

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

Date of decision: 02.01.2024

NAME OF THE BUILDER		M/s SIGNATURE GLOBAL (INDIA) PRIVATE LIMITED	
PROJECT NAME		The Millennia at sector 37D, Gurgaon, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/1704/2023	Ankit Vij Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani Shri Niraj Kumar
2.	CR/1715/2023	Neha Yadav Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani Shri Niraj Kumar
3.	CR/1725/2023	Aparajita Jena Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani Shri Niraj Kumar
4.	CR/1749/2023	Gurvinder Singh Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani Shri Niraj Kumar
5.	CR/1769/2023	Gourav Maggu Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani Shri Niraj Kumar
6.	CR/1796/2023	Rajni Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani Shri Niraj Kumar
7.	CR/1798/2023	Manuj Gupta and Bhavna Gowda Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani Shri Niraj Kumar

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

ORDER

1. This order shall dispose of the aforesaid complaints 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 and 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	9.7015625 acres



DTCP License No. and validity	04 of 2017 dated 02.02.2017 Valid up to 01.02.2022
HRERA Registered	Registered 03 of 2017 dated 20.06.2017
Date of approval of building plans	08.06.2017
Date of environment clearance	21.08.2017
Possession Clause	5. Possession <i>Within 60 (sixty) days from the date of 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.</i>
Due date of possession	21.02.2022 i.e., 21.08.2021+ 6 months (Calculated from the date of environment clearance + 6 months of grace period of COVID-19)
Occupation certificate	25.01.2023

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainant	Offer of possession	Relief sought
1.	CR/1704/2023 Ankit Vij Vs. Signature Global (India) Pvt. Ltd. DOF: 27.04.2023 Reply: 13.09.2023	7-103, 1 st floor Tower 7 Carpet area- 585.944 sq. ft. Balcony area- 79.545 sq. ft.	15.11.2017	TSC- 23,83,549 Rs. AP- 23,83,549 Rs.	28.03.2023 Actual handover on- 19.11.2023 CD- 22.06.2023	<ul style="list-style-type: none"> • Handing over of possession • DPC • Not to charge anything which is not part of BBA • Not to charge skyfull maintenance charges for a period of 5 years
2.	CR/1715/2023 Neha Yadav Vs. Signature Global (India) Pvt. Ltd. DOF: 08.05.2023 Reply: 27.09.2023	11-107, 1 st floor Tower 11 Carpet area- 596.126 sq. ft. Balcony area- 79.653 sq. ft.	20.07.2011	TSC- 24,24,331 Rs. AP- 24,24,331 Rs.	28.03.2023 Actual handover- Physical possession not given CD- 14.09.2023	<ul style="list-style-type: none"> • Handing over of possession • DPC • Not to charge anything which is not part of BBA • Not to charge skyfull maintenance charges for a period of 5 years
3.	CR/1725/2023 Aparajita Jena Vs. Signature Global (India) Pvt. Ltd. DOF: 08.05.2023 Reply: 27.09.2023	10-901, 9 th floor Tower 10 Carpet area- 519.229 sq. ft. Balcony area- 79.653 sq. ft.	20.11.2017	TSC- 21,16,743 Rs. AP- 21,16,743 Rs.	23.03.2023 Actual handover- 08.06.2023 CD- 08.06.2023	<ul style="list-style-type: none"> • Handing over of possession • DPC • Not to charge anything which is not part of BBA • Not to charge skyfull maintenance charges for a period of 5 years

4.	CR/1749/2023 Mr. Gurminder Singh & Mrs. Avneet Kaur Vs. Signature Global (India) Pvt. Ltd. DOF: 27.04.2023 Reply: 13.09.2023	11-1505, 15 th floor, tower 11 Carpet area- 552.360 sq. ft. Balcony area- 79.653 sq. ft.	22.02.2018	TSC- Rs. 22,49,267 AP- Rs. 22,49,267	28.03.2023 Actual handover- Physical possession not given CD- 30.05.2023	<ul style="list-style-type: none"> • Handing over of possession • DPC • Not to charge anything which is not part of BBA • Not to charge skyfull maintenance charges for a period of 5 years
5.	CR/1769/2023 Gourav Maggu Vs. Signature Global (India) Pvt. Ltd. DOF: 08.05.2023 Reply: 27.09.2023	11-305, 3 rd floor, tower 11 Carpet area- 552.360 sq. ft. Balcony area- 79.653 sq. ft.	20.11.2017	TSC- Rs. 22,49,267 AP- Rs. 22,49,267	28.03.2023 Actual handover- Physical possession not given CD- 07.11.2023	<ul style="list-style-type: none"> • Handing over of possession • DPC • Not to charge anything which is not part of BBA • Not to charge skyfull maintenance charges for a period of 5 years
6.	CR/1796/2023 Rajni Vs. Signature Global (India) Pvt. Ltd. DOF: 27.04.2023 Reply: 27.09.2023	1-003, ground floor, tower 1 Carpet area- 644.510 sq. ft. Balcony area- 79.653 sq. ft.	15.11.2017	TSC- Rs. 28,54,061 AP- Rs. 28,54,061	13.02.2023 Actual handover- 26.04.2023 CD- 26.04.2023	<ul style="list-style-type: none"> • Handing over of possession • DPC • Not to charge anything which is not part of BBA • Not to charge skyfull maintenance charges for a period of 5 years

7.	CR/1798/2023 Manuj Gupta & Bhavana Gowda Vs. Signature Global (India) Pvt. Ltd. DOF: 27.04.2023 Reply: 13.09.2023	1-901, 9 th floor, tower 1 Carpet area- 644.510 sq. ft. Balcony area- 79.653 sq. ft.	23.02.2018	TSC- 28,53,471 AP- 28,53,471	Rs. Rs.	16.02.2023 Actual handover- 09.08.2023 CD- 09.08.2023	<ul style="list-style-type: none"> • Handing over of possession • DPC • Not to charge anything which is not part of BBA • Not to charge skyfull maintenance charges for a period of 5 years
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
DPC	Delayed possession charges
TSC	Total sale consideration
AP	Amount paid by the allottee/s
CD	Conveyance deed

- The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges and maintenance charges.
- 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.
- The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case

CR/1704/2023 titled as Ankit Vij Vs. M/s Signature Global (India) Pvt. Ltd. are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

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/1704/2023 titled as Ankit Vij Vs. M/s Signature Global (India) Pvt. Ltd.

S. No.	Particulars	Details
1.	Name of the project	"The Millennia", Sectors 37D, Gurugram, Haryana
2.	Project area	9.701 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.	Name of licensee	Signature Global (India) Pvt. Ltd.
6.	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
7.	Building plan approved on	08.06.2017 [Page 3 of reply]

8.	Environmental clearance granted on	21.08.2017 [Page 3 of reply]
9.	Allotment Letter	01.11.2017 [Page 32 of complaint]
10.	Builder buyer agreement executed on	15.11.2017 [Page 35 of complaint]
11.	Unit no.	7-103 on 1 st floor Tower 7 [Page 37 of complaint]
12.	Unit admeasuring	585.944 sq. ft. (Carpet area) with balcony area of 79.545 sq. ft. (Page 37 of the complaint)
13.	Possession clause	<p>5. POSSESSION</p> <p>5.1 Within 60 (sixty) days from the date of 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. [Page no. 47 of complainant]</p>

14.	Due date of possession	21.08.2021 + 6 months = 21.02.2022 [Calculated from the date of environment clearance + 6 months of grace period of COVID-19]
15.	Total sale price	Rs.25,98,073/- (with tax) Rs.23,83,549/- (without tax) [As per statement of account dated 11.01.2023 at page 73 -Annexure C4 of complaint]
16.	Amount paid by the complainant till 11.01.2023	Rs.22,76,295/- [As per statement of account dated 11.01.2023 at page 73 of complaint] Rs.23,83,549/- (As alleged by the complainant)
17.	Occupation certificate /Completion certificate	25.01.2023 [As per DTCP web site]
18.	Offer of possession	28.03.2023 [Additional documents placed on record by the respondent during proceedings dated 05.12.2023]
19.	Actual handover of physical possession	19.11.2023 [Additional documents placed on record by the respondent during proceedings dated 05.12.2023]

B. Facts of the complaint

8. The complainant has made following submissions in the complaint:
 - i. That 2017, the respondent company issued an advertisement announcing a residential group housing project called 'The Millennia' Sector 37D,

- Gurugram, Haryana in terms of the provisions of Affordable Group Housing Policy 2013 and thereby invited applications from prospective buyers for the purchase of allotments in the said project. Respondent confirmed that the project had got building plan approval from the authority.
- ii. That the complainant was caught in the web of false promises of the agents of the respondent company, paid an initial amount of Rs. 1,19,177/- vide cheque dated 26.07.2017. The payment was acknowledged by the respondent vide payment receipt dated 06.08.2017 and accordingly filled the application form for one unit. The complainant was allotted one unit being in the above said project. The complainant received an allotment letter for the unit bearing no. T7-103.
 - iii. That the complainant caught in the web of lies and false promises of the respondent company duly executed the builder buyer agreement on the 15.11. 2017. The complainant already paid the sum of Rs. 1,19,177/- before the execution of builder buyer's agreement in the favour of respondent.
 - iv. That the Complainant against the demand notices raised by the respondent have paid a total sum of Rs. 23,83,548/- in favour of the respondent. In terms of Scheduled "D" of builder buyer agreement, the complainant has made the payments as per the payment plan.
 - v. That the complainant had sent multiple e-mails communications and made calls during the time intimating the respondent for the possession of the said unit. With great regret the complainant did not receive any revert from the respondent.
 - vi. That the respondent being very well aware of the guidelines laid in The Real Estate (Regulation and Development) Act, 2016 and the Haryana Real

Estate (Regulation & Development) Rules, 2017, and the interest the complainant is entitled for as well as being aware of plethora of judgments issued by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent has not given the complainant the interest that he is eligible for the delayed compensation based on the clause 6.2(ii) of the BBA even when the respondent has charged interest from the complainant for delay payment at the rate of 15%p.a.

- vii. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent individually chasing the respondent for construction on very regular basis. The respondent was never able to give any satisfactory response to the complainant or the Governing body of the Association regarding the status of the construction and was never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondent as to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of delay on account of the Novel Corona Virus and on the account of paucity of funds.
- viii. That the respondent is guilty of deficiency in service within the purview of provisions of the Act and the Rules. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act and Rules.
- ix. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their floors and the provisions allied to it. The modus operandi adopted

by the respondent, from the respondents point of view may be unique and innovative but from the consumers point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the consumers, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time. The respondent not only failed to adhere to the terms and conditions of buyer's agreement dated 15.11.2017 and affordable housing policy 2013 but has also illegally extracted money from the complainant by stating false promises and statements.

- x. That as per clause 6.1(i) of the builder buyer's agreements, which was signed on 15.11.2017, the possession of the said unit was supposed to be delivered by 20.08.2021. It would be appreciated that the offer of possession of the unit has been made after a delay of more than 18 months approx. The respondent is liable to pay interest at the rate prescribed in clause 6.2(ii) i.e., at 15% per annum for every month of delay till the handing over of the possession of the said flat within 45 days of it becoming due. The said clause is reproduced hereunder:

"6.2 (ii) The Allottee(s) shall have the option of terminating the agreement in which case the developer shall be liable to refund the entire money paid by the Allottee(s) along with interest at the rate of 15% per annum within 45 days (fourty five) of receiving the termination Notice from the Allottee(s).

Provided that in case the Allottee(s) does not intend to withdraw from the project or terminate the agreement, the developer shall pay to the Allottee(s) interest at the rate of 15% per annum for every month of delay till the handing over of the possession of the said flat within 45 (fourty five) days of it becoming due."



- xi. The grievance of the complainant is that as per many judgments passed by the authority, the complainant is entitled for delayed possession charges at prescribed rate of interest from due date of possession till actual possession which is not been given by the respondent till date.
- xii. That under clause 4.6 of the builder buyer's agreement, upon delay of payment by the allottees, the respondent can charge 15% simple interest per annum and the same is charged from the complainant. On the other hand, as per clause 6.2(ii), the respondent is equally liable to pay to complainant, interest at the rate of 15% per annum for every month of delay till the handing over of the possession of the said flat within 45 days of becoming due. Whereas respondent has deliberately indulged in misstatement, prevarications and innuendos and has not paid a single penny on account of delayed compensation.
- xiii. That the Honourable NCDRC, New Delhi in many cases has held that offering of possession, conditional on the payment of charges which the unit buyer is not contractually bound to pay as per the BBA, cannot be considered to be a valid offer of possession. In any case if builder creates an agreement which is not ethically correct or entraps the complainant in feeble situation can't be held valid. Such agreements have consistently been held to be unfair not only by this Commission but also by the Honourable Supreme Court. A reference in this regard is made to the decision of the Honourable Supreme Court in **PIONEER URBAN LAND & INFRASTRUCTURE LTD. VS. GOVINDAN RAGHVAN (2019) 5 SCC 725.**
- xiv. That as per section 11 (4) of the Act, the promoter is liable to abide by the terms and agreement of the sale. As per section 18 of the Act, the respondent is liable to pay interest to the allottees of an apartment,



building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. Accordingly, the complainant is entitled to get interest on the paid amount at the rate as prescribed per annum from due date of possession as per builder buyer agreement till the date of handing over of actual possession.

- xv. That the respondent has issued final demand notice wherein the respondent has made various unnecessary demands which are not as per the builder buyer agreement and hence are baseless, unfounded, unlawful, untenable, unsustainable, grossly misconceived, illegal and unwarranted including the advance maintenance charges. Hence the respondent is in gross violation of clause 4(v) affordable housing policy 2013. Maintenance services are to be provided by the respondent as per section 3(3)(a)(iii) of the Act no. 8 of 1975 and Rule of 1976 and the facilities provided by the developer/respondent in Affordable housing colonies.
- xvi. That in case the complainant has to pay outstanding payments if any the same may be deducted after, adjustment of interest for the delayed period, hence in fact the complainant has to take a huge sum from the respondent as delay penalty. Complainant has paid the respondent a sum of Rs. 23,83,548/- as per the customer ledger furnished by the respondent to the complainant and the possession of unit to the complainant has not yet given.
- xvii. That after losing all hope from the respondent company and having shattered and scattered dreams of owning a home and also losing considerable amount of money (as per the buyer's agreement dated 15.11.2017). Hence, the complainant is constrained to approach this



Authority for redressal of their grievance. There is a delay of more than 19 months as on the date of filing this complaint.

C. Relief sought by the complainant

9. The complainant has sought the following relief(s):

- I. Direct the respondent to handover the physical possession of the subject unit along with two-wheeler open parking and pay interest for every month of delay at the rate of 15% per annum as per BBA w.e.f the committed date of possession till the actual possession is delivered with proper habitable condition.
 - II. Direct the respondent not to ask for any charges which are not as per the BBA and if any paid, be returned to the complainant.
 - III. Direct the respondent to not charge the amount of "Skyfull" maintenance charges for the period of 5 years.
10. 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

11. The respondent has contested the complaint on the following grounds.

- i. That the complainant was allotted a flat bearing no. 7-103 in Tower 7 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.
- ii. 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.

- iii. That the total cost of the allotted flat including balcony area was Rs.23,83,548.50/- excluding the other charges such as stamp duty, registration charges, other expenses etc., in accordance with the BBA and the payment was time link payment plan as stipulated by the policy. The GST was payable extra as applicable.
- iv. 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.
- v. 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. In the instant project the building plan was approved vide approval dated 08.06.2017 while the environmental clearance was provided to the project vide approval dated 21.08.2017. Therefore, 4 years of possession date shall be considered from the date of environmental clearance 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 no. 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.
- 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 the Real Estate (Regulation and Development) Act, 2016 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 Majeure 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.

- 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 complainant 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:
- a. 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.
 - b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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 complainant-allottee.
- 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 the respondent after receipt of occupancy certificate from the Town & Country Planning Department, Haryana has already issued offer of possession to the complainant.
12. 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

13. 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

14. 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

15. 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.

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

F. Findings on the objections raised by the respondent

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

17. 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. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA etc., were for a shorter duration of time and were not continuous being annual feature. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

18. As far as delay in construction due to outbreak of Covid-19 is concerned, ***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. Hence, no relaxation over and above 6 months COVID period can be considered.

G. Findings on the relief sought by the complainant

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

19. The following table represent as to the date on which the respondent offered the possession of the subject unit to the allottee, the date on which the physical possession was handed over by the respondent and the date of execution of the conveyance deed in respect of the subject unit.

S.no.	Complaint no.	Offer of possession	Date of handover of actual physical possession
1.	CR/1704/2023	28.03.2023	19.11.2023
2.	CR/1715/2023	28.03.2023	Not handed over
3.	CR/1725/2023	23.03.2023	08.06.2023
4.	CR/1749/2023	28.03.2023	Not handed over
5.	CR/1769/2023	28.03.2023	Not handed over
6.	CR/1796/2023	13.02.2023	26.04.2023
7.	CR/1798/2023	16.02.2023	09.08.2023

20. As delineated in the aforesaid table, in CR/1704/2023, CR/1725/2023, CR/1796/2023 and CR/1798/2023, the physical possession has already handed over to the complainant allottee by the respondent on 19.11.2023, 08.06.2023, 26.04.2023 and 09.08.2023 respectively. Thus, no direction for possession is required.

21. However, in CR/1715/2023, CR/1749/2023 and CR/1769/2023, the physical possession has not been handed over to the complainant-allottee. 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 respective complainant on various dates as stated above. 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 and thereafter, the complainant is obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.

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.

22. In the present complaint, the complainant intends to continue with the project and is 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."

23. 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."

24. 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.
25. **Due date of handing over possession:** As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject 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. 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.



26. **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.

27. 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.
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., 02.01.2024 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(z) 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;"

30. 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 complainant in case of delayed payment during this 6 months COVID-19 period from 25.03.2020 to 25.09.2020.
31. 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 (28.03.2023) plus two months i.e., 28.05.2023.

32. 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., 28.05.2023, 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.
33. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

S.no.	Complaint no.	Due date of possession	Offer of possession	Period for which the complainant is entitled to DPC
1.	CR/1704/2023	21.02.2022	28.03.2023	W.e.f. 21.02.2022 till 28.05.2023
2.	CR/1715/2023	21.02.2022	28.03.2023	W.e.f. 21.02.2022 till 28.05.2023
3.	CR/1725/2023	21.02.2022	23.03.2023	W.e.f. 21.02.2022 till 23.05.2023
4.	CR/1749/2023	21.02.2022	28.03.2023	W.e.f. 21.02.2022 till 28.05.2023
5.	CR/1769/2023	21.02.2022	28.03.2023	W.e.f. 21.02.2022 till 28.05.2023
6.	CR/1796/2023	21.02.2022	13.02.2023	W.e.f. 21.02.2022 till 13.04.2023
7.	CR/1798/2023	21.02.2022	16.02.2023	W.e.f. 21.02.2022 till 16.04.2023

G.III Not to charge anything which is not part of BBA

34. The complainant has failed to specifically mention as to what charges has been charged by the respondent which do not form part of the buyer's agreement.
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 in the complaint bearing no. 4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Limited**, has already decided that the promoter cannot charge anything which is not part of the buyer's agreement subject to the condition that the same are in accordance with the prevailing law. 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 and is directed to charge the demands relying on the above said orders.

G.IV Maintenance charges

36. It is alleged by the complainant that the respondent in the present matter has demanded "Skyful maintenance charges" through maintenance agency i.e., "Skyfull Maintenance Services Pvt. Ltd." from the complainant at the time of offer of possession. The authority observes that clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project which is reproduced as under:

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.

37. It is pertinent to mention here that the authority on 11.04.2022 requested DTCP, Haryana to give clarification with respect to the issue of levy of maintenance charges in view of above provisions made under Affordable Housing Policy. 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 Housing Policy, 2013 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

38. 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 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 plus two months or till actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. The due date of possession and the date of entitlement of delay possession charges are detailed in table given in para 33 of this order. 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.
- ii. 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 in terms of aforesaid para 21 of this order.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. 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.

- v. 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.
39. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
40. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
41. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.01.2024

HARERA
GURUGRAM