

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

Date of decision: 12.01.2023

| NAME OF THE BUILDER | | M/S SIGNATURE GLOBAL (India) PRIVATE LTD. | |
|---------------------|--------------|---|--|
| PROJECT NAME | | The Millennia | |
| S. No. | Case No. | Case title | Appearance |
| 1 | CR/7181/2022 | Abhishek Jain and Prachi Jain V/S M/S Signature Global India Private Ltd. | Shri Satish Tanwar Shri Niraj Kumar |
| 2 | CR/7182/2022 | Sukhwinder Singh V/S Signature Global India Private Ltd. | Shri Satish Tanwar Shri Niraj Kumar |

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of the two complaints titled above filed before this 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 allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Millennia situated at Sector-37 D, Gurugram being developed by the same respondent/promoter i.e., M/s Signature Global India Private



Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.

3. The details of the complaints, reply 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:

| | |
|---|--|
| Project Name and Location | "The Millennia" at sector 37D, Gurgaon, Haryana. |
| Project area DTCP License No. | 9.7015625 acres 04 of 2017 dated 02.02.2017 valid upto 01.02.2022 |
| Rera Registered | Registered 03 of 2017 dated 20.06.2017 |
| Possession Clause: - 5. Possession Within 60 days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Flat to the Allottee(s). Subject to Force majeure circumstances, receipt of Occupancy Certificate, as prescribed by the 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 years from the date of approval of building plans or grant of environment clearance, (herein referred to as the "Commencement Date") whichever is later. | |
| Date of approval of building plans: 08.06.2017 Date of environment clearance: 21.08.2017 | |
| Due date of possession: 21.08.2021+ 6 months =21.02.2022 (Calculated from the date of approval of building plans + 6 months of grace period of Covid) | |
| Occupation certificate: 25.01.2023 Offer of possession: 04.02.2023 | |



| Sr. No | Complaint No., Case Title, and Date of filing of complaint | Unit No. | Unit admeasuring | Date of apartment buyer agreement | Due date of possession | Total Sale Consideration / Total Amount paid by the complainant | Relief Sought |
|--------|---|--|--|-----------------------------------|---|---|----------------------------------|
| 1. | CR/7181/2022 Abhishek Jain and Prachi Jain V/S M/s Signature Global India Pvt. Ltd. DOF: 15.11.2022 Reply status: 11.07.2023 | 1303, 13 th floor, Tower 11 | Carpet area: 585.944 sq. ft. Balcony area: 79.545 sq. ft. | 13.11.2017 | 21.02.2022 Calculated from the date of environment clearance + 6 months of grace period of Covid) | TSC: - Rs.23,83,548/- AP: - Rs. | 1. Handover possession 2. DPC |
| 2. | CR/1326/2022 Sandeep Batra and Priyanka Batra V/S M/s Ireo Grace Realtech Pvt. Ltd. DOF: 04.04.2022 | 1208, 12 th floor, Tower 9 | Carpet area: 519.229 sq. ft. Balcony area: 79.653 sq. ft. | 28.11.2017 | 21.02.2022 (Calculated from the date of environment clearance + 6 months of grace period of Covid) | TSC: - Rs.23,07,843/- AP: - Rs. 26,07,843/- | 1. Handover possession 2. DPC |



Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges.
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 all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/7181/2022 Abhishek Jain and Prachi Jain V/S M/s Signature Global India Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges.

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/7181/2022 Abhishek Jain and Prachi Jain V/S M/s Signature Global India Pvt. Ltd.

| S. N. | Particulars | Details |
|-------|-------------|---------|
|-------|-------------|---------|



| | | |
|-----|--------------------------------------|---|
| 1. | Name of the project | The Millennia,37-D Gurugram, Haryana. |
| 2. | Nature of the project | Affordable Group Housing |
| 3. | Project area | 9.7015625 acres |
| 4. | DTCP license no. and validity status | 04 of 2017 dated 02.02.2017 valid upto 01.02.2022 |
| 5. | RERA Registered/ not registered | Registered 03 of 2017 dated 20.06.2017 |
| 6. | Unit no. | 1303, 13th Floor, Tower 11 (Page no. 22 of complaint) |
| 7. | Unit area admeasuring | Carpet Area- 585.944 sq. ft. Balcony area-79.545 sq. ft (Page no. 22 of complaint) |
| 8. | Date of allotment | 01.11.2017 (page no. 17 of complaint) |
| 9. | Agreement to sell | 13.11.2017 (Page no. 21 of complaint) |
| 10. | Date of approval of building plans | 08.06.2017 (as per project details) |
| 11. | Date of environment clearance | 21.08.2017 (as per project details) |
| 12. | Possession clause | 5. Possession <i>Within 60 days from the date of issuance of Occupancy Certificate, the Developer shall</i> |



| | | |
|-----|------------------------------------|--|
| | | <i>offer the possession of the Flat to the Allottee(s). Subject to Force majeure circumstances, receipt of Occupancy Certificate, as prescribed by the 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 years from the date of approval of building plans or grant of environment clearance, (herein referred to as the "Commencement Date") whichever is later.</i> |
| 13. | Due date of delivery of possession | 21.08.2021 + 6 months = 21.02.2022 (Calculated from the date of environment clearance + 6 months of grace period of COVID) |
| 14. | Total sale consideration | Rs. 23,83,548/- (As per agreement to sell on page no. 28 of complaint) |
| 15. | Amount paid by the complainants | Rs. 22,61,764/- (as per mentioned in facts) |
| 16. | Occupation certificate | 25.01.2023 (As per DTCP website) |
| 17. | Offer of possession | 04.02.2023 (page no. 112 of reply) |

B. Facts of the complaint

The complainants have made the following submissions in the complaint: -

8. That complainants duly believed the statement of the representative of respondent and applied with application no.31250 dated 06.08.2017 thereafter the draw of lots held on dated 27.10.2017 as per rule of draw of DTCP / DC Gurugram a unit bearing no 1303 was allotted in Tower-11 having the carpet area of 585.944 Sq. Ft. and balcony area 79.545 sq. ft. alongwith two wheeler open parking site and the prop rata share in the common areas on 13th floor in the project The Millenia in affordable group housing scheme situated at Sector-37D, Gurugram with total sale consideration of Rs.23,83,548.00/- including all other charges. The complainant duly paid the total consideration of Rs.25,83,544.00/-
9. That the complainants without making any kind of delay always deposited the amount required as per the payment plan/schedule opted by the complainants immediately on receipt of letters from the respondent company which has also been admitted and acknowledged by the respondent's company officials. The stamp duty + registration charges & administrative charges as mentioned in the payment plan is liable to be payable by the complainants and that too at the time of offer of possession.
10. That apart from issuing a payment receipts on different dates, the respondent company also issued an allotment letter dated 01.11.2017 carrying the details of unit allotted and also the details of amount to be deposited by the complainants time to time as per payment plan opted by the complainants as per annexure.
11. That the complainant deposited the required amount as per the payment plan opted by the complainants according to the builder buyer agreement, which was executed between the complainant and the respondent



- company on 13.11.2017 following carrying all the details of terms and conditions of the said BBA were complied by the complainants time to time as well as the respondent company from all the time as and when it was required.
12. That after several requests finally the respondent agreed to execute the builder buyer agreement with the complainant and ultimately it was executed on 13.11.2017 vide Vasika No.2965 dated 13.11.2017 registered in the office of Sub Registrar, Kadipur, Gurugram, showing the total sale consideration of Rs.23,83,548.00/- including of Fixtures & Fittings, electricity connection charges and other charges and again the respondent assured the complainant that they have taken all necessary sanctions for the completion of aforesaid project.
13. That as per one of the terms and conditions of the said buyer's agreement dated 13.11.2017, in para no.5.1 it is clearly mentioned that regarding the possession of the said unit it was agreed and settled that the possession of the said unit/flat shall be handed over to the complainants within a stipulated period of 4 (four) years from the date of approval of building plan or grant of environment clearance (hereinafter referred to as the "Commencement Date" whichever is later). Hence, from the above said clause as mentioned in buyer agreement, the respondent company was duly bound to handover the physical possession of the above said unit/flat to the complainants positively upto 13.11.2021 and it was told by the authorised person of respondent that till date they have never delayed the completion of any project they have in their hand.
14. That from the above said timely payments made by the complainants in the respondent company leaves no iota of doubt that the complainants



- have been very sincere and honest while complying with the terms and conditions of above said builder buyer agreement.
15. That on account of not constructing the above said Unit within the stipulated period of 4 years, the complainants kept on requesting the respondent company's officials to complete the construction of the said unit/flat as early as possible and handover the peaceful possession of the above said unit/flat. All the times the respondent kept on misguiding and putting forth the complainant on one reason or the others and could not adhere to the terms and conditions as settled and agreed upon between the respondent and the complainants. And that so much so the respondent company failed to handed over the physical possession of the above said unit to the complainants till date
16. That, till date the complainants are running from pillar to post to get the physical possession of their unit / flat from the respondent till date but futile as the respondent had failed to complete the said project on the assured time. From the abovesaid acts and misdeeds of the Respondent, it is crystal clear that despite of request of the complainants to give them physical possession of the unit flat, thereby misappropriating the huge hard earned money of the complainants.
17. That the respondent being such a type of reputed company firstly trapped the innocent customers like the complainants by showing attractive brochures boosting about the reputation of the respondent company and once the customers like the complainants are trapped in their net, they with having no fear of law of land demands the amount without having any norms leaving the customers like the complainant to run from pillar to post without their being any fault on their part.



18. That on account of not completing the construction of the above said Unit/flat allotted to the complainant within the stipulated period of 4 years, the complainants have suffered a huge monetary loss besides having sleepless night for the past more than 1 year. The complainants had been burdened by the respondent by paying penal rate of interest to the bank, and the complainants has also suffered with great mental harassment and humiliation. The act and conduct of the respondents have also snatched the mental peace of the complainants. The following are the details of monetary loss which has been suffered by the complainants on account of total negligence/carelessness on the respondent part.
19. The amount which is payable upon the respondent company, to the complainant as per the terms and conditions laid down in of Buyer's agreement dated 13.11.2017 by the respondent on account of delayed period for not handing over the possession within the period of 4 years from the date of BBA.
20. That, the complainant tried to approach the respondent many times and requested with folded hands to hand over the physical possession of the said unit/flat. But the respondent did not even bothered to respond the buyer
21. That as the respondent failed to discharge to complete and handover the possession of the allotted unit / flat to the complainants within the stipulated time and thus they have cheated the complainant to invest their hard earn money on believing upon their false assurances. The Respondent in a master minded and scripted way succeeded to their ulterior motive and cause wrongful losses to the complainant and wrongful gains to themselves. Thus the respondent has not only breached



the trust of the complainants but also in a planned and thoughtful way cheated/defrauded the complainant. The complainants due to their said illegal acts, conduct and misdeeds, suffered mental agony, sorrow, trauma and apathy. The respondent involved in the swindling and embezzlement of funds of not only of the complainant but similarly situated innocent people at large. That due to illegal acts and conducts of the Respondent, the complainants had suffered to great mental agony, physical harassment, financial loss, humiliation, hence the respondent is liable to pay the delay possession charges on paid amount to the complainant as per Section 18 of Haryana Real Estate Regulatory Authority.

C. Relief sought by the complainants: -

22. The complainants have sought following relief(s):

- I. Direct the respondent to handover the physical possession of the unit.
- II. Direct the respondent to pay delayed possession interest on the amount paid by the allottee at the prescribed rate from the due date of possession to till the actual possession of the flat is handed over as per the proviso to section 18(1) of the Act.

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

D. Reply by the respondent

The respondent has contested the complaint on the following grounds.

24. That the complainant was allotted a flat bearing no. 1303 in Tower 11 having carpet area of 585.944 sq.ft. on the 13th floor and balcony area



- 79.545 sq. ft. together with the two wheeler open parking site through draw of lots held on 27.10.2017 under the affordable group housing policy 2013 notified by Government of Haryana vide Town and Country Planning Department notification dated 21.08.2017 as applicable at relevant point of time.
25. That subsequent to the allotment of the said flat the complainant entered into agreement with the respondent for the delivery of possession of the said flat on the terms and conditions as contained therein.
26. That the total cost of the allotted flat including balcony area was Rs.23,43,7761/- excluding the other charges such as stamp duty, registration charges, other expenses etc and the payment was time link payment as stipulated by the policy.
27. That the total cost of the said flat was escalation free, save and except increase on account of development charges payable to the governmental authority and/ or any other charges which may be levied or imposed by the governmental authority from time to time, which the complainant had agreed to pay on demand by the respondent.
28. 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.
29. 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.

30. 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.
31. 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.
32. That in fact, almost the entire world had struggled to cope with the Coronavirus menace. The Novel Coronavirus had been declared as a pandemic by World Health Organization. Following the declaration of the World Health Organization, the Ministry of Home Affairs, Government of India vide notification 40-3/2020-DM-I(A) dated 24.03.2020 under the Disaster Management Act, 2005, had imposed lockdown for whole of India for 21 days with effect from 25.03.2020 wherein all the commercial and private establishments was directed to be closed down including transport services besides others. Further, the lockdown was extended vide direction dated 17.05.2020 upto 31.05.2020.
33. That further Ministry of Finance vide Office Memorandum No.F-18/4/2020-PPD dated 13.05.2020 recognized that given the restriction



placed on the goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 and the respective State and UT Government, it may not be possible for the parties to the contract to fulfil contractual obligations and permitted the parties to the contracting with the Government for all construction/works contracts, goods and services contracts and PPP contract to invoke force majeure clause and thereby extended the contract by six months.

34. That the Hon'ble Haryana Real Estate Regulatory Authority vide order no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 extended the date of completion for all Real Estate Projects registered under Real Estate Regulation and Development Act, where completion date, revised completion date or extended completion date was to expire on or after 25th of March, 2020 automatically by 6 months, due to outbreak of the COVID -19 (Corona Virus), which is calamity caused by nature and is adversely affecting regular development of real estate projects by invoking "force majeure" clause.
35. That even before the expiry of said extended period, it is very much in public domain and had also been widely reported that second wave of Covid-19 had also hit the country badly 'like a tsunami' and Haryana was no exception thereof.
36. That Haryana Government had imposed various lockdown for different periods even after January 2021 terming it as "Mahamari Alert/Surkshit Haryana (Epidemic Alert/Safe Haryana) resulting in virtual stoppage of all activity within the state of Haryana.

37. That therefore, it is manifest that both the first wave and second wave of Covid had been recognized by this Hon'ble Authority and the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula to be Force Majeure events being calamities caused by nature which had adversely affected regular development of real estate projects. All these facts have been mentioned hereinabove to highlight the devastating impact of Covid-19 on businesses all over the globe.
38. That the respondent had also suffered devastatingly because of blanket ban on raising of construction, advisories etc. The concerned statutory authorities had earlier imposed a blanket ban on raising of construction, advisories had been issued by the statutory authorities to the developers to ensure that no retrenchment of staff/labour are done and further to ensure that the staff/labour were adequately fed and provided for. Subsequently, the said embargo had been lifted to a limited extent. However, in the interregnum, large scale migration of labour had occurred which had also been extensively reported in printed and electronic media. Availability of raw material remained a major cause of concern. Infact, the aforesaid Force Maeure events had completely affected the ability of the respondent to continue with the construction. Despite diligent efforts, the respondent had been unable to carry on construction/development/implementation of its projects including the project in question during the aforesaid period which in any case should not be considered for determining the period for delivery of physical possession of the apartment to the complainant.
39. That the agreement of sale notified under the Haryana Real Estate (Regulation and Development) 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, 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 complainant as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017.

40. That the development of project of the respondent was also adversely affected due to various orders of Hon' ble Supreme Court, National Green Tribunal, directions of Haryana State Pollution Control Board, Orders passed by Municipal Commissioner of Gurgaon, Environment Pollution (Prevention & Control) Authority for National Capital Region for varying period during the year 2017, 2018, 2019 and 2020. The various dates which affected the constructions of the project have been detailed as under:

- i. National Green Tribunal vide order dated 09.11.2017 completely prohibited the carrying on of construction by any person, private or government authority in the entire NCR till the next date of hearing 17.11.2017 when the prohibition was lifted. The relevant part of the order is reproduced herein for sake of brevity: "All the construction (structural) activity of any kind in the entire NCR is hereby prohibited and will not be carried on by any person, private or Government Authority in the entire NCR till the next date of hearing. However, the internal finishing and interior work (causing no dust whatsoever) where no construction material is used can be carried on.

- ii. Haryana State Pollution Control Board, Panchkula had passed order dated 29.10.2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27.10.2018 whereby directing all construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material was used) to remain closed in Delhi and other NCR Districts from 1st to 10th November 2018.
- iii. Commissioner, Municipal Corporation, Gurugram vide order dated 11.10.2019 prohibited construction activity from 11.10. 2019 to 31.12 2019. On account of passing of aforesaid order, no construction activity could have been legally carried on by the Respondent and accordingly, construction activity had been completely stopped during this period.
- iv. Again Environment Pollution (Prevention & Control) Authority, for the National Capital Region vide direction dated 01.11.2019 imposed complete ban on the construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida until morning of 05.11.2019. The relevant part of the aforesaid order dated 01.11.2019 is reproduced herein for sake of brevity.
- v. Hon'ble Supreme Court vide order dated 04.11.2019 in the W.P. (Civil) No. 13029/1985 M.C.Mehta vs Union of India & ors; directed for stoppage of all the constructions work till further order. The Hon'ble Supreme Court recalled the ban on construction work only vide order dated 14.02.2020. A copy of the order dated 04.11.2019& 14.02.2020 are annexed as Annexure-R9 (Colly).

- vi. Further, Commission for Air Quality Management (NCR and Adjoining Areas) vide order dated 16.11.2021 directed to stop the construction and demolition activities in NCR until 21.11.2021.
41. That due to the Court orders, Government policy/guidelines, decisions a total of 151 days have been lost and the respondent is entitled for the extension of 151 days for delivery of possession of the flat to the complainant.
42. That the period of 151 days in addition to the period affected by Covid-19 (6+3= 9 months) mentioned hereinabove was consumed on account of circumstances beyond the power and control of the respondent owing to passing of orders by statutory authorities affecting the regular development of the real estate project. Since, the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of time already indicated hereinbefore, the said period ought to be excluded, while computing the period availed by the respondent for the purpose of raising construction and delivering possession.
43. That in a recent publication in mint dated 07.10.2022 wherein it has been published that a one-month ban on the construction activities would delay the project by 3-4 months on account of mobilization of the labour, machinery, resumption of supplies of various materials etc. Accordingly, the Hon' ble Authority may consider grant of benefit of extension to the respondent on account of time consumed in re-mobilization of the various construction activities.
44. That it is respectfully submitted that in a recent judgment Hon' ble RERA Authority of Guatam Budh Nagar has provide benefit of 116 days to the

Developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.10.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.11.2019 to 14.02.2020. The Hon'ble Authority was also pleased to consider and provided benefit of 6 months to the Developer on account of effect of Covid also.

45. That it is also in public domain that the third wave of Covid-19 had also badly hit all the activities not only in Haryana but also in India and rest of the world. Haryana Government had imposed lockdown for varying periods owing to Covid19 third wave resulting in virtual closure of construction activities in their entirety within the state of Haryana.
46. That the aforesaid incidence was unforeseen events and beyond the control of the respondent which adversely affected the respondent's ability to perform its obligations under the agreement are within the meaning of force majeure as defined in clause in 19 of the agreement.
47. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

48. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

49. 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

50. 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.

51. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F. I Objection regarding delay due to force majeure circumstances.

52. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 08.06.2017 and environment clearance is 21.08.2017 as taken from the project details. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 21.08.2021. **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/due 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 21.08.2021 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. So, in such case the due date for handing over of possession comes out to 21.02.2022.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to handover the physical possession of the unit.

53. The respondent promoter was granted OC for the subject unit from the competent authority on 25.01.2023 and had offered possession to the complainants allottee vide notice of possession letter dated 04.02.2023. The promoter is directed to handover possession of the unit complete in all respect as per BBA on making due payment by the allottee after adjusting the delayed possession charges. If there is any delayed payment by the allottee the interest at the prescribed rate shall be chargeable by the promoter.

G.II Direct the respondent to pay delayed possession interest on the amount paid by the allottee at the prescribed rate from the due date of possession to till the actual possession of the flat is handed over as per the proviso to section 18(1) of the Act.

54. In the present complaint, the complainants intends to continue with the project and seeking delay possession charges at prescribed rate of interest on amount already paid by her as provided under the proviso to section 18(1) of the Act which 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."

55. Clause 5.1 of the apartment buyer's agreement (in short, the agreement) dated 28.11.2017, provides for handing over possession and the same is reproduced below:

5.1 "Subject to Force Majeure circumstances, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of agreement and not being in default under any part hereof, including but not limited to the timely payment of instalments as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee 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."

56. 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 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 is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

57. Admissibility of grace period: As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession was to be handed over within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later with a grace period of 6 months (COVID-19). Accordingly, the authority 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 allows the grace period of 6 months to the promoter at this stage.

58. Admissibility of delay possession charges at prescribed rate of interest: The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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]

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.

59. The legislature in its wisdom in the subordinate legislation under the 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.

60. 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., 15.12.2023 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

61. 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. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

62. On consideration of the documents available on record and submissions made regarding contravention of 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 buyer's agreement executed between the parties, the possession of the subject apartment was to be



delivered within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later with a grace period of 6 months (COVID-19). As such the due date of handing over of possession comes out to be 21.02.2022. However, no interest shall be charged from the complainant in case of delayed payment during this 6 months COVID period from 01.03.2020 to 01.09.2020.

63. 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 25.01.2023. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he 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 i.e., 21.02.2022 till the expiry of 2 months from the date of offer of possession (04.02.2023) plus two months (i.e., 04.04.2023).
64. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the

possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 21.02.2022 till offer of possession plus two months (i.e., 04.04.2023), at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. . Directions of the authority

65. 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):

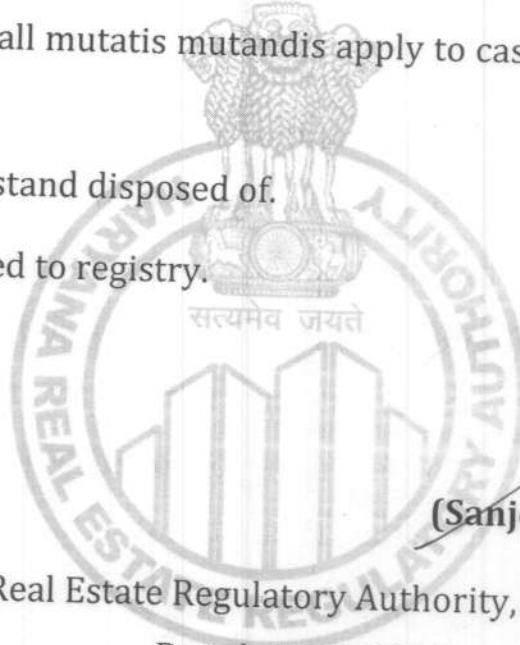
- i. The respondent is directed to handover physical possession of the subject unit within 60 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 21.02.2022 till offer of possession i.e., 04.02.2023 plus two months i.e., upto 04.04.2023 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- iii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the



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- respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
66. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
67. The complaints stand disposed of.
68. Files be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.01.2024

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