

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

Complaint no.: 6951 of 2022
Date of decision : 09.02.2024

Kirti Gupta

R/o: - H.no. 1157/6, Roshanpura, Behind ganpati
Arcade, Tehsil & Distt. Gurugram, Haryana-122101

Complainant

Versus

M/s Signature Global (India) Pvt. Ltd.
Office: 1302,13th floor, Tower-A, Signature Tower,
South City-1, Gurugram, Haryana-122001

Respondent

CORAM:

Shri Sanjeev Kumar Arora

सत्यमेव जयते

Member

APPEARANCE:

Shri. Vishal Gupta (Advovate)
Shri. Niraj Kumar (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainants/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 to the allottees as per the agreement for sale executed inter-se them.

A. Unit and Project related details:



2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"The Millennia", Sector-37D, Gurugram
2.	Project area	9.701 acres
3.	Nature of the project	Residential - Affordable housing
4.	DTCP license no. and validity status	4 of 2017 dated 02.02.2017 valid upto 01.02.2022
5.	Name of the Licensee	Signature Global India Pvt. Ltd.
6.	RERA registered/ not registered and validity status	Registered vide no. 03 of 2017 dated 20.06.2017
7.	Unit no.	8-202, Block/Tower - 8 (Page no 20 of complaint)
8.	Unit admeasuring	592.126 sq. ft. (Page no 20 of complaint)
9.	Date of flat buyer's agreement	09.01.2018 (Page no 18 of complaint)
10.	Payment plan	Time linked payment plan (Page no 54 of complaint)
11.	Total consideration	Rs. 24,24,331/- (Page 27 of complaint) Rs. 26,42,525/- (Page no 10 of rejoinder-final statement of account)
12.	Total amount paid by the complainants	Rs. 24,24,331/- (As alleged by Complainant, Page no 4 of the complaint)



		Rs. 26,42,525/- (Page no 10 of rejoinder-final statement of account)
13.	Possession clause	5.1 <i>The developer shall 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. Whichever is later</i> (Emphasis supplied)
14.	Date of approval of building plans	08.06.2017
15.	Date of environment clearance	21.08.2017
16.	Due date of delivery of possession	21.02.2022 [Note: including grace period of 6 months]
17.	Occupation certificate	25.01.2023 (As per DTCP website)
18.	Offer of possession	23.03.2023 [pg. 7 of rejoinder by complainant]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a. That that the respondent is engaged in the business of developing housing/commercial projects and selling of residential apartments/ affordable housing projects & commercial spaces, having registered office mentioned in titled of the complaint, and Sh. Ravi Aggarwal is the managing director of respondent company, and is responsible for the liabilities and day to day conduct of affairs of respondent. The complainant had applied for allotment of residential flat admeasuring about Area - 596.126 sq. feet carpet area with balcony area 79.653 sq. feet sq. ft. in affordable group housing project The Millennia, Sector-37-D, Gurugram to be developed by respondent for a



total price of ₹24,24,331/- + GST tax, and the complainant had paid ₹ 1,21,217/- vide cheque no.163821 drawn on Indian Bank, Gurdwara Road, Gurugram. The said payment of ₹1,21,217/- has been duly acknowledged by the respondent vide application form serial no.009294. It is worth to mention here that the complainant has paid the entire sale consideration to the respondent in the shape of installment without any default as and when, the demand was raised by the respondent in the shape of installment without any default, initially out of her personal funds and then after availing home loan from Indian bank Gurugram.

- b. The complainant had paid the entire sale consideration of ₹24,24331/- +GST to the respondent in respect of residential flat admeasuring about area -596.126 sq. feet carpet area with balcony area 79.653 sq. feet sq. ft. in affordable group housing project The Millennia, Sector-37-D, Gurugram to be developed by respondent. That despite making complete payment to respondent/builder by the complainant qua above stated residential flat, the respondent failed to deliver the actual physical possession to the complainant in total violation of terms and condition of agreement to sell dated 09.01.2018.
- c. That as per clause 6.1 of ATS dated 09.01.2018, the respondent is under legal obligation to handover the habitable flat to the complainant on or before 20.08.2021, and in case of default, the respondent is liable to compensate the complainant for delayed possession, and the complainant is entitled for



compensation/interest for such delay till the actual delivery of possession.

- d. From above stated facts, it is clear that actual delivery of possession of unit to the complainant has to be made on or before 20.08.2021 as per the provisions of ATS, hence the complainant is entitled for delayed possession charges/interest/compensation with effect from 21.08.2021 till the actual delivery of possession of flat .It is worth to mention here that no charges for delayed possession have been given to complainant by the respondents.
- e. That in the 34th meeting of GST council held on 19.03.2019 regarding GST on real estate sector, the GST council has given option to the builder/developer/promoter having ongoing projects to continue to pay GST at the old rates (effective rate of 12% with ITC) on ongoing projects which have not been completed by 31.03.2019, or to opt for new rate of 1% GST without input tax credit (ITC) on construction of affordable houses.
- f. That in view of the above said decision taken by the GST council the complainant had sent various email to the respondents on 04.04.2019, 18.04.2019 requesting the respondents to assess the fresh GST tax calculation i.e.@1% or to send the copy of official letter and resolution sent by respondent to GST authorities, regarding option exercised by respondent qua adopting the old tax regime but the same has not been supplied by the respondents till date, however the complainant made all



the payment including GST as demanded by the respondents under protest through her banker vide email dated 22.04.2019.

- g. That after various personal visit and telephone calls the complainant sent another email dated 06.10.2022 and demanded compensation for delay in delivery of possession as per the agreed terms and further demanded the copy of letter /Annexure-IV along with board resolution sent by the respondents to the GST authorities regarding opting the old tax regime of GST, but the respondents sent a vague reply and have failed to full fill the just and legal demand of the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
- To order the respondent to handover the actual physical possession of the flat to the complainant.
 - To order respondent to pay delay possession charges from 21.08.2021 till actual date of handing over of possession.
 - To order the respondent to provide copy of Annexure IV along with copy of supportive board of directors resolution submitted by it to GST department in compliance of decision taken by GST council on 19.03.2019 regarding GST rates on ongoing real estate projects.
 - To order respondent to refund the excess GST charged by it if the respondent has opted for new tax regime for its project in compliance of order dated 19.03.2019 of GST council.
 - Cost of litigation.

D. Reply filed by the respondent:

5. The respondent has contested the complaint on the following grounds:
- a. That the complainant was allotted a flat bearing no. 8-202 having carpet area of 596.126 sq. ft. and balcony area 79.653 sq. ft. together with the two wheeler open parking site through draw of lots held on 27.10.2017 under the affordable group housing policy 2013 notified by Government of Haryana vide Town and Country Planning Department notification dated 21.08.2017 as applicable at relevant point of time.
 - b. That subsequent to the allotment of the said flat the complainant entered into agreement with the respondent for the delivery of possession of the said flat on the terms and conditions as contained therein.
 - c. That the total cost of the allotted flat including balcony area was ₹24,24,331/- 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.
 - d. That the total cost of the said flat was escalation free, save and except increase on account of development charges payable to the governmental authority and/ or any other charges which may be levied or imposed by the governmental authority from time to time, which the complainant had agreed to pay on demand by the respondent.
 - e. That the delivery of the possession of the said flat was agreed to be offered within 4 (four) years, from the approval of building plans or grant of environmental clearance, whichever is later.



However the delivery of possession was subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely completed with all its obligations.

- f. 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.
- g. 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.
- h. 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.
- i. That the outbreak of Covid-19 has been declared as a pandemic by the World Health Organization. Advisories/ directions including lockdown/ restrictions have been issued by the Govt.

of India as also State Govt. The said pandemic has had serious consequences and was so deadly and contagious that complete lockdown was imposed several times not only in Haryana but in India and rest of the world also. That even lockdown was withdrawn various restrictions continued to be imposed.

- j. That it is also to be noted that on the same principle, the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide Order/direction dated 26th of May, 2020 on account of 1st wave of Covid-19 pandemic. The said lockdown was imposed in March 2020 and continued for around three months. However, the extension of six month was granted in contemplation of its effects against three months of lockdown.
- k. That before the effect of 1st wave of Covid-19 could subside, it is matter of fact that 2nd and 3rd wave of Covid19 out broke. The 2nd wave of Covid-19 pandemic had hit the country badly 'like a tsunami' and Haryana was no exception thereof.
- l. That it is also matter of fact that Gurugram falls within the area of NCR and different competent authorities such as the Hon'ble Supreme Court, National Green Tribunal (NGT), Municipal Corporation Gurugram (MCG) etc. had directed ban on construction activities in Delhi NCR due to rise in pollution level mainly in festive season/ winter season for various periods thereby severely affecting the regular development of the real estate projects.

- m. That it is important to mention herein that graded response action plan has been implemented during winters and depending upon severity it also includes ban on construction activity and infact such restrictions have been imposed from time to time. Reference may be made to article in this regard which was published in business standard.
- n. That it is needless to mention that owing to a ban on construction activity, especially a complete and a long ban, the labour force gets demobilized. They have to be let off and they generally go back to their native places or seek work elsewhere and resumption of work and gaining pace of construction takes a very long time even after the ban stand lifted. Now as a matter of practice construction labour is not coming to NCR for construction in project site in winter season due to above reason & they are preferring to work in other state outside NCR during that time of year resulting in further delay of mobilization of construction activity.
- o. 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 Real Estate Regulation and Development Act, 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.

- p. That the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula had decided to grant extension of 3 months in addition to waiver granted during first wave of Covid pandemic from 15 of April 2021 to 30th of June 2021 considering the 2nd wave of Covid19 as a Force Majeure event.
- q. That the Commissioner of Municipal Corporation Gurugram. Vide order dated 11.10.2019 issued direction to issue challan for Construction Activities & lodging of FIR from 11th October to 31 December, 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.
- r. That the Hon'ble RERA, Gautam Budh Nagar while deciding complaint No. -ADJ/NCR144/07/56387/2020 and leading complaint No. NCR144/09/61244/2020 and NCR144/01/0447/2020 vide order dated 19.03.2021 and 16.12.2020 has given extension of 74 days and 102 days to the developer on account of construction. It is pertinent to mention that said extension was in addition to Covid19 six months extension as noted in the said judgments.
- s. That in the light of aforesaid facts and notifications, it is submitted that the respondent is entitled for exclusion of the period of delay caused due to 2nd wave of Covid-19 pandemic and construction ban imposed by competent authorities being decisions affecting the regular development of the real estate

project for a period of at least nine (9) months in addition to six months extension of Covid-19.

- t. Further, all these facts were and are in the notice and knowledge of the complainant and the complainant has pleaded deliberate ignorance about the same. The complainant has intentionally omitted any reference to the aforesaid clauses of agreement. It is further submitted that the occupancy certificate of the project has been received and the respondent is in process to issue offer of possession to the allottees including the complainant.
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 on the basis of these undisputed documents and submissions made by the complainants.
7. The complainant and the respondent submitted the written submission in the authority dated 16.11.2023 & 18.01.2024 respectively.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

9. 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

10. 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;

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

11. So, in view of the provisions of the Act of 2016 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

12. 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, so, the due date of subject unit comes out to be 21.08.2021. *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/due date on or after 25.03.2020.* The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 21.08.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 21.02.2022.

G. Findings regarding relief sought by the complainant.

- G.I. To order the respondent to handover the actual physical possession of the flat to the complainant. /**
- G.II. To order respondent to pay delay possession charges from 21.08.2021 till actual date of handing over of possession.**
13. The complainant in its complaint stated that although the respondent has offered the possession of the unit on 23.03.2023 but since it is accompanied by illegal demands therefore, the said letter dated 23.03.2023 is invalid. Also, the copy of OC was not attached with the offer. The authority before adjudicating upon the relief of delay

possession charges shall first give findings with regard to the validity of offer of possession letter dated 23.03.2023.

Validity of offer of possession

14. At this stage, the authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:
- i. **Possession must be offered after obtaining occupation certificate-** The subject unit after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.
 - ii. **The subject unit should be in habitable condition-** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc from the relevant authorities. In a habitable unit all the common facilities like lifts, stairs, lobbies,

etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render unit uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of the subject unit with such minor defects under protest. This authority will award suitable relief for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legally valid offer of possession.

- iii. **Possession should not be accompanied by unreasonable additional demands-** In several cases additional demands are made and sent along with the offer of possession. Such additional demands could be unreasonable which puts heavy burden upon the allottees. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession.

Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if respondent has raised additional demands, the allottees should accept possession under protest.

15. The respondent has charged the demands under the following heads:

Head	Amount(₹)
Water connection charges	1381
Administration charges	15000
Advanced consumption deposit	6000
IFSD charges	15000
External electrification charges	31684
Meter connection charges	3850

16. 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:

- **Administration charges**

17. That a nominal amount of Rs. 15000/- could 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**

18. That the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee(s) on pro-rata basis on account of electricity connection. 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. The model of the digital meters installed in the complex be shared with allottee(s) so that they could verify the rates in the market and the coloniser.

- **External electrification charges**

19. It was decided 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**

20. 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**

21. 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.

22. According to the above findings the respondent is correct in charging the said amount under the following heads accordingly the said offer was not accompanied with any illegal demands therefore all the conditions of a valid offer are being fulfilled therefore, the said letter dated 23.03.2023 is valid in eyes of law.
23. Further, 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

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.

24. As per clause 5.1 of the buyer's agreement dated 09.01.2018, the possession of the subject unit was to be handed over by 21.02.2022. Clause 5.1 of the buyer's agreement provides for handover of possession and is reproduced below:

5.1

The developer shall 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. Whichever is later."

25. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application,

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 promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters 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 flat buyer agreement by the promoters are 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 his 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.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. 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."

27. 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.
28. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 09.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
29. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. — For the purpose of this clause—

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

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

30. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the

respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges

31. 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 agreement executed between the parties on 09.01.2018, the possession of the subject apartment was to be delivered within 4 years from the date of environment clearance or building plan whichever is later. The due date of possession is calculated from the date of environment clearance being later i.e., 21.08.2017. As far as grace period of 6 months is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 21.02.2022. The respondent has offered the possession of the subject apartment on 23.03.2023. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the 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 allottee 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., 23.05.2023 at 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. To order the respondent to provide copy of Annexure IV along with copy of supportive board of directors resolution submitted by it to GST department in compliance of decision taken by GST council on 19.03.2019 regarding GST rates on ongoing real estate projects.**
- G.IV. To order respondent to refund the excess GST charged by it if the respondent has opted for new tax regime for its project in compliance of order dated 19.03.2019 of GST council.**
32. The above said reliefs are interconnected therefore, they are being taken up together for adjudication. The complainant in its complaint is asking for the copy of documents submitted in the GST department in compliance of the decision taken by the department on 19.03.2019. The respondent in its reply have replied that they mailed the complainant on 17.04.2019 regarding the same that they have opted to continue GST as per old regime for their ongoing project. Although the respondent has replied in its mail to the said query of the complainant but did not attached the relevant document for its proof even after being asked from the complainant on mail dated 18.04.2019.
33. The authority is of the view that the rate of GST for affordable group housing projects were revised from 8 % to 1% by the GST Council in its 34th GST Council meeting held on 19.03.2019 for the projects commenced on or after 01.04.2019. It is observed that the instant project was commenced on 21.08.2017 i.e., from date of environment clearance. Since the said project do not fall the said revision policy accordingly, the respondent is right in collecting the said amount from the complainant in this regard.

G.V. Cost of litigation

34. The complainant is claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand

that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may approach the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

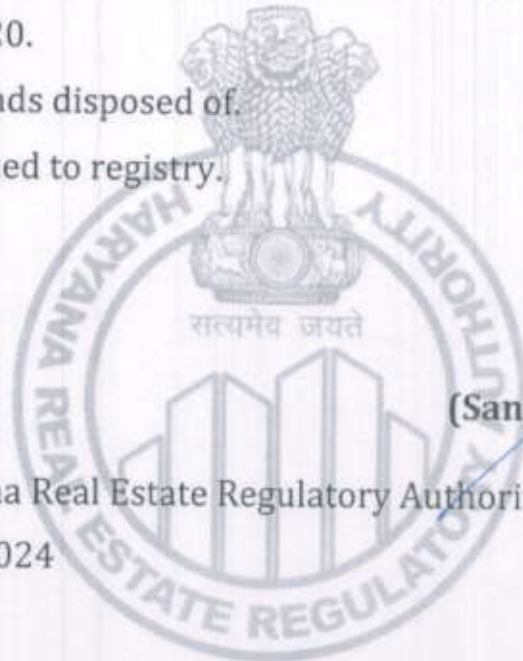
H. Directions of the authority

35. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- a. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 21.02.2022 till offer of possession plus two months i.e., 23.05.2023.
- b. 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 promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. Accordingly, the respondent is directed to refund the excess amount charged on account of delay payment from the complainant if any.
- c. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period within 30 days from the date of this order and the respondent shall

handover the possession in next 60 days to the complainants/allottees.

- d. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
36. Complaint stands disposed of.
37. File be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.02.2024

HARERA
GURUGRAM