

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

Order reserved on:	02.11.2023
Order pronounced on:	21.12.2023

NAME OF THE BUILDER		M/S Forever Buildtech Private Limited	
PROJECT NAME		"The Roselia"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6466/2022	Shika Yadav and Sudhir Yadav V/S M/s Forever Buildtech Private Limited	Sh. Sukhbir Yadav Advocate and Sh. Dheeraj Kumar Advocate along with Sh. Mintu Kumar AR of the company
2.	CR/6468/2022	Pavan Kumar V/S M/s Forever Buildtech Private Limited	Sh. Sukhbir Yadav Advocate and Sh. Dheeraj Kumar Advocate along with Sh. Mintu Kumar AR of the company

**CORAM:****Shri Vijay Kumar Goyal****Member****ORDER**

1. This order shall dispose of both the complaints titled as above filed before the authority 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 allottee 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, "**The Roselia**" (Affordable Group Housing Colony) being developed by the same respondent/promoter i.e., M/s Forever Buildtech Private Limited. The terms and conditions of the booking application form, agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges along with interest and others.

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

<b>Project Name and Location</b>	<b>M/s Forever Buildtech Private Limited at "The Roselia", at Sectors 95-A, Gurugram.</b>	
<b>Project registered vide no. 05 of 2017 dated 20.06.2017 valid up to 17.05.2021</b>		
<b>Date of approval of Building Plans: - 09.01.2017 (Revised on 06.07.2018)</b> No document has been placed on record. Hence taken from the DTCP website.	<b>Date of Environment clearance: - 18.05.2017</b> (Taken from the similar complaint of the said project being developed by the same developer)	
<b>Occupation Certificate: - 14.05.2022</b>		
<p><b>Possession Clause: -</b>  <b>5. POSSESSION</b>  5.1 <i>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."</i></p> <p style="text-align: right;"><i>(Emphasis supplied).</i></p> <p style="text-align: right;"><i>[Page no. 41 of complaint].</i></p>		

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Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell	Due date of possession	Total Consideration /Total Amount paid by the complainants in Rs.
1.	CR/6466/2022  Shika Yadav and Sudhir Yadav V/S M/s Forever Buildtech Private Limited  Date of Filing of complaint 29.09.2022	Reply received on 04.05.2023	402, 4 <sup>th</sup> floor, tower-D  Area admeasuring 514.272 sq. ft. (super area)  (Page no. 31 of the complaint)	14.08.2018  [Page no. 28 of complaint]	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.]	BSP:- 20,97,050/- (As per BBA at page no. 37 of the complaint)  TSC: - 22,64,810/-  AP: - 22,64,810/-  (As per customer ledger dated 14.09.2022 at page no. 84 of the complaint )
2.	CR/6468/2022  Pavan Kumar V/S M/s Forever Buildtech Private Limited.  Date of Filing of	Reply received on 04.05.2023	103, 1 <sup>st</sup> floor, tower-F  Area admeasuring 514.272 sq. ft. (super area)  (Page no. 31 of the complaint)	14.08.2018  [Page no. 28 of the complainant]	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	20,97,050/- (As per BBA at page no. 37 of the complaint)  TSC: - 22,65,038/-  AP: - 22,64,810/-  (As per customer ledger dated 14.09.2022 at

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	complaint 29.09.2022				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.]	page no. 88of the complaint ]
<p><b>The complainants in the above complaints have sought the following reliefs:</b></p> <ol style="list-style-type: none"> <li>1. Direct the respondent party to pay delayed possession interest from the due date of possession i.e. 09.01.2021 till 17.08.2022.</li> <li>2. Direct the respondent to refund Rs.1,45,333/-</li> <li>3. To get an order in their favour by refraining the respondent party from charging maintenance charges for 5 years from the date of handing over the possession as per affordable housing policy.</li> </ol>						
<p><b>Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:</b></p> <p><b>Abbreviation Full form</b>                  TSC Total Sale consideration                  AP Amount paid by the allottee(s)</p>						

4. The aforesaid complaints were filed against the promoter on account of violation of the booking application form, agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of delayed possession charges along with interest and others.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.



6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/6466/2022 titled as Shika Yadav and Sudhir Yadav V/s M/s Forever Buildtech Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua seeking award of delayed possession charges along with interest and others.

**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/6466/2022 titled as Shika Yadav and Sudhir Yadav V/s M/s Forever Buildtech Private Limited.**

S. No.	Particulars	Details
1.	Name of the project	The Roselia, Sector 95-A, Gurugram, Haryana.
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 05 of 2017 dated 20.06.2017 Valid upto 17.05.2021
7.	Date of approval of building plans	09.01.2017 No document has been placed on record. Hence taken from the DTCP website.
8.	Date of approval of revised building plans	06.07.2018 No document has been placed on record. Hence taken from the DTCP website.
9.	Date of Environment clearance	18.05.2017

		(Taken from the similar complaint of the said project being developed by the same developer)	
10.	Date of Environment clearance	28.01.2019 (Taken from the similar complaint of the said project being developed by the same developer)	
11.	Unit no.	402, 4 <sup>th</sup> floor, tower-D (Page no. 31 of the complaint)	
12.	Unit admeasuring	514.272 sq. ft. (Carpet area)	79.923 sq. Ft. (Balcony Area)
13.	Allotment Letter	27.07.2018 (Page no. 25 of the complaint)	
14.	Date of execution of agreement to sell	14.08.2018 (Page no. 28 of the complaint)	
15.	Possession clause	<b>5. Possession</b> <b>5.1</b> <i>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."</i> (Emphasis supplied).	

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(Page no. 41 of the complaint)		
16.	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.]
17.	Total sale consideration	Rs.20,97,050/- (As alleged in the BBA on page no. 37 of the complaint)
18.	Total amount paid by the complainants	Rs.22,64,810/- (As per customer ledger dated 14.09.2022 at page no. 84 of the complaint)
19.	Occupation certificate	06.05.2022 No document has been placed on record. Hence taken from the DTCP website.
20.	Offer of possession	14.05.2022 (Page no. 76 of the complaint)
21.	Conveyance deed	17.08.2022 (Page no. 87 of the complaint)
22.	Possession certificate	08.10.2022

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -
- a. That in March 2018, the complainants being relied on the representation and assurances of the respondent, booked an apartment bearing No. D-402, on 4th floor, type - Bin Tower-D, in the project namely 'The Roselia', situated in Sector -95A, Gurugram, and submitted a pre-printed application form and issued a cheque of Rs.1,04,852/-. The project was marketed & developed by the respondent, under the Affordable Group Housing Policy 2013 and they booked the flat under the installment linked payment plan

for a total sale consideration of Rs20,97,050/- (payment plan is annexed on page 37 of the agreement to sell).

- b. That on 27.07.2018, respondent issued a demand cum allotment letter of the allotted unit of the complainants, and raised a demand of Rs.10,27,552/- . That on 09.08.2018, the complainants paid Rs.1,25,000/- as part payment and requested the respondent to execute the BBA/FBA. The respondent issued a payment receipt in favour of the complainants against the paid amount.
- c. That on 14.08.2018, a pre-printed, arbitrary, unilateral flat buyer's agreement/agreement to sell was executed between the parties. As per section 4.1 of the buyer's agreement, the total cost of the unit was Rs.20,97,050/- and as per clause no. 5 of the buyer's agreement, the respondent has to give the possession of the unit within 4 years from the date of approval of building plans or grant of environment clearance(commencement date) whichever is later. The building plans of the project were approved on 09.01.2017, therefore, the due date of possession was 09.01.2021. The payment schedule of the cost of the unit was divided into six equal installments over an interval of six months.
- d. That on 17.08.2018, complainants sent a letter to the respondent and request to grant the time to avail of the home loan and for making payment of Rs.10,27,552/-. The buyer's agreement was executed on 14.08.2018 and received on 20.08.2018, therefore, they could not get sanction and disburse the loan in a short period, and therefore the complainants requested time to make payment.

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- e. Thereafter, on 16.10.2018, the complainants made the payment of Rs.9,02,552/- to the respondent company. Thereafter, the complainants requested the respondent for a waiver of interest of Rs.54,418/- and asked for rectification of the demand letter dated 19.12.2018. On 15.02.2019, the complainants sent an email to respondent and further requested for waiver of the interest.
- f. That on 17.06.2019 and 27.12.2019 respectively the complainants paid Rs.2,83,101/- and on 19.06.2021, they paid an amount of Rs.2,83,103/- as per the payment plan and the respondent issued a payment receipt.
- g. That on 14.05.2022, respondent issued a letter of offer of possession to the complainants and stating that "It gives us immense pleasure to inform you that the occupation certificate for your unit bearing No. D-402 at The Roselia has been received and the unit is ready for possession". The said offer of possession contains several illegal /unreasonable demands under different heads i.e., administration charges, meter connection, water connection, advance consumption charges, IFSD charges, and external electrification charges of Rs.91,294/-.
- h. That on 20.05.2022, the respondent through a maintenance agency "Skyfull Maintenance Services Pvt. Ltd." raised an invoice for maintenance of Rs.24,687/- The complainants refused to hand over possession, with payment of these demands. Therefore, under the compelling circumstance, the complainants paid Rs.91,294/- and Rs.24,687/- and Rs.29,352/- as late payment interest and maintenance and other demand.
- i. That as per the statement of account issued by the respondent dated 14.09.2022, the complainant has paid Rs.22,64,810/- i.e., more than 100%

of the total sale consideration. The final cost of the flat is Rs.20,97,050/- The statement of account shows the transaction entry till 23.06.2020 and the complainants paid Rs.1,45,333/- (24,687+91924+29352) are not shown in the statement of account.

- j. That on 17.08.2022, the respondent executed conveyance deed in favour of the allottees/complainants and as per said conveyance deed the total sale consideration for the unit is Rs.20,97,050/-.
- k. That due to the acts of the above and the terms and conditions of the buyer's agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.
- l. That the cause of action for the present complaint arose in January 2021 when the respondent failed to handover the possession of the unit as per the buyer's agreement. The cause of action again arose on various occasions, including on: a) August 2021; b) September 2021; c) December 2021; d) January 2022; e) March 2022, and on many times till date, when the protests were lodged with the respondent party about its failure to deliver the fully developed project and the assurances were given by it that the delayed possession interest will be given. The cause of action is alive and continuing and will continue to subsist till this authority restrains the respondent by an order of injunction and/or passes the necessary orders.

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

9. The complainants have sought following relief(s)
  - a. Direct the respondent party to pay delayed possession interest from the due date of possession i.e. 09.01.2021 till 17.08.2022.

- b. Direct the respondent to refund Rs.1,45,333/-
- c. To get an order in their favour by refraining the respondent party from charging maintenance charges for 5 years from the date of handing over the possession as per affordable housing policy.

**D. Reply by the respondent**

10. The respondent contested the complaint on the following grounds: -

- i. That at the outset, the complaint filed by the complainants is grossly misconceived, erroneous, wrong, unjustified and untenable in law being clearly extraneous and irrelevant having regard to facts and circumstances of this case. The complainants approached the respondent out of their own freewill and consent and also after carrying out the necessary due diligence and further after evaluating the commercial viability of the project of the respondent with the other options available in the vicinity.
- ii. That in accordance with the terms and conditions of the application form accepted by the complainants, any dispute arising between the parties shall be referred to arbitration. In presence of the arbitration clause as contained in application form, which has been agreed to by the complainants and in light of provisions of arbitration and conciliation Act, the dispute raised by the complainants shall be referred for arbitration and any further proceedings before this commission cannot and ought not to be proceeded with. Hence, the captioned complaint is not maintainable in the present form and liable to be dismissed at threshold.
- iii. That a bare perusal of the complaint would show that the complainants is claiming/seeking direction/relief which is beyond the terms and conditions

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of the BBA. It is submitted that under the Act, this authority may not like to exercise the jurisdiction to go into the interpretation of, or rights of the parties' inter-se in accordance with the said BBA which jurisdiction would be exclusive to the competent authority who enforces the Affordable Group Housing Policy 2013 or a Civil Court. The issue in the present complaint relates to the interpretation and implementation of the terms of BBA which can only be decided by the competent authority who enforces the Affordable Group Housing Policy of 2013 or a Civil Court.

- iv. That the complainants have filed the present complaint for seeking benefits of alleged delay in handing over of the possession by the respondent, however, the respondent and its officials were trying to complete the said project as soon as possible and there was no malafide intention of the respondent to get the delivery of project, delayed. It is important to mention here that this authority, Hon'ble Supreme Court of India as well as Government of India has taken cognizance of devastating conditions of the real estate sector due to spread of Corona Virus Pandemic in nation, which is beyond the control of respondent, hence, the present complaint filed by the complainants is malafide and the complainant are not entitled for any relief as claimed by him in the present complaint.
- v. That the buyer's agreement was executed between the parties on 14.08.2018, and the said buyer's agreement contained all the terms and conditions providing full disclosure of all the material terms and conditions of allotment and the same was signed by the complainants after going through the same and understanding each and every clause contained therein. The complainants have unnecessarily mentioned about the letter

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dated 17.08.2018 sent by the respondent to the complainant to grant the time to avail of the home loan. The respondent was not having any responsibility for granting loan sanction to the complainant. Thereafter, an e-mail dated 15.02.2019 sent by the complainant to the respondent for waiver of interest was beyond the scope of execution of BBA between the parties and the same was misleading and the respondent has rightly refused to grant the waiver of interest. The complainants have agreed to pay the total cost and other charges in terms of the agreement and bound to fulfill other terms, conditions and stipulations, as contained in the agreement. It is pertinent to mention here that in the agreement executed between parties it was specifically stated about "other charges" other than the total cost. It is the obligation of the complainant to make the payments as per demand made by the respondent before taking the possession of the said flat as per buyer's agreement. The respondent has made the payment to the respondent as per the terms and conditions of the BBA and, therefore, question of claiming any refund from the respondent does not arise at all. The complainants have paid the administrative charges as demanded by the respondent as per clause 5.2 of the said buyer's agreement. The complainants were compelled to make the necessary payments.

- vi. That the respondent has issued the offer of possession along with the statement of account reflecting the charges which is to be payable by the complainants. It is submitted that the charges as demanded and payable by the complainant was payable at the time of offer of possession which was paid by them.

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- vii. That the respondent is bound by the terms and conditions of BBA in normal and ordinary circumstances and the respondent has acted as per the terms and conditions of the BBA executed between the parties. The possession was handed over to the complainant in agreed terms considering force majeure including, construction ban, outbreak of the pandemic of Covid-19. Moreover, the agreement of sale notified under the Rules, 2017 categorically excludes any delay due to "force majeure", court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project. That in addition to the aforesaid period of 9 months, the following period also deserves to be excluded for the purpose of computation of period available to the respondent to deliver physical possession of the apartment to the complainants as permitted under the Rules, 2017. That the alleged delay in construction/development, if any, is attributable to reasons beyond the control of the respondent. Respondent was enough bonafide that when the circumstances turned in its favour they have immediately issued the letter of offer of possession to the complainant on 14.05.2022.
- viii. That the respondent/promoter has demand of charges i.e., administrative charges, advance electricity consumption charges, IFSD charges, external electrification charges and the interest on delayed payment were cover under the head of "other charges". That as per the terms of the said BBA if the complainant fails to take over the possession of the said flat the respondent shall have no liability or concern in respect thereof and the act of complainant i.e. failure to comply with the terms and conditions of the said BBA and the Policy of 2013, is to be treated as breach of agreement.

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11. 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 made by the parties and written submissions filed by the complainants.

**E. Jurisdiction of the authority**

12. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

14. 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.

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15. 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.1 Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.**

16. The agreement to sell entered into between the two side on 14.08.2018 contains a clause 31 relating to dispute resolution between the parties. The clause reads as under: -

***"31. Dispute Resolution:***

*All or any disputes arising out or in connection with this Agreement including its existence, interpretation and validity of the terms thereof and the respective rights and obligations of the Parties, shall be settled amicably by mutual discussion, failing which, the same shall be referred to and finally resolved by arbitration pursuant to the provisions of the (Indian) Arbitration and Conciliation Act, 1996. The Parties further agree as follows:*

*(i) the seat and venue of the arbitration shall be New Delhi, India.*

*(ii) the arbitral tribunal shall consist of 3 (three) arbitrators. The Developer and the Allotee(s) shall appoint 1 (one) arbitrator each. These 2 (two) arbitrators shall in turn appoint the 3rd (third) arbitrator.*

*(iii) the language of the arbitration shall be English.*

*(iv) the award of the arbitration panel shall be final and conclusive and binding upon the Parties and non-appealable to the extent permitted by Applicable Law.*

*(v) the Parties further agree that the arbitration panel shall also have the power to decide on the costs and reasonable expenses (including reasonable fees of its counsel) incurred in the arbitration and award interest up to the date of the payment of the award.*

*(vi) during the arbitration proceedings, the responsibilities and obligations of the Parties set out in this Agreement shall subsist and the Parties shall perform their respective obligations continuously except for that part which is the concerned matter of dispute in the arbitration".*

17. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts



about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

18. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court ***in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the judgement of NCDRC. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy*

*under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

**F.II Objection regarding force majeure conditions:**

19. 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 14.08.2018 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

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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.

20. 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/allottee 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.

**G. Findings on the relief sought by the complainants**

**G. I Direct the respondent party to pay delayed possession interest from the due date of possession i.e. 09.01.2021 till 17.08.2022.**

21. 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."*

22. 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."***

23. 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.

