along with interest w.e.f. 01.07.2021 @ 11.10% till the date of payment on whole month basis.
- (ii) to pay the maintenance and holding charges as per the terms and conditions of the Buyer's Agreement to the respondents after two months from taking over of possession or offer of possession, whichever is earlier.

23. In view of the above discussions, the present complaint is, therefore, **disposed off** accordingly. A copy of this order be supplied to both the parties and file be consigned to record room.

Chandigarh  
Dated: 30.04.2025


  
(Binod Kumar Singh)  
Member



  
(Rakesh Kumar Goyal)  
Chairman

A copy of the above order be sent to the followings for further necessary action:-

1. M/s Barnala Builders at Opp. McDonald's, NH-22, Zirakpur-Ambala Highway, Zirakpur, SAS Nagar-140603.
2. Sh. Satish Jindal, Barnala Builders Opp. McDonald's, NH-22, Zirakpur-Ambala Highway, Zirakpur, SAS Nagar-140603.
3. Sh. Deepak Aggarwal, Barnala Builders Opp. McDonald's, NH-22, Zirakpur-Ambala Highway, Zirakpur, SAS Nagar-140603.
4. Sh. Krishan Lal Bishnoi and Ms. Raj Bala, both residents of D-2/22, 2<sup>nd</sup> Floor, DLF Valley, Behind Amravati Enclave, Sector 3, Kalka-Pinjore, Urban Complex, Panchkula, Haryana - 134107)
5. Director (Legal), RERA, Punjab.
6. The Master File.
- ✓ 7. The Record File.

  
(Sawan Kumar),  
P.A. to Chairman  
RERA, Punjab.