

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

Complaint no. : 1907 of 2023
Date of filing complaint: 18.05.2023
Date of order 20.02.2024

1. Mrs. Seema Singh Chauhan
2. Mr. Kuldeep Singh Chauhan
Both R/O: H. no. 6/26, Shivaji Nagar,
Gurugram, Haryana.

Complainants

Versus

M/s Signature Global India Pvt. Ltd.
Regd. Office: 1302, 13th Floor, Tower A,
Signature Towers, South City 1,
Gurugram, Haryana-122001.
Corp. Office: Unit no. 13.04, 13th Floor, Dr. Gopal
Das Bhawan 28 Barkhamba Road, Connaught
Place, New Delhi-110001.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Sh. Neeraj Sharma, Advocate

Complainants

Sh. Niraj Kumar, Advocate along with Sh. Mintu Kumar,
Authorised representative 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"The Millennia", Sectors 37D, Gurugram, Haryana
2.	Project area	9.7015625 acres
3.	Nature of the project	Affordable Housing Colony
4.	DTCP license no. and validity status	4 of 2017 dated 02.02.2017 Valid up to 01.02.2022
5.	Name of licensee	Signature Global (India) Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 3 of 2017 dated 20.06.2017 Validity- The registration shall be valid for a period of 4 years commencing from 20 June 2017 and ending on 4 years from the date of environment clearance
7.	Allotment letter dated	01.11.2017 [Page 51 of complaint]
8.	Builder buyer agreement executed on	18.01.2018 [Page 53 of complaint]
9.	Unit no.	1-1203, Tower 1 on 12 th floor [Page 54 of complaint]
10.	Unit admeasuring	644.510 sq. ft. (Carpet area) with balcony area of 79.653 sq. ft. (Page 54 of complaint)

11.	Building plan approval	08.06.2017
12.	Environment clearance	21.08.2017
13.	Possession clause	<p>5. POSSESSION</p> <p>5.1 <i>Within 60 (sixty) days from the date of issuance of Occupation Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to force majeure circumstances, receipt of Occupation Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by the Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i></p> <p>[Page 63 of complaint]</p>
14.	Due date of possession	<p>21.02.2022 i.e., 21.08.2021+ 6 months</p> <p>(Calculated from the date of environment clearance being later + 6 months of grace period on account of COVID-19)</p>
15.	Total sale price	<p>Rs.26,17,867/-</p> <p>[Page 60 of complaint]</p>
16.	Amount paid by the complainants	<p>Rs.29,43,763/-</p> <p>[As admitted by the respondent vide additional written submissions filed on 06.02.2024]</p>
17.	Occupation certificate /Completion certificate	<p>25.01.2023</p> <p>[As per DTCP web site]</p>
18.	Offer of possession	<p>13.02.2023</p> <p>[as on page 90 of complaint]</p>

B. Facts of the complaint:

3. The complainants have made following submissions in the complaint:
 - i. That the present complaint is being filed by the complainants against the respondent as the respondent has, in a pre-planned manner, cheated and defrauded the complainants of their hard-earned money and have rendered deficient services by not delivering possession of affordable flat no. 1-1203 in block/tower -1 having a carpet area of 644.510 sq. ft. on 12th floor and balcony area 79.653 sq. ft along with two wheeler parking purchased by the complainants from the respondent. The complainants purchased the said unit in question for their residential purposes.
 - ii. That the complainants have been influenced and allured about the residential flat in an upcoming project namely The Millennia, Sector-37D, Gurugram (Haryana) by the respondents' official informing the complainants that there would be world class homes with lifestyle amenities, world class engineering, construction and services in the upcoming said project. The official of the respondent further assured the complainants they had obtained a license dated 02.02.2017 vide license no. 4 of 2017 from Director General Town and Country Planning, Government of Haryana, Chandigarh and also obtained building plan approval vide Memo no. ZP-1140/SD(BS)/2017/12572 dated 08.06.2017. It was assured that the project shall be developed by the respondent in accordance with the aforementioned approvals and other sanctions including environment clearance and in terms of the provisions of Affordable Housing Policy, 2013 and further assured the complainants that above said project is registered with the Haryana Real Estate Regulatory Authority at Panchkula on 20.06.2017 vide Registration no. 3.
 - iii. That relying upon the assurance of the company as well as its official, the complainants had applied for allotment of a flat in the project vide

application no. 3850 dated 14.08.2017 and pursuant to the application, the draw of lots held on 27.10.2017 in the presence of official of DGTCP/DC, Gurugram and was allotted a flat no. 1-1203 in Block/Tower -1 having a carpet area of 644.510 sq. ft. on 12th floor and balcony area of 79.653 sq. ft. together with the two wheeler open parking site and the pro rata share in the common areas.

- iv. That as per demands raised by the respondent for the above-said affordable flat, the complainants had paid total amounting to Rs. 28,53,468/- through RTGS/Cheques/Online payment and other applicable modes to the respondent.
- v. That the respondents and the complainants had entered into an agreement to sell on dated 18.01.2018 in respect of the above said flat and as per clause 5.1 of the said agreement to sell, the possession of the above said flat to be handed over within four years from the date of approval of building plans or grant of environment clearance but it was utter dismay to the complainants that the respondent till date has not offered the possession of the above said flat to the complainants despite receiving excess sale consideration from the complainants.
- vi. That it is pertinent to mention here that it has been clearly mentioned in the terms no. 5.1 of the agreement to sell, 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 plan or grant of environment clearance but the respondents did not handover the possession of the said flat and violated the terms and conditions of the agreement to sell.
- vii. That as per agreement to sell, the respondent had obtained the approval of building plan on dated 08.06.2017 and also obtained environment clearance but despite elapsed the stipulated time period, the respondent has

miserably failed to offer the possession of the above said flat of the complainants, which clearly shows their malafide intention to grab the hard earned money of the complainants illegally and unlawfully.

- viii. That the complainants several times requested the respondent telephonically as well as by personal visits at the office for offer of possession of the above said flat but every time the respondent avoided the matter on one pretext or another. The respondent has failed to perform its part of contract by not delivering the possession of the said flat to the complainants and as such the respondent is liable to pay the interest on delayed possession to the complainants at the market prevailing rate.
- ix. That the respondent knowingly and deliberately violated the terms and conditions of the agreement to sell with sole intention to cause wrongful loss to the complainants and to gain wrongfully themselves and due to their above said illegal act and conduct the complainants have suffered huge mental agony, harassment and pain and suffering and despite having her own flat, the complainants are paying rent of an amount of Rs 15,000/- per month which the respondents are liable to pay the said additional expenses to the complainants.
- x. That to provide an instance of the ground reality of the status of progress of construction at site, it is brought to the attention of this hon'ble authority that the demands raised by the respondent were all promptly paid by the complainants as it is reflected from the annexed receipts and other documents, which clearly shows that the complainants have been making timely payments in good faith all along.
- xi. That the respondent has caused monetary losses to the complainants. Moreover, the complainants have already paid the stamp charges, registration fee and nothing is due towards the complainants and despite

that the respondent is intentionally and deliberately raising illegal demands regarding maintenance charges and late fee during covid-19 period payment. However, the complainants timely made the payment through RTGS but the same were returned back by the builder then the complainants personally visited to the office and issued a cheque in favour of the respondent which was encashed and therefore, the payments have been made timely without any delay but despite of this, the respondent levied late fee charges upon the complainants and also claiming illegal maintenance amount. It is submitted that as per covenant no. 9.1 of agreement to sell, it has been clearly mentioned that for a period of 5 (five) year from the date of grant of occupancy certificate in relation to the project, the maintenance work and services in relation to the common area shall be provided by the developer.

- xii. That the act and conduct of the respondent amounts to grave deficiency in service and unfair trade practice of the highest degree. The respondent has caused great mental agony and physical harassment to the complainants. The complainants have paid such a huge amount after collecting their life's savings with the hope to move into their own apartment in the NCR region.
- xiii. That the respondent has intentionally and deliberately changed the units of the tower and now unit no. 1 has named as unit no. 2 and vice-versa. Also the numbering have been changed anti-clockwise. As per the old site plan, the unit no. 1 was toward the left side of service lift and unit no. 2, opposite to no. 1. The complainants visited several time during the construction work of the work site. But when the complainants visited the site, it was found that they have changed unit no. 1 to unit no. 2 and vice versa. The complainants met with project head Mr. Anil Singh and apprised him about the actual situation, but he never visited the site nor took any care regarding

this matter. Despite repeated requests made by the complainants, the said Project Head Anil Singh avoided the matter on one pretext or another made false and lame excuses. His behavior was very rude towards the complainants.

- xiv. That the respondent is guilty of deficiency in service as per the Act. The complainants have suffered on account of deficiency in service by the respondent by not delivering the possession of the unit/apartment of the complainants within time.
- xv. That the respondent issued an offer of possession vide letter dated 13.02.2023 and asked the complainants to deposit the stamp duty Rs. 1,57,100/- and registration fee of Rs. 15,010/- and accordingly the complainants deposited the said amount and also deposited an amount of Rs. 90,295/- on account of fire, electricity etc. to the respondent.
- xvi. That the complainants served a legal notice upon the respondent on 30.01.2023 through their counsel, thereby calling upon the respondent to handover the possession of the unit/flat along with delayed possession interest etc. but despite receiving the legal notice, the respondent intentionally and deliberately neither gave any reply of the said legal notice nor has delivered the possession of the unit/flat to the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to handover the possession of the flat/unit/apartment to the complainants
 - ii. Direct the respondent to pay the interest on the principal amount @ 18% per annum from the date of payment till realization.

- iii. Direct the respondent to execute the conveyance deed/sale deed in favour of the complainants.
- iv. Direct the respondent to purchase stamp paper for which complainants have already made the payments.
- v. Direct the respondent to rectify the number of units/flats as per old site plan and the unit/flat numbers be retained as per old site plan.
- vi. To restrain the respondents from getting illegal and unlawful demands of late payment as well as maintenance.
- vii. Cost of litigation of Rs. 2,00,000/- and compensation.

D. Reply by respondent:

5. The respondent by way of written reply has made following submissions:
 - i. That the complainants were allotted a unit bearing no. 1-1203 in block/tower 1 having carpet area of 644.510 sq. ft. on the 12th floor with the two wheeler open parking site and pro rata share in the common area through draw of lots held on 27.10.2017 under the Affordable Housing Policy, 2013 notified by Government of Haryana vide Town and Country Planning Department notification dated 21.08.2017 as applicable at relevant point of time.
 - ii. That subsequent to the allotment of the said unit, the complainants entered into agreement with the respondent for the delivery of possession of the said unit on the terms and conditions as contained therein.
 - iii. That the total cost of the allotted flat including balcony area was Rs.26,17,867/- excluding the other charges such as stamp duty, registration charges, other expenses etc. and the payment was time link payment as

stipulated by the policy. The goods and service tax was payable extra as applicable.

- iv. That the total cost of the said unit was escalation free, save and except increase on account of development charges payable to the governmental authority and/ or any other charges which may be levied or imposed by the governmental authority from time to time, which the complainants had agreed to pay on demand by the respondent.
- v. That the delivery of the possession of the said unit was agreed to be offered within 4 (four) years, from the approval of building plans or grant of environmental clearance, whichever is later. However the delivery of possession was subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely completed with all its obligations. In the instant project, the building plan was approved vide approval dated 08.06.2017 while the environment clearance approval was provided to the project vide approval dated 21.08.2017. Therefore, 4 years of possession date shall be considered from the date of EC i.e. 21.08.2017 which is later in time.
- vi. That the proposed period of delivery of physical possession was subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having complied with all obligations of allotment in a timely manner and further subject to completion of formalities/documentation as prescribed by the respondent and not being in default of any clause of the agreement.
- vii. That the agreed possession period would have been applicable provided no disturbance/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory authorities etc.

- viii. That prior to the completion of the project, various force majeure circumstances (such as construction bans, Covid-19 pandemic, various lockdowns etc.) affected the regular development of the real estate project. The deadly and contagious Covid-19 pandemic had struck which have resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent.
- ix. That in fact, almost the entire world had struggled to cope with the Coronavirus menace. The Novel Coronavirus had been declared as a pandemic by World Health Organization. Following the declaration of the World Health Organization, the Ministry of Home Affairs, Government of India vide notification no. 40-3/2020-DM-I(A) dated 24.03.2020 under the Disaster Management Act, 2005, had imposed lockdown for whole of India for 21 days with effect from 25.03.2020 wherein all the commercial and private establishments was directed to be closed down including transport services besides others. Further, the lockdown was extended vide direction dated 17.05.2020 upto 31.05.2020.
- x. That further Ministry of Finance vide Office Memorandum No.F-18/4/2020-PPD dated 13.05.2020 recognized that given the restriction placed on the goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM, Act 2005 and the respective State and UT Government, it may not be possible for the parties to the contract to fulfil contractual obligations and permitted the parties to the contracting with the Government for all construction/works contracts, goods and services contracts and PPP contract to invoke force majeure clause and thereby extended the contract by six months.

- xi. That the Hon'ble Haryana Real Estate Regulatory Authority vide order no. 9/3-2020 HARERA/GGM (Admn.) dated 26.05.2020 extended the date of completion for all real estate projects registered under the Real Estate (Regulation and Development) Act, 2016 where completion date, revised completion date or extended completion date was to expire on or after 25th of March, 2020 automatically by 6 months, due to outbreak of the COVID -19 (Corona Virus), which is calamity caused by nature and is adversely affecting regular development of real estate projects by invoking "force majeure" clause.
- xii. That even before the expiry of said extended period, it is very much in public domain and had also been widely reported that second wave of Covid-19 had also hit the country badly 'like a tsunami' and Haryana was no exception thereof.
- xiii. That thereafter, during the second wave of COVID-19, the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula by way of resolution in the meeting held on 02.08.2021 ordered for extension of three months from 01.04.2021 to 30.06.2021 due to second wave of Covid-19 as a force majeure event. It is submitted that particular circumstances in a state considered as force majeure by similar authority under the same statute should also be considered as force majeure by another authority under same statute.
- xiv. That Haryana Government had imposed various lockdown for different periods even after January 2021 terming it as "Mahamari Alert/Surkshit Haryana (Epidemic Alert/Safe Haryana) resulting in virtual stoppage of all activity within the state of Haryana.
- xv. That therefore, it is manifest that both the first wave and second wave of Covid had been recognized by this Hon'ble Authority and the Hon'ble

Haryana Real Estate Regulatory Authority, Panchkula to be Force Majeure events being calamities caused by nature which had adversely affected regular development of real estate projects. All these facts have been mentioned hereinabove to highlight the devastating impact of Covid-19 on businesses all over the globe.

- xvi. That the respondent had also suffered devastatingly because of blanket ban on raising of construction, advisories etc. The concerned statutory authorities had earlier imposed a blanket ban on raising of construction, advisories had been issued by the statutory authorities to the developers to ensure that no retrenchment of staff/labour are done and further to ensure that the staff/labour were adequately fed and provided for. Subsequently, the said embargo had been lifted to a limited extent. However, in the interregnum, large scale migration of labour had occurred which had also been extensively reported in printed and electronic media. Availability of raw material remained a major cause of concern. Infact, the aforesaid Force Majeure events had completely affected the ability of the respondent to continue with the construction. Despite diligent efforts, the respondent had been unable to carry on construction/ development/ implementation of its projects including the project in question during the aforesaid period which in any case should not be considered for determining the period for delivery of physical possession of the apartment to the complainants.
- xvii. That the agreement of sale notified under the Haryana Real Estate (Regulation and Development) Rules, 2017 categorically excludes any delay due to "force majeure", Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. That in addition to the aforesaid period, the following period also deserves to be excluded for the purpose of computation of period available to the

respondent to deliver physical possession of the apartment to the complainants as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017.

- xviii. That the development of project of the respondent was also adversely affected due to various orders of Hon'ble Supreme Court, National Green Tribunal, directions of Haryana State Pollution Control Board, Orders passed by Municipal Commissioner of Gurgaon, Environment Pollution (Prevention & Control) Authority for National Capital Region for varying period during the year 2017, 2018, 2019 and 2020. The various dates which affected the constructions of the project have been detailed as under:

National Green Tribunal vide order dated 09.11.2017 completely prohibited the carrying on of construction by any person, private or government authority in the entire NCR till the next date of hearing 17.11.2017 when the prohibition was lifted.

Haryana State Pollution Control Board, Panchkula had passed order dated 29.10.2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27.10.2018 whereby directing all construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material was used) to remain closed in Delhi and other NCR Districts from 1st to 10th November 2018.

Commissioner, Municipal Corporation, Gurugram vide order dated 11.10.2019 prohibited construction activity from 11.10.2019 to 31.12.2019. On account of passing of aforesaid order, no construction activity could have been legally carried on by the respondent and accordingly, construction activity had been completely stopped during this period.

Again Environment Pollution (Prevention & Control) Authority, for the National Capital Region vide direction dated 01.11.2019 imposed complete ban on the construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida until morning of 05.11.2019.

Hon'ble Supreme Court vide order dated 04.11.2019 in the W.P. (Civil) No. 13029/1985 M.C.Mehta vs Union of India & ors; directed for stoppage of all the constructions work till further order. The Hon'ble Supreme Court recalled the ban on construction work only vide order dated 14.02.2020.

Further, Commission for Air Quality Management (NCR and Adjoining Areas) vide order dated 16.11.2021 directed to stop the construction and demolition activities in NCR until 21.11.2021.

- xix. That due to the Court orders, Government policy/guidelines, decisions a total of 151 days have been lost and the respondent is entitled for the

extension of 151 days for delivery of possession of the flat to the complainant-allottee.

- xx. That the period of 151 days in addition to the period affected by Covid-19 (6+3= 9 months) mentioned hereinabove was consumed on account of circumstances beyond the power and control of the respondent owing to passing of orders by statutory authorities affecting the regular development of the real estate project. Since, the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of time already indicated hereinbefore, the said period ought to be excluded, while computing the period availed by the respondent for the purpose of raising construction and delivering possession.
- xxi. That in a recent publication in mint dated 07.10.2022 wherein it has been published that a one-month ban on the construction activities would delay the project by 3-4 months on account of mobilization of the labour, machinery, resumption of supplies of various materials etc. Accordingly, the Hon'ble Authority may consider grant of benefit of extension to the respondent on account of time consumed in re-mobilization of the various construction activities.
- xxii. That it is respectfully submitted that in a recent judgment Hon'ble RERA Authority of Guatam Budh Nagar has provide benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.10.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.11.2019 to 14.02.2020. The Hon'ble Authority was also pleased to consider and provided benefit of 6 months to the developer on account of

effect of Covid also which has been upheld by Hon'ble REREA Appellate Tribunal, Lucknow.

- xxiii. That it is also in public domain that the third wave of Covid-19 had also badly hit all the activities not only in Haryana but also in India and rest of the world. Haryana Government had imposed lockdown for varying periods owing to Covid19 third wave resulting in virtual closure of construction activities in their entirety within the state of Haryana.
- xxiv. That the aforesaid incidence was unforeseen events and beyond the control of the respondent which adversely affected the respondent's ability to perform its obligations under the agreement are within the meaning of force majeure as defined in clause in 19 of the agreement.
- xxv. That it is respectfully submitted that the respondent after receipt of occupancy certificate from the Town and Country Planning Department Haryana, issued offer of possession to the complainants on 13.02.2023 requesting the complainants to accept the possession and execute the necessary documents for the execution of the conveyance deed of the allotted unit. However, the complainants have refused to pay the outstanding amount of Rs.10,151/- towards the LPC and another sum of Rs. 3,850/- towards maintenance charges payable to Skyfull Maintenance Services and the complainants are not coming forward to execute the necessary documents for handing over the possession to them.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

8. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of

obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

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

9. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 08.06.2017 and environment clearance is 21.08.2017 as taken from the project details. The due date is calculated from the date of environment clearance being later. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA etc., were for a shorter duration of time and were not continuous being annual feature. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.
10. As far as delay in construction due to outbreak of Covid-19 is concerned, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the

subject unit is being allotted to the complainants is 21.08.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 21.02.2022. Hence, no relaxation over and above 6 months COVID period can be considered.

G. Findings on the relief sought by the complainants:

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

11. In the present complaint, the physical possession has not been handed over to the complainants-allottees. The respondent promoter has obtained OC for the subject unit from the competent authority on 25.01.2023 and has offered the possession of the subject unit(s) to the complainants on 13.02.2023. The promoter is directed to handover the physical possession of the subject unit complete in all respect as per specifications mentioned in BBA as per provisions of section 17 of the Act on making due payment by the allottee after adjusting the delayed possession charges. The complainants are also obligated to take the possession within 2 months as per section 19 (10) of the Act, 2016. If there is any delayed payment by the allottee, the interest at the prescribed rate shall be chargeable by the promoter.

G.II Direct the respondent to pay the interest on the principal amount @ 18% per annum from the date of payment till realization.

12. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under:-

"Section 18: - Return of amount and compensation

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

.....

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

13. Clause 5.1 of the apartment buyer's agreement (in short, the agreement) provides for handing over possession and the same is reproduced below:

5.1 "Subject to Force Majeure circumstances, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of agreement and not being in default under any part hereof, including but not limited to the timely payment of instalments as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later."

14. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is

just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

15. **Due date of handing over possession:** As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession was to be handed over within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. As detailed hereinabove, the authority in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic has allowed the grace period of 6 months to the promoter. Therefore, the due date of handing over possession comes out to be 21.02.2022.
16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.
17. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

19. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

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

20. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. As such the due date of handing over of possession comes out to be 21.02.2022 including grace period of 6 months on account of COVID-19. However, no interest shall be charged from the complainants in case of delayed payment during this 6 months COVID-19 period from 25.03.2020 to 25.09.2020.
21. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted

by the competent authority on 25.01.2023. The respondent has offered the possession of the subject unit(s) to the complainants on 16.02.2023 after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 21.02.2022 till the expiry of 2 months from the date of offer of possession (13.02.2023) plus two months i.e., 13.04.2023.

22. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainants-allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 21.02.2022 till offer of possession plus two months i.e., 13.04.2023, at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.III Not to raise illegal demands at the time of offer of possession

23. The complainants have also contended in brief facts and written submission that the respondent has issued offer of possession 13.02.2023 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.	Cheque bounce charges	0	0	0	0	0
2.	Water connection charges	1381	249	1630	0	1630
3.	Administration Charges	15000	2700	17700	0	17700
4.	Advance consumption charges	6000	0	6000	0	6000
5.	IPSD charges	20000	0	20000	0	20000
6.	External Electrification charges	34256	6166	40422	0	40422
7.	Meter connection charges	3850	693	4543	0	4543
Sub Total (B)		80487	9808	90295	0	90295

24. The authority has already dealt with the above charges in the compliant bearing no. *4147 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*, wherein the authority has held:

- **Administration charges**

25. That a nominal amount of Rs. 15000/- can be charged by the promoter/developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard.

- **Meter connection charges/water connection charges**

26. The authority is of the view that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainants on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainants vis-à-vis the area of all the flats

in this particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.

- **External electrification charges**

27. The authority has already dealt with the above charges in the compliant bearing no. *CR/4147/2021* titled as *Vineet Choubey V/S Pareena Infrastructure Private Limited* wherein the authority has held that the colonizer would provide the detail of expenditure to the complainant(s) and they can verify the same from DHBVN, if required. Thus, when the claimant(s) agreed to pay charges under this head on the condition of the promoter providing the details of expenditure to them and the same to be verified by them, then promoter can legally charge the same from them.

- **Advanced consumption deposit**

28. The authority has already dealt with the above charges in the compliant bearing no. *CR/4147/2021* titled as *Vineet Choubey V/S Pareena Infrastructure Private Limited* wherein the authority has held that the charges under this head are being demanded so that the allottee(s) should have power connection in his/ her unit at the time of possession and that amount should be adjusted in the electricity bill as per the consumption of power.

- **Interest free security deposit**

29. The authority has already dealt with the above charges in the compliant bearing no. *CR/4031/2019* titled as *Varun Gupta V/s Emaar MGF Land Limited* wherein the authority has held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFSD".

However, the authority directs and passes an order that the promoter must keep the amount collected under that head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFSD amount and the interest accrued thereon, it must provide details to them. It is further clarified that out of this IFMS/IFSD account, no amount can be spent by the promoter for the expenditure for which he is liable to incur/discharge the liability under section 14 of the Act.

30. According to the above findings, the respondent is correct in charging the said amount under the following heads and the said offer was not accompanied with any illegal demands. Therefore, the complainants are liable to pay the aforesaid demands as raised by the respondent vide letter of offer of possession dated 13.02.2023.

G.IV Direct the respondent to execute the conveyance deed/sale deed in favour of the complainants and to purchase stamp paper for which complainants have already made the payments.

31. The counsel for the complainants state that they have paid Rs.1,57,100/- towards stamp duty and Rs.15,010/- towards registration fees. The respondent has admitted the same as matter of record in the reply filed by it.
32. Clause 10 of the buyer's agreement provides for the execution and registration of the conveyance deed. The relevant clause is reproduced hereinafter for ready reference:

"The Allottee(s) undertakes to execute the Conveyance Deed in respect of the Said Flat within the period as may be intimated by the Developer in writing, failing which the Allottee(s) shall solely be liable for the consequences arising there from which inter-alia may include the increase in the rate of stamp duty/registration fee or any other such duty or charges payable in respect thereof."

33. The authority has gone through the aforesaid clause of the agreement and a reference to the provisions of section 17 (1) is also must, which provides as under:

"Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

34. In the present case, the complainants have already made payment regarding the stamp paper and registration fees however, the same has not been encashed by the respondent. The authority is of view that promoter is under an obligation to get conveyance deed executed in favour of the complainants as per the section 17(1) of the Act, 2016. Since, the possession of the allotted units has already been offered to the allottee(s) on 13.02.2023 after obtaining occupation certificate on 25.01.2023, so the respondent is directed to get the conveyance deeds of the subject unit executed within a period of 3 months from the date of this order upon payment of requisite stamp duty by the complainants as per norms of the state government in terms of section 17 of the Act.

G.V Restrain the respondent from demanding maintenance charges.

35. The respondent in the present matter has demanded skyful maintenance charges amounting to Rs.31,850/- through maintenance agency i.e., "Skyfull Maintenance Services Pvt. Ltd." from the complainants at the time of offer of possession. The authority observes that clause 4(v) of the policy, 2013 talks

about maintenance of colony after completion of project which is reproduced as under:

"A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The coloniser shall not be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983."

36. It is pertinent to mention here that the authority on 11.04.2022 requested DTCP, Haryana to give clarification with respect to the issue of maintenance. In response of the said letter sent by the Authority, an email dated 29.11.2022 has been received from DTCP intimating that the issue of free maintenance of the colony in terms of section 4(v) of the Affordable Group Housing Policy, stands referred to the Government and clarification will be issued by DTCP as and when the approvals is received from the Government.
37. As per the clarification regarding maintenance charges to be levied on affordable group housing projects being given by DTCP, Haryana vide clarification no. PF-27A/2024/3676 dated 31.01.2024, it is very clearly mentioned that the utility charges (which includes electricity bill, water bill, property tax waste collection charges or any repair inside the individual flat etc.) can be charged from the allottees as per consumptions.
38. Accordingly, the respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per consumptions basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

G.VI Restrain the respondent from charging late payment charges

39. The respondent has demanded a sum of Rs.10,351/- towards late payment charges at the time of offer of possession.
40. The authority hereby clarifies that no interest shall be charged from the complainants in case of delayed payment during the 6 months COVID-19 period from 25.03.2020 to 25.09.2020. Further, if there is any delay in making payment by the complainants-allottees, the interest at the prescribed rate shall be chargeable by the promoter as delineated hereinabove.

G.VII Direct the respondent to rectify the number of units/flats as per old site plan and the unit/flat numbers be retained as per old site plan

41. The counsel for the complainants are contending that the respondent has intentionally and deliberately changed the units of the tower and now unit no. 1 has named as unit no. 2 and vice-versa. Also the numbering have been changed anti-clockwise. Thus, the respondent be directed to retain the unit/flat number as per old site plan.
42. The authority vide proceeding dated 02.01.2024 has sought clarification from both the parties regarding alleged changes made in the lay-out plans/building plan after signing of BBA and handing over of possession.
43. The complainants vide supplementary documents dated 05.02.2024 states that they have filed an RTI with DTCP, Chandigarh seeking requisite plans and documents, However, the reply is still awaited.
44. However, the respondent vide written submission dated 06.02.2024 states that there has been no changes in the layout plan after execution of BBA with the complainants. Further, it is stated that the layout plan as cited by the complainants as Annexure E at page 84 is the mirror image of the layout

plan as provided at page 85, Annexure F of the complaint. Hence, there is no change of the lay out plan.

45. The authority is of the view that the occupation certificate has been granted by the concerned competent authority on 25.01.2023 as per the due procedure of law and if there is any deviation from the plans as approved by the concerned authority, the complainants are at liberty to approach the adjudicating officer seeking compensation as per provisions of section 14(3) of the Act.

G.VIII Cost of litigation and compensation

46. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants are at liberty to approach the adjudicating officer for seeking compensation.

H. Directions of the Authority:

47. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- a) The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e., 21.02.2022 till offer of possession (13.02.2023)

plus two months i.e., 13.04.2023 as per proviso to section 18(1) of the Act read with rule 15 of the rules. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.

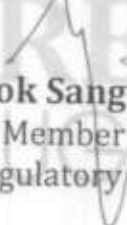
- b) The respondent is directed to handover physical possession of the subject unit complete in all respect as per specifications mentioned in BBA as per provisions of section 17 of the Act within 60 days from the date of this order on payment of outstanding dues, if any remains after adjustment of delay possession interest at the above prescribed rate.
- c) The respondent is directed to get the conveyance deeds of the subject unit executed within a period of 3 months from the date of this order upon payment of requisite stamp duty by the complainants as per norms of the state government in terms of section 17 of the Act.
- d) The respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per consumptions basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.
- e) The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and not as per the provisions of Affordable Group Housing Policy, 2013. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law

settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

- f) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. The benefit of grace period on account of Covid-19, shall be applicable to both the parties in the manner detailed herein above.
- g) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
48. Complaint stands disposed of.
49. File be consigned to the registry.


(Sanjeev Kumar Arora)

Member


(Ashok Sangwan)

Member


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.02.2024