

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

Complaint no. 4876 of 2022
Date of filing of complaint: 03.08.2022
Date of decision : 02.11.2023

Vineesh Sehgal
R/o: - A-98, GF, Sushant Lok- II, Sector- 55, Gurugram-
122002

Complainant

Versus

M/s Forever Buildtech Private Limited
Regd. Office at: Ground Floor, Block-A, Signature Tower,
South City-1, Gurugram - 122001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Rahul Tuteja (Advocate) and complainant in person
Sh. Dheeraj Sharma (Advocate)

**Complainant
Respondent**

ORDER

1. This complaint has been filed by the complainant/allottee 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 thereunder or to the allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Roselia-2, Sector 95-A, Gurugram, Haryana.
2.	Project area	2.531 Acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP License no. & validity status	63 of 2017 dated 03.08.2017 Valid up to 02.08.2023
5.	Name of Licensee	Forever Buildtech Pvt. Ltd.
6.	RERA registered/not registered	Registered 18 of 2018 dated 12.10.2018 Valid up to 30.10.2021
7.	Unit no.	1405 14 th floor, tower- H (Page no. 30 of the complaint)
8.	Unit admeasuring	569.43 sq. ft. 101.978 sq. ft. (Carpet Area) (Balcony Area)
9.	Date of approval of building plans	09.01.2017 No document has been placed on record. Hence taken from the DTCP website.
10.	Date of approval of revised building plans	06.07.2018 No document has been placed on record. Hence taken from the DTCP website.
11.	Date of Environment clearance	18.05.2017 (Taken from the similar complaint of the said project being developed by the same developer)

12.	Date of Environment clearance	28.01.2019 (As alleged by the respondent during proceeding dated 02.11.2023)
13.	Date of execution of agreement to sell	08.04.2019 (Page no. 29 of the complaint)
14.	Possession clause	<p>5. Possession</p> <p><i>5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and-Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i></p> <p style="text-align: right;">(Emphasis supplied).</p>
15.	Due date of delivery of possession as per clause 5.1 of the flat buyer's agreement	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be

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		18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]
16.	Sale consideration	Rs.25,13,132/- (TSC) (As alleged by the complainants in the facts) Rs.23,26,972/- (BSP) (As per the BBA on page 36 of the complaint)
17.	Total amount paid by the complainant	Rs.25,13,132/- (As alleged by the complainants at page no. 16 of the complaint)
18.	Occupation certificate	06.05.2022 No document has been placed on record. Hence taken from the DTCP website.
19.	Offer of possession	14.05.2022 (Page 17 of the complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant has applied a unit under the Affordable group housing scheme 2013 in the project of the respondent company. After draw of lot in the presence of official of DGTCP & DC Gurugram held on 24.01.2019 and he was allotted a unit for a total sale consideration of Rs.25,13,132/-.
- II. That the complainant has allotted a unit bearing no. 1405, 14th floor, in tower- H in the project namely "Roselia-2", Sector- 95A, Gurugram (Haryana). The agreement to sell was executed in this regard on 08.04.2019 and as per possession clause 5.1 of the agreement the possession was to be



handed over 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. He has paid full consideration as per mentioned in the buyer's agreement.

- III. That the project was completed by the respondent/promoter and the occupation certificate was obtained by the competent authorities. After obtaining the occupation certificate, the respondent was offered the possession of the allotted unit to the complainant on 14.05.2022 along with statement of account showing the various charges to be payable by me whereas the whole cost of the flat was already paid by me long back.
- IV. That the complainant also stated that while offering the possession the respondent has demanded various charges along with statement of account i.e., meter connection charges, administrative charges, water connection charges advance electricity consumption charges, IFSD charges, external electrification chargers. The whole charges raised by the respondent /promoter except at s.no. 2 to 4 are absurd, fictitious, after thought and not as per the clause of the agreement. That the whole payment was already paid by me, except the payment of Rs.9,514/- including GST payable.
- V. That the developer has appoint a maintenance agency namely "Skyfull Maintenance Service Private Limited" for the project and the said company raised a bill no. RT2206101067 dated 20.05.2022. The complainant submitted that it is totally wrong, absurd and not as per agreement condition no. 9.1 executed between the parties. The said clause says that "For a period of 5 years from the date of OC, in relation to the project, the

maintenance work and service in relation to the common areas shall be provided by the developer. After the aforesaid of 5 years the project shall be transferred to the association of flat owners.....”

From the above condition in the agreement, it is very clear that the maintenance work and services shall be provided by the developer and the owner of the flat is not under obligation as per agreement to pay the amount of maintenance bill raised of which is total responsibilities of the developer. That the developer to withdraw the maintenance bill and request you to kindly handover the physical possession of the flat since the occupation certificate was issued by the Authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to pay delayed possession charges and handover the possession of the allotted unit after payment of admitted amount of Rs.9,513/- and removing other charges.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds: -
- That the respondent is applying before this authority prior to submitting its first statement on the substance of the dispute to refer the parties to arbitration as admittedly there is an arbitration agreement in duly executed and admittedly agreement enclosed by the complainant itself with the complaint itself. Dispute/differences raised by complainant is the



subject of an arbitration agreement in the duly executed and admittedly agreement enclosed by the complainant itself with the complaint itself.

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



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

- vi. That the complaint filed by the complainant is the result of clever drafting which is creating illusions of a cause of action that is not permitted by law. The complaint filed by the complainant is liable to be rejected as frivolous or vexatious litigations are not allowed to consume the precious time of this authority.
- vii. That the respondent has issued the demands as per agreement to sell executed between the parties and the possession will be offered on 14.05.2022. He has agreed to pay the total cost and other charges in terms of the agreement and bound to fulfill other terms, conditions and stipulations, as contained in the agreement. The agreement executed between parties it was specifically stated about "other charges" other than the total cost. It is the obligation of the complainant to make the payments as per demand made by the respondent before taking the possession of the said flat as per BBA. That the respondent/promoter has demand of charges i.e., Administrative Charges, Advance Electricity Consumption Charges, IFSD Charges, External Electrification Charges and the interest on

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delayed payment were cover under the head of "other charges". The respondent has not received the payments of dues payable by the complainant. That as per the terms of the said BBA if the complainant fails to take over the possession of the said flat the respondent shall have no liability or concern in respect thereof and the act of complainant i.e. failure to comply with the terms and conditions of the said BBA and the Policy of 2013, is to be treated as breach of agreement.

viii. The possession of the said flat is not with the complainant due to non-compliance of terms of offer of possession by the complainant and when the complainant will fulfill the terms and make the payment to the respondent as demanded as per the said BBA the possession will be handed over to the complainant. There are no reasons for the respondent to delaying or not giving the possession of the said flat to the complainant. The total consideration for the said flat was paid by the complainant however, he is attempting to escape from his liability to pay other expenses to the respondent as agreed by him in the said BBA. The respondent has issued the offer of possession along with the statement of account reflecting the charges which is to be payable by the complainant. The charges as demanded and payable by the complainant was paid by the complainant. The charges as demanded and payable by the complainant was not the part of total cost which was paid by the complainant as stated above.

ix. The relief(s) sought by the complainant travel way beyond the four walls of the agreement. Further, the complainant has accepted and is bound by

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each and every clause of the said agreement. It is, therefore, most respectfully prayed that the present complaint filed by the complainant may kindly be dismissed or in alternate refer the present complaint for amicable settlement of matter in dispute.

6. 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 based on these undisputed documents and written submission made by the respondent.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11

.....

(4) 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.

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

F. Findings on the objections raised by the respondent.

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

9. The agreement to sell entered into between the two side on 08.04.2019 contains a clause 31 relating to dispute resolution between the parties. The clause reads as under: -

"31. Dispute Resolution:

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

- (i) the seat and venue of the arbitration shall be New Delhi, India.
- (ii) the arbitral tribunal shall consist of 3 (three) arbitrators. The Developer and the Allottee(s) shall appoint 1 (one) arbitrator each. These 2 (two) arbitrators shall in turn appoint the 3rd (third) arbitrator.
- (iii) the language of the arbitration shall be English.

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

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

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

10. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

11. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in

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the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the judgement of NCDRC. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

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

G. Findings on the relief sought by the complainant



G. I Direct the respondent to pay delayed possession charges and handover the possession of the allotted unit after payment of admitted amount of Rs.9,513/- and removing other charges.

12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

13. As per clause 5.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

5. POSSESSION

- 5.1** Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and-Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, ***the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later..***

14. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter.

The drafting of this clause and incorporation of such conditions are not only

vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

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

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

16. During proceeding dated 02.11.2023, the AR for the respondent request that the approvals of revised building plans (06.07.2018) and the revised environment clearance (28.01.2019) prior to the allotment of the unit of the complainant and the due date of possession considered from the date of revised plans. Hence there is no delay on the part of the respondent and

✓ further the complainant become allottee only after revision of the above mentioned plans i.e., 28.01.2019. The authority observes that there is no

provision of counting the due date of possession /completion of the project from the revised building plans or the revised environment clearance in Affordable Group Housing Policy, 2013. The clause "1(IV) of the policy of 2013, clearly mention that the due date of possession/completion of the project *shall be required to be necessarily completed **within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.** This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project."* However, there is no such provisions related to revised building plans or revised environment clearance available in the policy of 2013. Therefore, in view of the above the said contention of the respondent is hereby rejected.

17. Admissibility of delay possession charges at prescribed rate of interest:

However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -

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

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.



18. 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.
19. 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., 02.11.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
20. 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.
21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.75%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
22. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3.1 of the agreement executed between the parties on 08.04.2019, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of

building plan (09.01.2017) or grant of environment clearance i.e. (18.05.2017) whichever is later. Therefore, the due date of handing over possession is calculated by the receipt of environment clearance dated 18.05.2017 which comes out to be 18.05.2021. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.05.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 18.11.2021. Occupation certificate was granted by the concerned authority on 06.05.2022 and thereafter, the possession of the subject flat was offered to the complainant on 14.05.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 08.04.2019 to hand over the possession within the stipulated period.

23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the

competent authority on 06.05.2022. The respondent offered the possession of the unit in question to the complainant only on 14.05.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till actual handing over of possession or offer of possession plus two months whichever is earlier.

24. 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 complainant is entitled to delayed possession at prescribed rate of interest i.e., 10.75 % p.a. w.e.f. 18.11.2021 till the expiry of 2 months from the date of offer of possession (14.05.2022) which comes out to be 14.07.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
25. The complainant has also contended in his brief facts that the respondent has issued offer of possession 14.05.2022 along with statement of account and containing several illegal charges which are mentioned below: -

S. No.	Particulars	Basic Amt.	Tax Amount	Due Amount	Received/ adjustment	Balance
1.	Administration Charges	15000	2700	17700	0	17700
2.	Meter connection charges	3700	666	4366	1	4365
3.	Water connection charges	549	99	648	0	648
4.	Advance consumption charges	4500	0	4500	0	4500
5.	IFSD charges	15000	0	15000	0	15000
6.	External Electrification charges	43082	7755	50837	0	50837
	Sub Total	81831	11220	93051	1	93050

26. The authority vide order dated 09.12.2022, passed in case bearing no. **4174 of 2021 titled as Vineet Choubey V/s Pareena Infrastructure Private Limited and also the complaint bearing no. 4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Limited**, has already decided the above said issues. Further, the respondent is directed to charge the same relying on the above said orders.

H. Directions of the authority

27. 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):

- The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 18.11.2021 till 14.07.2022 i.e., expiry of 2 months from the date of offer of possession (14.05.2022). The arrears of interest

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accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% 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(z) of the Act. The benefit of grace period on account of Covid-19, shall be applicable to both the parties in the manner detailed herein above.
- iii. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement and the provisions of Affordable Group Housing Policy of 2013.

28. Complaint stands disposed of.

29. File be consigned to registry.

Dated: 02.11.2023


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram