

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

**Complaint no.** : 6412 of 2022  
**Date of filing complaint** : 22.09.2022  
**Date of decision** : 26.10.2023

Ramesh and Radha <b>Both RR/o:</b> - 529, Dhani Mohbatpur, Hisar, Haryana-125052.	<b>Complainants</b>
Versus	
M/s Signature Builders Pvt. Ltd. <b>Regd. Office at:</b> - 1301, A, B 13 floor, tower-A, Signature Tower, South City 1, Gurugram.	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Amit Jaglan (Advocate)	Complainants
Sh. Neeraj Kumar (Advocate) with Sh. Mintu Kumar, AR of the company	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made 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 unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Signature Solera 2, Sector - 107, Gurugram, Haryana"
2.	Nature of project	Affordable group housing
3.	<b>RERA registered/not registered</b>	4 of 2017 dated 20.06.2017 (Page 16 of complaint)
4.	<b>DTPC License no.</b>	25 of 2016 dated 29.11.2016
	Validity status	30.06.2024
5	Unit no.	A-6-1001 (Page no. 16 of complaint)
6	Unit measuring	Carpet Area- 553.856 sq.ft. Balcony Area- 81.08 sq. ft.
7	Date of execution of Floor buyer's agreement	17.10.2018 (Page no. 12 of complaint)
10	Possession clause	<b>5. Possession</b> 5.1 Within a period of 4 years from the date of approval of building plan or grant of environment clearances, whichever is later.
11	Building plan	07.06.2017
12	Environment clearance	20.09.2017 (as confirmed by the counsel for the respondent during proceeding)



11	Due date of possession	20.03.2022 (20.09.2021 plus six months grace period due to covid-19 i.e., 20.03.2022)  (Calculated from the date of environment clearance being later)  *Note: Inadvertently mentioned 05.09.2021 in proceeding dated 26.10.2023
12	Total sale consideration	Rs. 24,36,446/-  (as per final statement of account, page 71 of complaint)
13	Total amount paid by the complainant	Rs.20,40,521/- (as per final statement of account, page 71 of complaint)
14	Occupation certificate dated	06.05.2022
15	Offer of possession	14.05.2022

**B. Facts of the complaint**

The complainants have submitted as under: -

3. That believing the representations of the respondent and on the lookout for an adobe for himself and his family, on 01.09.2018, the complainant booked a unit in the said project by making a payment of Rs. 1,12,799/-
4. That, the first draw of the project was done on 16.11.2017 and on the same date the respondent started the construction. The respondent was liable to complete the construction and hand over the possession of the project till 15.11.2021. Though the complainants got their unit in second draw i.e., on 15.10.2018 yet the complainants were forced to pay the entire 50% amount of total sale consideration on the very first date. Thus, the almost a month from the date of booking, finally, on 17.10.2018, the buyer's agreement was executed between the parties. The respondent had made the 50% of the total sale consideration on

31.10.2018 despite the fact that the respondent was liable to demand the 50% amount after 12 months as mentioned in the buyer's agreement based on the construction. But on the demand of the respondent, the complainants paid the first 4 installments on same date that amount to Rs. 12,18,223/-. Thus, the due date for handing over the unit of the complainants was 15.11.2021. The offer of possession letter was issued on 14.05.2022 despite the fact that the unit of the complainants is not ready till date.

5. That believing on the respondent representation the complainants kept on making payment as and when demanded by it. Till date the complainants have paid a total sum of Rs. 24,36,446/- towards the unit in question, as and when demanded, as against a total sale consideration of Rs. 20,40,521/-. The respondent has sent offer of possession letter dated 14.05.2022 to the complainants in which the respondent raised the final demand of Rs. 4,77,028/-. The complainants without making any delay paid the demanded amount to the respondent. Thus, the complainants have paid entire sale consideration to the respondent without having made any single default in making payment.
6. That as per clause 5.2 of the said buyer's agreement dated 17.10.2018, the respondent proposed to handover the possession of the unit in question within a period of 4 years from the date of approval of building plans or grants of environment clearance, whichever is later. However, the respondent failed in handing over possession in accordance with the said agreement.
7. That after getting the offer of possession of letter from the respondent, the complainants visited the project and inspected the condition of their unit, they discovered that the unit in question was no were close to completion. The unit of the complainants is not at all in a habitable

condition and the construction work remains to be pending not only in the unit in question but also in the whole project. Moreover, the respondent has raised the final payment demand illegally way before the construction work got completed.

8. That the respondent is acting with a malafide intention only to grab the hard-earned money of the complainants without ensuring the promised delivery of the unit in question. The respondent has raised the final demand of money and offered the possession of an incomplete unit because the respondent wants to escape from the liability to pay compensation to the complainants for the delay of possession of the said unit in question.
9. That subsequently, the complainants kept making calls, requests and through several meetings kept inquiring as to when would the respondent deliver the project but the respondent's representatives never furnished a concrete answer to the same. The complainants again and again contacted the officials of the respondent expressing their concern over the delay in project and seeking an explanation from the respondent for the same, but to no avail.
10. That the complainants approached the project location several times during the said period to see the stage of construction but the project was nowhere near completion. They, subsequently approached the respondent representatives to know about the date of handing over of possession but to the utter shock of the complainant, the respondent refrain from replying to the same.
11. That after receiving offer of possession, the complainants approached the project location to take possession of the unit but the same was not in a habitable position, upon which the respondent assured them that

finishing work in the unit would be done soon. The complainants, left with no other option give time to the respondent to finish the pending construction work in the unit.

12. That the respondent is well aware of the fact that he would not be able to complete the construction work within the promised timespan resulting into a delay in delivering the said project. Therefore, knowing this fact, the respondent issued an offer of possession of the unit in question to evade the liability to pay compensation for delay in handing over the project. There lies an inherent malafide intention to escape its liability to pay compensation of delayed possession. It is settled law that the project can be handed over to its allottees as a whole and not in parts. The respondent has deceived to curtail the right of complainants by offering the possession letter to them regarding the unit which is not even completed. These devious tactics adopted by the respondent cannot stand in the eyes of law and the respondent must be stopped due these illegal and unlawful acts.
13. That the complainants after taking possession of the unit requested the respondent to make the payment of delay possession charges from due date of possession till actual handing of possession as per Act, 2016 as the construction of the unit got delayed beyond the period as agreed in builder buyer agreement. But the respondent clearly refused to make the payment on account of delay possession charges as per the Act, 2016.
14. That the respondent is liable to pay delayed possession charges for every month of delay till the actual date of physical handing over the possession as the letter of offer of possession is mere an eye wash. Moreover, the respondent has charged the money in different head like administration charges, meter connection charges, water connection charges, advance consumption, IFSD Charges and external electrification charges. The

respondent is not liable to charge in the above-mentioned charges. When the complainants inquired about the validity of charging the money in the above said head then no rational explanation was given by the respondent. The heads which are mentioned in the offer of possession letter are the basic services whose cost is deemed to be included in the cost of the unit and respondent is not liable to charge this money from the complainants.

15. That the respondent had made representations and tall claims that the project would be completed on time. On the contrary, the respondent has failed in adhering to the representations made by it and retained the hard-earned money paid by the complainants for so many years thereby causing wrongful loss to the complainants and wrongful gain to the respondent.
16. That the respondent has charged an amount of Rs. 1,85,834/- as an interest which is illegal as no communication regarding the said interest amount was made earlier by the respondent. The complainants were shocked to know about the demand of Rs. 1,85,834/- as interest as no plausible explanation was given by the respondent to the complainants regarding the demand of said amount. The complainants have made all the payments on the scheduled time as and when demanded by the respondent. Therefore, the demand of Rs. 1,85,834/- is an illegal demand for which the appropriate action should be taken against the respondent. This amount of Rs. 1,85,834/- was levied on the complainants because they make a delay in making the initial payments of 25% of the total sale consideration. The complainants were liable to pay initial payments of 25% of the total sale consideration after the execution of buyer's agreement. But the respondent itself caused the delay in executing the buyer's agreement between the parties. After seeing the delay, the

complainants requested the respondent to get the buyer's agreement executed from any other lawyer but the respondent forcefully made the complainants to get the buyer's agreement executed from the only lawyer of the choice of the respondent, just to earn commission from the lawyer. Moreover, the respondent had charged an amount of Rs. 12,500/- from the complainants whereas the lawyer of the complainants was charging only Rs. 5,500/- for getting the buyer's agreement executed. This so-called delay in making the payment was caused not because of the complainants but due to the adamant behavior of respondent and mismanagement caused by it and its lawyer. Further, the respondent is still creating pressure on the complainants the sale deed of the unit of the complainants would be executed only from the lawyer of the choice of the respondent. If the complainants engage any other lawyer for getting the sale deed registered then the respondent will not get the sale registered. It is further noteworthy to mention here that the lawyer which is recommended by the respondent is charging way more money than the market rate. This kind of acts of the respondent are totally illegal and unlawful. This sort of blackmail is not warranted under law.

17. That at the time of purchasing the unit, the respondent promised to transfer the benefits of GST input to the complainants as per the rules and regulation of the Government. The Government of India has passed a notification 2019 in which Government has directed the builder to transfer the GST but now the respondent is not complying with the rules and regulations of Notification issued by the Government.

18. That as per the clause 9.1 of the buyer's agreement, the respondent is not liable to charge any maintenance fee from the complainants for 5 years but the respondent is charging the money Rs. 22,586/- in the heads of



called Skyfull Charges (which is a fancy name of Maintenance Charges) which is completely illegal. The respondent has become so greedy that he cannot leave any opportunity to grab the hard-earned money from the pocket of innocent persons. The respondent is not liable to charge all these unlawful charges.

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

- (i) Direct the respondent to delay possession charges along with interest and handover the possession of the unit.
  - (ii) Direct the respondent to charge delay payment at equitable rate of interest.
19. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

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

20. That the complainants were allotted a unit bearing no. A6-1001 in tower 6 having carpet area of 553.856 sq.ft. on the 10<sup>th</sup> floor and balcony area 81.084 sq.ft. together with the two wheeler open parking site and the pro-rata share in the common areas through draw of lots held on 15.10.2018 under the Affordable Group Housing Policy, 2013.
21. 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.
22. That the total cost of the allotted unit was Rs.22,55,966/- 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.

23. 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.
24. That the delivery of the possession of the said unit was agreed to be offered within 4 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.
25. 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.
26. 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.
27. That it is respectfully submitted that prior to the completion of the project, various force majeure circumstances 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.

28. That the outbreak of Covid-19 has been declared as a pandemic by the World Health Organization. Advisories/ directions including lockdown/ restrictions have been issued by the Govt. of India as also State Govt. The said pandemic has had serious consequences and was so deadly and contagious that complete lockdown was imposed several times not only in Haryana but in India and rest of the world also. Even lockdown was withdrawn various restrictions continued to be imposed.
29. That on the same principle, the Authority, Gurugram granted 6 months extension for all ongoing projects vide Order/direction dated 26<sup>th</sup> of May, 2020 on account of 1<sup>st</sup> wave of Covid-19 pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of six month was granted just against the only three months of lockdown. It is a matter of fact that 2<sup>nd</sup> and 3<sup>rd</sup> wave of Covid19 outbreak. The 2<sup>nd</sup> wave of Covid-19 pandemic had hit the country badly 'like a tsunami' and Haryana was no exception thereof.
30. That it is also to be brought into your kind notice that Gurugram falls within the area of NCR and different competent authorities such as the Hon'ble Supreme Court, National Green Tribunal (NGT), Municipal Corporation Gurugram (MCG) etc. had directed ban on construction activities due to rise in pollution level mainly in festive season/ winter season for various periods thereby severely affecting the regular development of the real estate projects.
31. That it is needless to mention that owing to a ban on construction activity, especially a complete and a long ban, the labour force gets demobilized. They have to be let off and they generally go back to their

native places or seek work elsewhere and resumption of work and gaining pace of construction takes a very long time even after the ban stand lifted. Now as a matter of practice construction labour is not coming to NCR for construction in project site in winter season due to above reason & they are preferring to work in other state outside NCR during that time of year resulting in further delay of mobilization of construction activity.

32. That it is respectfully submitted 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 25<sup>th</sup> of March, 2020 automatically by 6 months, due to outbreak of the COVID -19, which is calamity caused by nature and is adversely affecting regular development of real estate projects by invoking "force majeure" clause.
33. That inspite of the constraint faced in construction of the project, the respondent has offered the possession of the unit to the complainants on 14.05.2022 as against 01.09.2021 stipulated under the buyer's agreement.
34. All other averments made in the complaint were denied in toto.
35. 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 those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

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

**F. I Territorial jurisdiction**

37. 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.

**F. II Subject matter jurisdiction**

38. 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 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.*

39. 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

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decided by the adjudicating officer if pursued by the complainants at a later stage.

**G. Findings on the objection raised by the respondent.**

**G.I Objection regarding force majeure conditions:**

40. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as 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). But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. 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 07.06.2017 and date of environment clearance is 20.09.2017 as taken from the documents on record. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 20.09.2021. **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 20.09.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of

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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 **20.03.2022**.

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

41. Relief sought by the complainants: The complainants sought following relief(s):

- i. Direct the respondent to delay possession charges along with interest and handover the possession of the unit.
- ii. Direct the respondent to charge delay payment at equitable rate of interest.

**G.I Delay Possession Charges**

42. The complainants booked a unit bearing no. A6-1001, tower-6 admeasuring carpet area 553.856 sq.ft and balcony area 82.08 sq.ft. The complainants paid till date Rs. 23,59,008/- against the sale consideration of Rs. 24,36,446/-. A buyer agreement w.r.t the allotted unit was executed between the parties on 17.10.2018. As per clause 5.1 of the buyers' agreement, the due date for the completion of the project and offer of possession of the allotted unit was fixed as 20.09.2021 which is calculated from the date of environment clearances being later.

43. The complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest*

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*for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

44. Further, clause 5.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"5.1 within 60 days from the date of issuance of occupancy certificate, the Developer shall offer the possession of the said flat to the Allottee(s). Subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by developer in terms of the agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the payment plan, stamp duty and registration charges, the developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later."*

45. At the outset, it is relevant to comment on the pre-set 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 provision of this agreement and in 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 allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

46. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in



the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

47. **Admissibility of grace period:** As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession was to be handed over within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later with a grace period of 6 months (COVID-19). Accordingly, the authority in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic allows the grace period of 6 months to the promoter at this stage.

48. **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 does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at

*the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

49. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
50. 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., 26.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
51. 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—*

*(i) 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.*

*(ii) 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;"*

52. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/

promoters which is the same as is being granted to them in case of delayed possession charges.

53. 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 on 17.10.2018, the possession of the subject unit was to be delivered within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later. The due date of possession is calculated from the date of environment clearance i.e., 20.09.2021. As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 18.05.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be 20.03.2022. Further, a relief of 6 months will be given to the allottee that no interest shall be charged from the complainant-allottees for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
54. The respondent has obtained the occupation certificate on 06.05.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 17.10.2018

executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 17.10.2018 to hand over the possession within the stipulated period.

55. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 06.05.2022. The respondent offered the possession of the unit in question to the complainants only on 14.05.2022. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. 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 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. 20.03.2022 till the date of offer of possession (14.05.2022) plus two months i.e., 14.07.2022. The complainants are further directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

56. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.75% p.a. w.e.f. 20.03.2022

till the date of offer of possession (14.05.2022) plus two months i.e., 14.07.2022; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

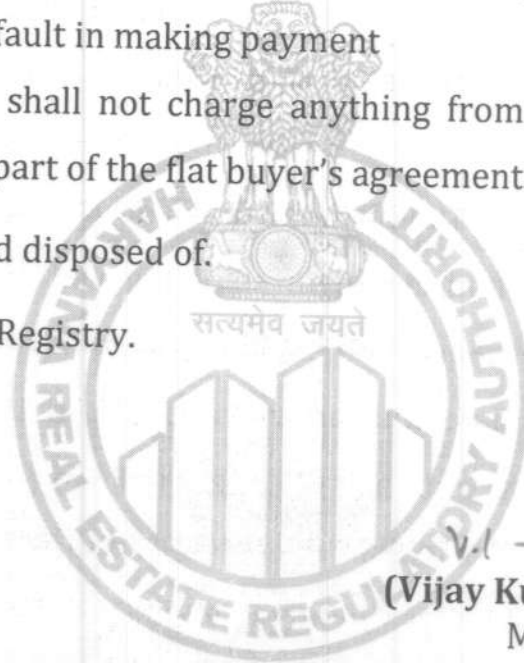
**H. Directions of the authority**

57. 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 pay interest at the prescribed rate i.e., 10.75 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 20.03.2022 till the date of offer of possession (14.05.2022) plus two months i.e., 14.07.2022; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and thereafter the complainants are directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 30 days and if no dues remain outstanding, the possession shall be handed over within four weeks from date of this order.
- iii. The complainants are also directed to take possession of the allotted unit and pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the

promoters to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.

- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondents/promoters which is the same rate of interest which the promoters 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 6 months grace period due to Covid-19 shall also apply to the allottee in case of any default in making payment
- vi. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
58. The complaints stand disposed of.
59. File be consigned to Registry.



*V.K. Goyal*  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 26.10.2023

**HARERA**  
**GURUGRAM**