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

The promoter has proposed to hand over the possession of the said flat as per clause 5.1 of the buyer's agreement within a period of 4 years from the date of approval of building plans (09.01.2017) or grant of environment clearance, (18.05.2017), whichever is later. Therefore, the due date of possession comes out to be 18.05.2021.

25. During proceeding dated 02.11.2023, the counsel for the respondent request that the four years is to be counted from the approvals of revised building plans (06.07.2018) and the allotment of the unit of the complainant after the revised plans and the due date of possession considered from the date of revised plans. The delay in construction due to force majeure circumstances i.e., ban of construction by NGT, and due to Covid- 19, and if the same is allowed, there is no delay in offer of possession. The authority 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 "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

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revised environment clearance available in the policy of 2013. Therefore, in view of the above the said contention of the respondent is hereby rejected.

**26. 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.

27. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
28. 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., 21.12.2023 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
29. 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.

30. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
31. 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 5.1 of the agreement executed between the parties on 14.08.2018, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan (09.01.2017) 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 14.08.2018 to hand over the possession within the stipulated period.

32. 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 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.
33. 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.

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As such the complainants are entitled to delayed possession at prescribed rate of interest i.e., 10.85 % p.a. w.e.f. 18.11.2021 till the expiry of 2 months from the date of offer of possession (14.05.2022) which comes out to be 14.07.2022 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 refund an amount of Rs.1,45,333/-**

34. The complainants submitted that the respondent company has offered the possession of the allotted unit on 14.05.2022 along with statement of account the said letter contains several illegal/unreasonable demands under different heads i.e., administration charges, meter connection, water connection, advance consumption charges, IFSD charges, and electrification charges of Rs.91,294/-, and on 20.05.2022, a maintenance agency i.e., "Skyfull Maintenance Services Private Limited" raised an invoice for maintenance of Rs.24,687/- and Rs.29,352/- as late payment interest. The respondent has demanded certain amount on account of charges i.e., administrative charges, advance electricity consumption charges, IFSD charges, external electrification charges and the interest on delayed payment were cover under the head of "other charges and the same is mentioned below: -

S. No.	Particulars	Basic Amt.	Tax Amount	Due Amount	Received/ adjustment	Balance
1.	Administration Charges	15000	2700	17700	0	17700
2.	Meter connection charges	3700	666	4366	0	4365
3.	Water connection charges	549	99	648	0	648
4.	Advance consumption charges	4500	0	4500	0	4500
5.	IFSD charges	15000	0	15000	0	15000
6.	External Electrification charges	41593	7487	49080	0	49080
<b>Sub Total</b>		<b>80342</b>	<b>10952</b>	<b>91294</b>	<b>0</b>	<b>91294</b>

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35. The authority vide order dated 09.12.2022, passed in case bearing no. **4147 of 2021 titled as Vineet Choubey V/s Pareena Infrastructure Private Limited and also the complaint bearing no. 4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Limited**, has already decided the above said issues. The respondent is directed to charge the same relying on the above said orders. Further, the interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges. In the present matter the respondent issued offer of possession dated 14.05.2022 wherein the respondent has charged delay payment interest on amount of Rs.29,352/-. The respondent is directed to charge the interest on delayed payment as per prescribed rate of interest as per section 2(za) of the Act of 2016.

**G.III To get an order in their favour by refraining the respondent party from charging maintenance charges for 5 years from the date of handing over the possession as per affordable housing policy.**

36. The respondent in the present matter has charged operational cost of utility service of Rs.26,687/- for 12 months these are under the head of maintenance charges only. Moreover clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project: *A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The coloniser shall not be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for*

*such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983. Moreover, the authority on 11.04.2022 requested DTCP, Haryana to give clarification upon the issue of maintenance but the clarification with respect to the said issue. In response of the said letter sent by the Authority, an email dated 29.11.2022 has been received from DTCP intimating that the issue of free maintenance of the colony in terms of section 4(v) of the Affordable Group Housing Policy, stands referred to the Government and clarification will be issued by DTCP as and when the approvals is received from the Government. Therefore, the issue of maintenance charges shall be regulated in terms of the orders of the Government as and when issued and the same would be binding on both the parties.*

**H. Directions of the authority**

37. 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., 10.85% 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 14.07.2022 i.e., expiry of 2 months from the date of offer of possession (14.05.2022). 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.

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- 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., 10.85% 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(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement and the provisions of Affordable Group Housing Policy of 2013.
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
40. File be consigned to registry.

Dated: 21.12.2023

V.1-3  
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram