

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

Complaint no. :	1394 of 2023
Date of filing complaint:	07.04.2023
Date of order	02.01.2024

Sh. Sunil Sangwan
Smt. Neetu Rani
Both R/O: Bararkhera (51), Buana, Jind Haryana

Complainants

Versus

M/s Signature Global India Pvt Ltd
Regd. Office: 1302, 13th Floor, Tower A, Signature
Towers, South City 1, Gurugram, Haryana-122001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. J.N Sharma (Advocate)

Complainants

Sh. Niraj Kumar (Advocate)

Respondent

HARERA
ORDER
GURUGRAM

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no.	Heads	Information
1.	Name of the project	"The Millennia", Sectors 37D, Gurugram, Haryana
2.	Project area	9.7015625 acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP license no. and validity status	4 of 2017 dated 02.02.2017 Valid up to 01.02.2022
5.	RERA Registered/ not registered	Registered vide no. 3 of 2017 dated 20.06.2017 Validity- The registration shall be valid for a period of 4 years commencing from 20 June, 2017 and ending on 4 years from the date of environment clearance
6.	Building plan approved on	08.06.2017 [Page 21 of complaint]
7.	Environmental clearance granted on	21.08.2017 [As per information available with the Planning Branch of the Authority]
8.	Application for allotment	14.08.2017 [Page 21 of complaint]
9.	Date of execution of buyer agreement	20.12.2017 [Page 19 of complaint]
10.	Unit no.	4-1102, 11 th floor, tower 4 [Page 21 of complaint]
11.	Unit admeasuring	596.126 sq. ft. (Carpet area) with balcony area of 79.653 sq. ft. (Page 21 of the complaint)
12.	Possession clause	5. POSSESSION 5.1 Within 60 (sixty) days from the date of

		<p>issuance of Occupation Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to force majeure circumstances, receipt of Occupation Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, 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 (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.</p> <p>[Page no. 31 of complaint]</p>
13.	Due date of possession	<p>21.02.2022</p> <p>[Note: 4 years are calculated from the date of approval of environmental clearance i.e., 21.08.2017 being later + 6 months of grace period of Covid-19]</p>
14.	Total sale price of the plot	<p>Rs.24,24,331/- (with tax)</p> <p>Rs.23,42,525/- (without tax)</p> <p>[As per statement of account dated 09.07.2022 at page 56 of complaint]</p>
15.	Amount paid by the complainants till 09.07.2022	<p>Rs.26,42,525/-</p> <p>[As per statement of account dated 09.07.2022 at page 56 of complaint]</p>
16.	Occupation certificate /Completion certificate	<p>25.01.2023</p> <p>[As per DTCP web site]</p>
17.	Offer of possession	<p>16.02.2023</p>

[As per the application filed by the respondent at page 5]

B. Facts of the complaint:

3. The complainants have made following submissions in the complaint:

- i. That the complainants booked a unit in the project of the respondent namely "The Millennia" at Village- Gadoli Khurd and Gadoli Kalan, Sector 37D, Gurugram, Haryana. The complainants booked the unit and was allotted a unit no. 4-1102 in tower 4. Thereafter, a buyer's agreement was executed between the parties on 20.12.2017. As per the clause 6.1 of the buyer's agreement, the possession of the subject unit shall be handed over to the complainants on or before 20.08.2021. However no possession was handed over to the complainants. There is already a delay of 18 months and the possession of the unit is not expected soon as the project is not even completed. The complainants are already paying the interest on the loan amount that they have taken from Aditya Birla Finance without any offer of possession by the company. That the disbursal of loan amount to company has already been stopped by the bank since the construction is already delayed and the same has been intimated to the complainants by the bank. They had already paid an amount of Rs.26,42,525/- as per the customer ledger account maintained by the respondent, however the construction is still lagging far behind. The complainants are unable to disburse any further amount raised by the respondent as the respondent has already delayed the project and crossed the date of final offer of possession with all amenities. Hence this complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s) (As per amendment in relief allowed by the authority vide order dated 14.11.2023):

- 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 till the actual possession of the flat is handed over as per the proviso to section 18(1) of the Act.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions: -
 - i. That the complainants were allotted a unit bearing no. 4-1102 in Tower 4 having carpet area of 596.653 sq. ft. on the 11th floor 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.
 - ii. That subsequent to the allotment of the said unit, the complainants entered into agreement with the respondent for the delivery of possession of the said unit on the terms and conditions as contained therein.
 - iii. That the total cost of the allotted flat including balcony area was Rs.24,24,330/- 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. The goods and service tax was payable extra as applicable.
 - iv. That the total cost of the said unit 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 complainants had agreed to pay on demand by the respondent.

- v. That the delivery of the possession of the said unit 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. In the instant project, the building plan was approved vide approval dated 08.06.2017 while the Environment Clearance approval was provided to the project vide approval dated 21.08.2017. Therefore, 4 years of possession date shall be considered from the date of EC i.e. 21.08.2017 which is later in time.
- vi. 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.
- vii. 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.
- viii. 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.

- ix. 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 up to 31.05.2020.
- x. 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.
- xi. 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.

- xii. 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.
- xiii. That thereafter, during the second wave of COVID-19, the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula by way of resolution in the meeting held on 02.08.2021 ordered for extension of three months from 01.04.2021 to 30.06.2021 due to second wave of Covid-19 as a force majeure event. It is submitted that particular circumstances in a state considered as force majeure by similar authority under the same statute should also be considered as force majeure by another authority under same statute
- xiv. 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.
- xv. 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.
- xvi. 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 complainants.

- xvii. 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 complainants as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017.
- xviii. 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:

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.

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.

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.

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.

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.

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.

- xix. 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 complainants-allottees.
- xx. 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.
- xxi. 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.
- xxii. 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 which has been upheld by Hon'ble REREA Appellate Tribunal, Lucknow.

- xxiii. 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.
- xxiv. 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.
- xxv. That it is respectfully submitted that the respondent after receipt of occupancy certificate from the Town and Country Planning Department Haryana, issued offer of possession to the complainants on 16.02.2023 to accept the possession and execute the necessary documents for the execution of the conveyance deed of the allotted unit. However, the complainants have refused to take possession of the flat and also refused to pay the late payment charges amounting to Rs. 57,146.32/-.
6. Copies of all the relevant documents have been filed and placed on 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:

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondent

F.1 Objection regarding delay due to force majeure circumstances.

9. 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 complainants 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 physical possession of the subject unit

10. In the present complaint, the physical possession has not been handed over to the complainants-allottees. The respondent promoter has obtained OC for the subject unit from the competent authority on 25.01.2023 and has offered the possession of the subject unit(s) to the complainants on 16.02.2023. The promoter is directed to handover the physical possession of the subject unit complete in all respect as per specifications mentioned in BBA as per provisions of section 17 of the Act on making due payment by the allottee after adjusting the delayed possession charges. Thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016. 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.

11. The complainants have filed the present complaint for the relief of refund of entire amount paid by the complainants along with interest @24% per annum, penalties and litigation charges. During the pendency of the complaint, the complainants have filed an application dated 29.09.2023 for amending the relief stating that the respondent/builder completed the construction at project location and is offering the possession of the project in 2023 and as such the complainants are ready to take the possession of the unit. Thus, the complainants are now seeking a relief of delay possession charges till offer of possession of the unit along with prevailing interest. The

said application was allowed by the authority vide proceedings dated 14.11.2023 as the respondent had no objection towards the said amendment.

12. Now, the complainants intends to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them 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."

13. Clause 5.1 of the apartment buyer's agreement (in short, the agreement) 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."

14. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants 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.

15. **Due date of handing over possession:** 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. As detailed hereinabove, 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 has allowed the grace period of 6 months to the promoter. Therefore, the due date of handing over possession comes out to be 21.02.2022.
16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.

17. 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.
18. 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., 02.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
19. 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;"

20. 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. As such the due date of handing over of possession comes out to be 21.02.2022 including grace period of 6 months on account of COVID-19. However, no interest shall be charged from the complainants in case of delayed payment during this 6 months COVID-19 period from 25.03.2020 to 25.09.2020.
21. 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 complainants on 16.02.2023 after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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 (16.02.2023) plus two months i.e., 16.04.2023.

22. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the 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., 16.04.2023, 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:

23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- The respondent is directed to handover physical possession of the subject unit within 60 days from the date of this order on payment of outstanding dues, if any remains after adjustment of delay possession interest at the above prescribed rate.
 - 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 complainants to the respondent from the due date of possession i.e., 21.02.2022 till offer of possession (16.02.2023) plus two months i.e., 16.04.2023 as per proviso to section 18(1) of the

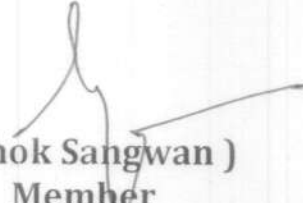


Act read with rule 15 of the rules. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.

- c) The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and not as per the provisions of Affordable Group Housing Policy, 2013.
- d) 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.
- e) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

24. Complaint stands disposed of.

25. File be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.01.2024