

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

**Date of decision: 29.02.2024**

NAME OF THE BUILDER		M/s SIGNATURE GLOBAL HOMES PRIVATE LIMITED	
PROJECT NAME		Signature Global Park-II, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/2623/2023	Suman Koul and Adarsh Koul Vs. M/s Signature Global Homes Private Limited	Shri Vijay (Advocate for the complainants)
2.	CR/2629/2023	Ekta Chauhan and Aditya Koul Vs. M/s Signature Global Homes Private Limited	Shri Niraj Kumar (Advocate for the respondent)

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**ORDER**

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible

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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, Signature Global Park-II, Gurugram, Haryana being developed by the same respondent/promoter i.e., M/s Signature Global Homes 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:

<b>Project Name and Location</b>	"Signature Global Park-II, Gurugram, Haryana"
<b>DTCP License No. and validity</b>	39 of 2019 dated 01.03.2019 valid up to 29.02.2024
<b>HRERA Registered</b>	Registered 43 of 2019 dated 01.08.2019 valid up to 30.06.2021
<b>Welcome-cum-allotment letter</b>	26.06.2020
<b>Possession Clause</b>	<p><b>4.1</b>  <i>.....The developer shall offer possession of the said independent floor to the allottees within a period of within 12 months with a grace period of additional 3 months (12 + 3 months) from the date of allotment. Applicable taxes would be payable at each stage. Aforesaid payment schedule may be preponed if the construction is completed before schedule milestone or the occupation certificate (OC) is received before the schedule possession period.</i></p>

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<b>Due date of possession</b>	26.09.2021 (calculated from the date of allotment)
<b>Occupation certificate</b>	Not obtained

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Consideration / Total Amount paid by the complainant	Sale Offer possession of
1.	CR/2623/2023  Suman Koul and Adarsh Koul Vs. M/s Signature Global Homes Private Limited  DOF: 04.07.2023  Reply: 21.11.2023	P4, 3 <sup>rd</sup> floor, Block P  Super area- 1210.730 sq. ft.  Carpet area- 750.60 sq. ft.	08.10.2020	TSC- Rs. 59,44,402/-  AP- Rs. 63,17,476/- (as per customer ledger dated 22.02.2024)	Not offered
2.	CR/2629/2023  Ekta Chauhan and Aditya Koul Vs. M/s Signature Global Homes Private Limited  DOF: 04.07.2023  Reply: 21.11.2023	P4, 4th floor, Block-P  Super area- 1210.730 sq. ft.  Carpet area- 750.60 sq. ft.	08.10.2020	TSC- Rs. 62,47,061/-  AP- Rs.66,34,892/- (as per customer ledger dated 22.02.2024)	Not offered

**The complainants in the above complaints have sought the following reliefs:**

1. Direct the respondent to pay delay possession charges on the amount collected till date.
2. Direct the respondent not to raise any fresh demands.

**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

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4. 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.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case *CR/2623/2023 titled as Suman Koul and Adarsh Koul Vs. M/s Signature Global Homes Private Limited* 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/2623/2023 titled as Suman Koul and Adarsh Koul Vs. M/s Signature Global Homes Private Limited***

S. No.	Particulars	Details
1.	Name of the project	"Signature Global Park-II, Gurugram, Haryana"
2.	Nature of the project	Independent Floors
3.	DTCP license no.	39 of 2019 dated 01.03.2019 valid up to



		29.02.2024
4.	RERA Registered/ not registered	Registered 43 of 2019 dated 01.08.2019 valid up to 30.06.2021
5.	Welcome-cum-allotment Letter	26.06.2020 (page 36 of complaint)
6.	Builder buyer agreement executed on	08.10.2020 (page 50 of complaint)
7.	Unit no.	P4, 3rd floor, Block P (Page 53 of complaint)
8.	Unit admeasuring	1210.730 sq. ft. - Super area 750.60 sq. ft - Carpet area (page 53 of complaint)
9.	Possession clause	<b>4.1</b> <i>..... The developer shall offer possession of the said independent floor to the allottees within a period of within 12 months with a grace period of additional 3 months (12 + 3 months) from the date of allotment. Applicable taxes would be payable at each stage. Aforesaid payment schedule may be preponed if the construction is completed before schedule milestone or the occupation certificate (OC) is received before the schedule possession period.</i>
10.	Due date of possession	26.09.2021 (calculated from the date of allotment i.e. 26.06.2020)
11.	Total sale price	Rs.59,44,402/- (as per BBA page 59 of complaint)
12.	Amount paid by the complainants	Rs.63,17,476/- (as per customer ledger dated 22.02.2024 submitted by respondent) <b>(*Note:</b> inadvertently mentioned Rs.63,17,204/- vide proceedings dated 29.02.2024)
13.	Occupation certificate /Completion certificate	Not obtained
14.	Offer of possession	Not offered

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## **B. Facts of the complaint**

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

- i. That the complainants are law abiding citizen, consumer and had earned goodwill in the society. The complainants were looking for a residential floor and came across the project of the respondent which was highly advertised by them. The respondent made several representations to the complainants with respect to their project "Signature Global Park" Sector 36 Sohna, District Gurugram, Haryana. Also, made several claims regarding the project with the complainants to allure them to invest their hard-earned money in the project.
- ii. That the complainants booked a floor in the project of the respondent through an agent of the respondent 360 Realtors on 30.03.2020 and made a payment of Rs.1,00,000/-, same was acknowledged by the respondent vide email dated 18.06.2020 for unit no. P-2, 4<sup>th</sup> floor.
- iii. That the respondent asked the complainants to book the flat directly with the respondent in place of the agent namely 360 realtors. The respondent allured the complainants to the extent that if they will book an independent floor directly with the respondent, the respondent will give a unit on 3<sup>rd</sup> floor which is having more value and will also give a credit note. Subsequently, the complainants booked the unit no. P-4 3<sup>rd</sup> floor admeasuring 1210.73 sq. ft super area and 750.60 sq. ft. carpet area and made a payment of Rs 50,000/- to the respondent.
- iv. Thereafter, the respondent issued a welcome-cum-provisional allotment letter dated 26.06.2020, providing a detailed view of the independent floor to the complainants. Subsequently, on 08.10.2020, the complainants entered into a buyer's agreement with the respondent against the subject



unit for a total sale consideration of Rs.59,44,402/-. As per clause 4.1 of the agreement, the respondent was obligated to hand over the physical possession of the unit within 12 months, with an additional grace period of 3 months from the date of allotment.

- v. That the complainants obtained a loan from HDFC Bank for a subject unit and executed a tripartite agreement with both the bank and the respondent. Following a demand made by the respondent on 17.03.2021, bank officials visited the site to assess the progress of work in accordance with the payment requested. Subsequently, the bank informed the complainants that only Rs.2,52,000/- could be disbursed according to the construction status at the site. The respondent replied on 31.05.2021 stating that construction up to the 2<sup>nd</sup> floor was completed and provided a photo. However, the photo did not match the complainants' floor, indicating unethical business practices and harassment by the respondent.
- vi. Further, the complainants inquired about the construction status via emails on 09.10.2022 and 24.02.2023, receiving no useful response from the respondent. The respondent falsely assured possession of the unit by March 2023 to extort money, as indicated in the email dated 28.02.2023. The respondent levied late fees and interest of Rs.3,60,448/- on complainants due to delays caused by the respondent's failure to adhere to terms of agreement
- vii. That the respondent has failed to hand over the possession of the booked unit and provide any delay compensation. Additionally, the respondent has levied interest on payments in an illegal and arbitrary manner. Due to the respondent's negligence and actions, the complainants have been compelled to file a complaint before the Authority.

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viii. Furthermore, the developer/respondent is purposefully delaying the completion of the project, affecting its construction quality. The respondent's deceptive practices in obtaining money through bookings and floor buyer agreements have caused significant mental and physical distress to the complainants and their family. Despite multiple emails requesting possession, the respondent has not responded, leading to substantial losses for the complainants. The delay in possession has resulted in significant financial and mental distress for the complainants, who have faced unresponsive behavior from the respondent despite repeated visits to their office.

**C. Relief sought by the complainant.**

9. The complainants have sought the following relief(s):
- I. Direct the respondent to pay the delay possession charges.
  - II. Direct the respondent not to raise any fresh demands.
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 project in question is duly registered with the RERA vide registration no. 43 of 2019 dated 01.08.2019 and the DTCP had issued license to the respondent vide License no.39 of 2019 dated 01.03.2019. The complainants were allotted unit no. P4-3<sup>rd</sup> floor in Signature Global Park-II vide welcome-cum-allotment letter dated 26.06.2020.
  - ii. That subsequent to the allotment of the subject unit builder buyer's agreement was executed on 08.10.2020 between the parties wherein the

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delivery of possession of subject unit was subject to the terms and conditions as contained in the agreement. That the aforesaid allotment was subject to payment schedule which was time linked and independent of status of the construction.

- iii. That in terms of clause 3.1 the total price of the subject unit admeasuring 1210.73 sq. ft super area and 756.60 sq. ft carpet area was Rs.59,44,402/- excluding applicable GST and other charges to be demanded at the time of possession and the allottee was required to make payment towards the cost of the subject unit in 12 months from the date of submission of application.
- iv. That the allottees failed to make payments on time despite multiple reminders from the respondent, resulting in the levying of interest for the delayed payments. of Rs.3,60,462.53/- which remains outstanding. Additionally, the complainants have not paid the full consideration amount required for the possession of the unit.
- v. That in terms of clause 4.1 of the agreement, the possession was agreed to be offered within 12 months with a grace period of additional 3 months from the date of allotment. However, the delivery of possession was subject to force majeure circumstances, court orders, Government policy/guidelines, decisions etc. affecting the regular development of the real estate project.
- vi. That the agreed possession period would have been applicable provided no disturbances caused by force majeure circumstances or intervention by statutory authorities. Prior to project completion, various force majeure events such as construction bans, the Covid-19 pandemic, and lockdowns significantly impeded the project's progress. The Covid-19

pandemic, acknowledged as a force majeure event, led to unavoidable delays in delivering the unit. The Haryana Real Estate Regulatory Authority extended completion dates for projects affected by the Covid-19 pandemic, citing it as a natural calamity under the "force majeure" clause. The second wave of Covid-19 led to further extensions by regulatory authorities, acknowledging its impact as a natural calamity. Lockdowns and pandemic-related disruptions were widely considered force majeure events by governmental bodies, allowing for extensions and relief measures to address project delays.

- vii. That the complaint has been filed with malice and to put undue pressure on the respondent. The complaint deserves to be dismissed.
12. All other averments made by the complainants were denied in toto.
13. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaints can be decided on the basis of these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**

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

##### **E.1 Territorial jurisdiction**

15. 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

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authority has complete territorial jurisdiction to deal with the present complaint.

### **E.II Subject matter jurisdiction**

16. 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**

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(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.

17. 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.**

18. 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. 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 twelve months with grace period of three months from the date of allotment. In the present case, the date of allotment of the subject unit is 26.06.2020. However, given that the allotment of the subject occurred amidst pandemic, it is reasonable to assume that the respondent was aware of the prevailing circumstances and agreed to the designated timeframe for possession accordingly. Consequently, any extension in timeframe for handover of possession in lieu of Covid-19 cannot be granted and the due date for handover of possession remains unaltered i.e. 26.09.2021.

**G. Findings on the relief(s) sought by the complainants.**

**G.I Direct the respondent to pay delayed possession interest on the amount paid by the allottee at the prescribed rate as per the proviso to section 18(1) of the Act.**

**G.II Direct the respondent not to raise any fresh demands.**

19. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

20. In the present complaint, the complainants intend to continue with the project and are 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, —*

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*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."*

21. Clause 4.1 of the apartment buyer's agreement (in short, the agreement) dated 08.10.2020, provides for handing over possession and the same is reproduced below:

4.1

*"Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Independent Floor 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, registration charges and administrative charges and incidental charges etc., the Developer shall offer possession of the Said Independent Floor to the Allottee(s) within a period within 12 months with a grace period of additional 3 months (12+3 months) from the date of allotment. Applicable taxes would be payable extra at each stage. Aforesaid payment schedule may be preponed if the construction is completed before scheduled milestone or the occupation certificate (OC) is received before the scheduled possession period."*

22. 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 favor 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

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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.

23. **Due date of handing over possession:** As per clause 4.1 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of twelve months with grace period of three months from the date of allotment of the subject unit. Therefore, the due date of handing over possession comes out to be 26.09.2021.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. 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.*

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25. 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.
26. 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., 29.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
27. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

*Explanation. —For the purpose of this clause—*

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

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

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

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29. 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 4.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of twelve months with grace period of three months. As such the due date of handing over of possession comes out to be 26.09.2021. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 08.10.2020 executed between the parties. It is pertinent to mention over here that even after a passage of more than 3 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottees by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
30. 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., 26.09.2021 till actual handing over of possession or valid offer of possession plus two months after obtaining occupation certificate from the competent

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Authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**H. Directions of the authority.**

31. 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 interest to each of the complainant(s) against the paid-up amount at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay from the due date of possession 26.09.2021 till actual handing over of possession or valid offer of possession plus two months after obtaining occupation certificate from the competent Authority, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.

- 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., 10.85% 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.
- vi. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
33. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
34. Files be consigned to registry.

**Dated: 29.02.2024**

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory  
Authority, Gurugram