

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

Complaint no. 6913 of 2022
Ordre reserved on: 05.10.2023
Order pronounced on: 16.11.2023

1. Akhil Jain
2. Disha Jain
Both RR/o: - B-308, Signature Global Roselia, Sector 95A,
Gurugram, Haryana

Complainants

Versus

M/s Forever Buildtech Private Limited
Regd. Office at: 1102, 11th Floor, Block-A, Signature
Tower, South City, Gurugram Haryana

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Garvit Gupta (Advocate)
Sh. Neeraj Kumar (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees 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 complainants, 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	"The Roselia", sector- 95 A, Gurugram
2.	Project area	8.034 Acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP License no. & validity status	13 of 2016 dated 26.09.2016 upto 30.10.2023
5.	Name of Licensee	Forever Buildtech Pvt. Ltd.
6.	RERA registered/not registered	Registered vide no. 05 of 2017 dated 20.06.2017
7.	RERA registration valid upto	17.05.2021
8.	Unit no.	B -308, 3 rd floor, in tower- B (Page no. 35 of the complaint)
9.	Unit admeasuring	569.243 sq. ft. (Page no. 35 of the complaint)
10.	Date of allotment letter	27.07.2018 (Annexure -2, page no. 29 of the complaint)
11.	Date of execution of Agreement for sale	11.09.2018 (Page No. 34 of the complaint)
12.	Environment clearance	18.05.2017 (Page no. 70 of complaint)
13.	Possession clause	5. Possession 5.1: The developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever is later (Emphasis supplied).



14.	Due date of possession	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]
15.	Total sale consideration	Rs.23,26,972 /- (Page no. 41 of complaint)
16.	Total amount paid by the complainant	Rs.25,28,772 /- (As alleged by the complainant)
17.	Occupation certificate	06.05.2022 (Downloaded from the website of the tcpharyana.gov.in)
18.	Offer of possession	14.05.2022 (Annexure C-9 page 79 of complaint)
19.	Possession letter	13.07.2022 (Page no. 81 of the complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the respondent presented a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in their project to its prospective customers and made the same representations to the complainants as well. Accordingly, the complainants applied for the booking vide their application no. 51820 dated 27.03.2018 by making payment of 5% towards the total sale consideration as per the provisions laid down in Affordable Group Housing Policy, 2013. Pursuant to the application, the draw of lots were held on 24.07.2018 and the complainants were allotted unit no. B-308,



Tower-B, having carpet area of 569.243 sq. ft. together with a two-wheeler parking.

- II. That, despite being aware of the terms and provisions of the Affordable Group Housing Policy, 2013, the respondent deliberately sent a payment demand cum allotment letter dated 27.07.2018 and demanded Rs.11,40,218/- from the complainants out of the total sale consideration of Rs. 23,26,972/- i.e., the respondent demanded 49% out of the total sale consideration whereas, as per the said policy, the respondent could have demanded only 20% at the time of allotment of the unit. Complainants confronted the respondent about the said illegality vide their email dated 27.11.2018
- III. That, apartment buyer's agreement was sent to the complainants, which was wholly one-sided document containing totally unilateral, arbitrary and legally untenable terms favouring the respondent and was totally against the interest of complainants. They felt trapped after making payment of Rs.12,56,567/- out of the consideration amount of Rs.23,26,972 and executed builder buyer agreement dated 11.09.2018.
- IV. That as per clause 5.1 of the agreement, the possession of the unit was to be handed over by the respondent within a period of 4 years from the date of approval of the building plans or grant of environment clearance. As per clause 6.1 of the buyer's agreement, the developer was to provide ready to move in possession of the allotted unit to the complainants on or before 18.05.2021. Environment clearance of the project was obtained on

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18.05.2017. Thus, the due date to deliver the possession as per the agreed terms of the apartment buyer's agreement was on 18.05.2021.

- V. That complainants visited the project site in June, 2021 and were shocked to see that no construction activity was going on there and the work was at standstill. The actual ground reality at the construction site was way different than what the respondent had claimed to the complainants regarding the completion of the project. This further shows that the demands which were raised by the respondent didn't correspond to the actual construction status on the site. After being paid the amount as and when asked by respondent, it was miserably failed to abide by its obligations.
- VI. That respondent has been committing illegality by demanding GST dated 04.05.2020 at old rate of 8%. It is submitted that GST council in its 34th meeting held on 19.03.2019 took the decision vide a press release for a lower effective GST rate of 1% in case of affordable housing scheme instead of the earlier rate of 8% effective from 01.04.2019.
- VII. That complainants made various queries for possession thru emails and respondent finally offered the possession of the unit to the complainants vide its letter dated 14.05.2022 without adjusting delay possession charges and excess interest paid by complainants. Respondent issued possession certificate on 13.07.2022 which was signed by complainants on 20.07.2020. Respondent has deliberately, mischievously, dishonestly and with mala fide motives cheated and defrauded the complainants. That the cause of action

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for the present complaint is recurring one on account of the failure of respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to give delayed possession charges, compensation and refund of illegal charges and finally about a week ago when the respondent refused to compensate the complainants with the delayed possession interest amount, compensation and refund of illegal charges.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondents to pay interest for every month of delay from 18.05.2021 till 20.07.2022.
 - ii. Direct the respondent to provide interest for the excess amount taken by it from the complainants at the stage of allotment which was in violation of the Affordable Group Housing Policy, 2013.
 - iii. Direct the respondent to refund the excess amount taken from the complainants under the garb of the previous GST rates along with interest.
 - iv. Pass an order imposing penalty on the builder on account of various defaults under the Act, 2016 and the same be ordered to be paid to the complainants.
 - v. Any other relief as may be deemed fit by this Hon'ble Authority.

D. Reply by the respondent

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

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- i. That Mr. Mintu Kumar is fully conversant with the facts and circumstances of the case from the records being maintained by the respondent in its ordinary course of business. He has been authorized by board of directors of the respondent vide resolution dated 19.01.2022 to engage counsel, to sign and verify pleadings and to do all acts, deeds and things as may be required for defending the present complaint. As such, Mr. Mintu Kumar competent to sign and submit present reply/accompanying affidavit and documents.
- ii. That pursuant to the application no. 51820 dated 27.03.2018 by the complainants for booking of flat under the Affordable Group Housing Policy 2013 notified by Government of Haryana vide Town and Country Planning Department notification dated 19.08.2013 as applicable at relevant point of time, the complainants were allotted a flat bearing no. B-308 having carpet area of 569.243 sq. ft. and balcony area 101.978 sq. ft. together with the two wheeler open parking site and the pro rata share in the common areas through draw of lots held on 24.07.2018.
- iii. That subsequent to the allotment of the said flat the complainants entered into builder buyer agreement dated 11.09.2018 with the respondent for the delivery of possession of the said flat on the terms and conditions as contained therein. The total cost of the allotted flat was Rs.23,26,972/- excluding other charges such as stamp duty, registration charges, other expenses etc. and applicable GST.

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- iv. That the delivery of the possession of the said flat was agreed to be offered within 4 (four) years, from the approval of building plans or grant of environmental clearance, whichever is later. However the delivery of possession was subject to Force Majeure circumstances, receipt of occupancy certificate and allottee(s) having timely completed with all its obligations.
- v. That the proposed period of delivery of physical possession was subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having complied with all obligations of allotment in a timely manner and further subject to completion of formalities/documentation as prescribed by the respondent and not being in default of any clause of the agreement.
- vi. That the agreed possession period would have been applicable provided no disturbance/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory authorities etc.
- vii. That prior to the completion of the project, various force majeure circumstances (such as construction bans, Covid-19 pandemic, various lockdowns etc.) affected the regular development of the real estate project. The deadly and contagious Covid-19 pandemic had struck which have resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid-19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent. That the outbreak of Covid-19 has been declared as a pandemic by the World

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Health Organization/Advisories/directions including lockdown/restrictions have been issued by the Govt. of India and also by the State Govt. The said pandemic has had serious consequences and was so deadly and contagious that complete lockdown was imposed several times not only in Haryana but in India and rest of the world also. That even lockdown was withdrawn various restrictions continued to be imposed.

- viii. That this Authority, has already been granted a period of 6 months extension for all ongoing projects vide order/direction dated 26.05.2020 on account of 1st wave of Covid-19 pandemic. The said lockdown was imposed in March 2020 and continued for around three months. However, the extension of six month was granted in contemplation of its effects against three months of lockdown.
- ix. That before the effect of 1st wave of COVID-19 could subside, it is matter of fact that 2nd and 3rd wave of Covid19 out broke. The 2nd wave of Covid-19 pandemic had hit the country badly 'like a tsunami' and Haryana was no exception thereof. That Gurugram falls within the area of NCR and different competent authorities such as the Hon'ble Supreme Court, National Green Tribunal (NGT), Municipal Corporation Gurugram (MCG) etc. had directed ban on construction activities in Delhi NCR due to rise in pollution level mainly in festive season/ winter season for various periods thereby severely affecting the regular development of the real estate projects. That graded response action plan has been implemented during winters and depending upon severity it also includes ban on construction



activity and infact such restrictions have been imposed from time to time. Reference may be made to article in this regard which was published in business standard.

- x. That owing to a ban on construction activity, especially a complete and a long ban, the labour force gets demobilized. They have to be let off and they generally go back to their native places or seek work elsewhere and resumption of work and gaining pace of construction takes a very long time even after the ban stand lifted. Now as a matter of practice construction labour is not coming to NCR for construction in project site in winter season due to above reason & they are preferring to work in other state outside NCR during that time of year resulting in further delay of mobilization of construction activity.
- xi. That the pandemic and bans on construction activity by competent authorities are force majeure events which are beyond the control of the parties to prevent the same or its consequences and as such in view of Clause 19.1(f) of the BBA, the respondent is entitled to exclusion of period where the constructions of the Project was affected due to orders /directions of statutory authority/court orders/Government orders etc. while calculating the dates for delivery of possession of the said flat.
- xii. That, all these facts were and are in the notice and knowledge of the complainants and they have pleaded deliberate ignorance about the same. The complainants have intentionally omitted any reference to the aforesaid clauses of agreement. Further, the possession has been offered

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to the complainant vide offer of possession letter dated 14.05.2022 and the possession has been accepted without any protest and hence the instant complaint is an afterthought and misuse of the judicial process.

6. 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 based on these undisputed documents and written submission made by the respondent.

E. Jurisdiction of the authority

7. 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

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

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.

8. 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 force majeure conditions:

9. The respondent-promoter pleaded that though the due date for completion of the project and offer of possession of the allotted unit was fixed as 18.05.2021 as per buyer's agreement dated 11.09.2018 but due to outbreak of Covid 19, there was complete lockdown during the period March 2020 to different periods. Even the Government of Haryana termed that as Mahamari alert/ Surakshit Haryana resulting in slowdown of all the activities within the state even though the authority granted six months general extension with effect from 25.03.2020 to 24.09.2020 considering it as a force majeure event. That decision was taken pursuant to the advisory issued by the State Government as well as The Government of India. Due to Covid 19, it took some time to mobilize the labour as well as the construction material. Despite all that the



construction of the project was completed and its occupation certificate was received on 06.05.2022. So, the respondent-builder be allowed extension in offer of possession of the project. Though the request made in this regard is being opposed on behalf of the complainant, but a judicial notice of the fact can be taken that due to Covid 19, there was complete lockdown for a number of days resulting in the labour moving to their native places and the construction activities coming to a standstill. Even that fact was taken into consideration and the authority allowed extension of the ongoing projects for a period of six months.

10. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, the due date of handing over of possession comes out to be 18.05.2021 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders. Also, a relief of 6 months will be given to the complainant/allottees and no interest shall be charged from him for the delayed payments if any, during the Covid period i.e., from 01.03.2020 to 01.09.2020.
11. So, keeping in view these facts, the due date for completion of the project and offer of possession of the allotted unit comes out to be 18.11.2021.

G. Findings on the relief sought by the complainant

- G.1 Direct the respondents to pay interest for every month of delay from 18.05.2021 till 20.07.2022.**

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12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 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."

13. As per clause 5.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

5. POSSESSION

- 5.1** Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and-Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, ***the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.***

14. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottees in fulfilling

formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

15. Due date of handing over possession and admissibility of grace period:

The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans or grant of environment clearance, (18.05.2017), whichever is later and has sought further extension of grace period (after the expiry of the said time period of 4 year) for force majeure.

16. During proceeding dated 05.10.2023, the counsel for the respondent request for counting the due date of possession from the date of revised building plans (29.01.2018) and the environment clearance (09.01.2018) and hence there is no delay on the part of the respondent and further the complainant become allottee only after revision of the above mentioned plans i.e., 24.07.2018. The observes that there is no provision of counting the due date of possession /completion of the project from the revised building plans or the revised environment clearance in Affordable Group Housing Policy, 2013. The clause

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"1(IV) of the policy of 2013, clearly mention that the due date of possession/completion of the project shall be required to be necessarily completed **within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.** This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project." However, there is no such provisions related to revised building plans or revised environment clearance available in the policy of 2013. Therefore, in view of the above the said contention of the respondent is hereby rejected.

17. **Admissibility of delay possession charges at prescribed rate of interest:**

However, 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.

18. 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

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and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

19. 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., 16.11.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.
21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.75%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
22. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3.1 of the agreement executed between the parties on 11.09.2018, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan or grant of environment clearance i.e. (18.05.2017) whichever is later. Therefore, the due date of handing over possession is calculated by

the receipt of environment clearance dated 18.05.2017 which comes out to be 18.05.2021. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.05.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 18.11.2021. Occupation certificate was granted by the concerned authority on 06.05.2022 and thereafter, the possession of the subject flat was offered to the complainant on 14.05.2022. 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 flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 11.09.2018 to hand over the possession within the stipulated period.

23. Section 19(10) of the Act obligates the allottee 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 06.05.2022. The respondent offered the possession of

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the unit in question to the complainant only on 14.05.2022, 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 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has 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 till actual handing over of possession or offer of possession plus two months whichever is earlier.

24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 10.75 % p.a. w.e.f. 18.11.2021 till 13.07.2022 i.e., expiry of 2 months from the date of offer of possession (14.05.2022) or actual taking over of possession (13.07.2022) whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G. II Direct the respondent to provide interest for the excess amount taken by it from the complainants at the stage of allotment which was in violation of the Affordable Group Housing Policy, 2013.

25. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent

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/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default as per section 2(za) of the Act.

G. III Direct the respondent to refund the excess amount taken from the complainants under the garb of the previous GST rates along with interest.

26. The rate of GST for affordable group housing projects were revised from 8 % to 1% by the GST Council in its 34th GST Council meeting held on 19.03.2019 for the projects commenced on or after 01.04.2019. It is observed that the instant project "The Roselia", was commenced on 18.05.2017 i.e., from date of environment clearance. Thus, is liable to be taxed at the rate of 8%.

G.IV. Pass an order imposing penalty on the builder on account of various defaults under the Act, 2016 and the same be ordered to be paid to the complainants.

27. In the absence of any document pertaining to the said violation of the respondent, no direction is being given to this effect.

H. Directions of the authority

28. Hence, the authority hereby passes this order and issues 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 is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 18.11.2021 till 13.07.2022 i.e., expiry of 2 months from the date of offer of possession (14.05.2022) or actual taking over of possession (13.07.2022) whichever is earlier as per provisions of

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section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act. 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.

- 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., 10.75% 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. The benefit of grace period on account of Covid-19, shall be applicable to both the parties in the manner detailed herein above.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

29. Complaint stands disposed of.

30. File be consigned to registry.

Dated: 16.11.2023


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram