

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

Order reserved on:	05.07.2024
Order pronounced on:	26.07.2024

NAME OF THE BUILDER		M/S Forever Buildtech Private Limited	
PROJECT NAME		"The Roselia"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1282/2023	Vinod Tomar and Monika V/S M/s Forever Buildtech Private Limited	Sh. Mohit Dua Advocate and Sh. Niraj Kumar Advocate
2.	CR/1284/2023	Rinku Kumari V/S M/s Forever Buildtech Private Limited	Sh. Mohit Dua Advocate and Sh. Niraj Kumar Advocate
3.	CR/1285/2023	Vidhu Tripathi V/S M/s Forever Buildtech Private Limited	Sh. Mohit Dua Advocate and Sh. Niraj Kumar Advocate
4.	CR/1135/2023	Vinod Kumar V/S M/s Forever Buildtech Private Limited	Ms. Stuti Jain Advocate and Sh. Neeraj Kumar Advocate

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

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

for all its obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**The Roselia**" (Affordable Group Housing Colony) being developed by the same respondent/promoter i.e., M/s Forever Buildtech Private Limited. The terms and conditions of the booking application form, agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges along with interest and others.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	M/s Forever Buildtech Private Limited at "The Roselia", at Sectors 95-A, Gurugram.	
Project registered vide no. 05 of 2017 dated 20.06.2017 valid up to 17.05.2021		
Date of approval of Building Plans: - 09.01.2017 (Revised on 06.07.2018) No document has been placed on record. Hence taken from the DTCP website.	Date of Environment clearance: - 18.05.2017 (documents regarding this are placed on record)	
Occupation Certificate: - 14.05.2022		
Possession Clause: - 5. POSSESSION 5.1 <i>Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and-Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of</i>		



building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later."

(Emphasis supplied).

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell	Due date of possession	Total Consideration /Total Amount paid by the complainants in Rs.
1.	CR/1282/2023 Vinod Tomar and Monika V/S M/s Forever Buildtech Private Limited Date of Filing of complaint 31.03.2023	Reply received on 04.09.2023	603, 6 th floor, tower-D Area admeasuring 514.272 sq. ft. and a balcony area of 79.9 sq. ft. (super area) (Page no. 16 of the complaint)	07.09.2018 [Page no. 14 of complaint]	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]	BSP:- 20,97,050/- (As per BBA at page no. 21 of the complaint) TSC: - 22,69,145/- AP: - 22,69,150/- (As per customer ledger dated 26.11.2022 at page no. 50 of the complaint)



2.	CR/1284/ 2023 Rinku Kumari V/S M/s Forever Buildtech Private Limited. Date of Filing of complaint 31.03.2023	Reply received on 04.09.2023	907, 9 TH floor, tower-H Area admeasuring 514.272 sq. ft. and a balcony area of 79.9 sq. ft. (super area) (Page no. 19 of the complaint)	14.11.2018 [Page no. 16 of the complainant]	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]	20,97,050/- (As per BBA at page no. 25 of the complaint) TSC: - 22,64,810/- AP: - 22,75,668/- (As per customer ledger dated 12.12.2022 at page no. 54 of the complaint)
3.	CR/1285/ 2023 Vidhu Tripathi V/S M/s Forever Buildtech Private Limited. Date of Filing of complaint 31.03.2023	Reply received on 04.09.2023	604, 6 TH floor, tower-D Area admeasuring 569.243 Sq. Ft. carpet area and 101.978 sq. ft. balcony area (Page no. 20 of the complaint)	13.03.2018 [Page no. 18 of the complainant]	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having	23,26,972/- (As per BBA at page no. 27 of the complaint) TSC: - 25,14,309/- AP: - 25,33,297/- (As per customer ledger dated 08.10.2022 at page no. 55 of the complaint)



Complaint Nos. and 1282 of
2023 & 3 others

					completion date on or after 25.03.2020.]	
4.	CR/1135/2023 Vinod Kumar V/S M/s Forever Buildtech Private Limited. Date of Filing of complaint 14.03.2023	Reply received on 29.08.2023	1202, tower-K Area admeasuring 569.243 Sq. Ft. carpet area and 101.978 sq. ft. balcony area (Page no. 20 of the complaint)	14.02.2019 [Page no. 17 of the complainant]	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]	22,64,810/- (As per page 82 of the complaint) AP: - 20,97,050/- (Page 64 of complaint on conveyance deed)

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

1. Direct the respondent to pay delayed possession charges.
2. Direct the Respondent to refund the excessed charged amount from the total sale consideration as well as to refund the maintenance charges charged on account of Skyfull maintenance charges and other charges as per Annexure-7.
3. Direct the Respondent not to charge the maintenance charges further.
4. Direct the Respondent to charge delay payment, if required at equitable rate of interest.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form
TSC Total Sale consideration
AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the booking application form, agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of delayed possession charges along with interest and others.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the four complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1282/2023 titled as Vinod Tomar and Monika V/s M/s Forever Buildtech Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua seeking award of delayed possession charges along with interest and others.

A. Project and unit related details

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

CR/1282/2023 titled as Vinod Tomar and Monika V/s M/s Forever Buildtech Private Limited.

S. No.	Particulars	Details
1.	Name of the project	The Roselia, Sector 95-A, Gurugram, Haryana.



2.	Project area	8.034 Acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP License no. & validity status	13 of 2016 dated 26.09.2016 upto 30.10.2023
5.	Name of Licensee	Forever Buildtech Pvt. Ltd.
6.	RERA Registered / not registered	Registered 05 of 2017 dated 20.06.2017 Valid upto 17.05.2021
7.	Date of approval of building plans	09.01.2017 (page 28 of reply)
8.	Date of approval of revised building plans	06.07.2018 No document has been placed on record. Hence taken from the DTCP website.
9.	Date of Environment clearance	18.05.2017 (Taken from the similar complaint of the said project being developed by the same developer)
11.	Unit no.	D- 603 on 6th floor [page no. 16 of complaint]
12.	Unit admeasuring	514.272 sq. ft. (Carpet area) 79.923 sq. Ft. (Balcony Area)
13.	Allotment Letter	24.07.2018 (Page 12 of complaint)
14.	Date of execution of agreement to sell (Registered)	07.09.2018 (page no. 14 of complaint)
15.	Possession clause	5. Possession 5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and-Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and



		<p><i>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>(Emphasis supplied).</p>
16.	Due date of possession	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]
17.	Total consideration sale	Rs. 22,69,145/- (As per customer ledger dated 26.11.2022 at page no. 50 of the complaint)
18.	Total amount paid by the complainants	Rs. 22,69,150/-/- (As per customer ledger dated 26.11.2022 at page no. 50 of the complaint)
19.	Occupation certificate	06.05.2022 No document has been placed on record. Hence taken from the DTCP website.
20.	Offer of possession	14.05.2022 (Page no. 63 of the complaint)
21.	Possession certificate	29.07.2022 (Page 65 of complaint)

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
- a. That believing the representations of the respondent and on the lookout for an adobe for himself and his family, on 01.02.2018 vide application

bearing no. 51430, the complainants applied through an application for allotment through draw of a residential unit by making a payment of Rs. 1,06,000/- in the said project. However, the respondent at the time of receiving the aforesaid application assured the complainants that allotment of flat would be done in a 'draw of flats" which would be performed in a short period of time. Eventually the draw of flats was held by the respondent on 24.07.2018 whereby they were declared to be successful applicants and complainants were provisionally allotted an apartment bearing no. D-603, situated on 6th Floor in Tower/Block D having carpet area of 514.272 sq.ft. & balcony area of 79.923 sq.ft. The total sale consideration for the subject unit was quantified at Rs. 20,97,049.50/-.

b. That, thereafter the allotment of the unit, on 07.09.2018, the buyer's agreement was executed between the parties. That as per clause 5.1 of the said buyer's agreement dated 07.09.2018, the respondent proposed to offer the possession of the unit in question to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later, i.e., by 18.05.2021 as the respondent company has received the environment clearance from the concerned department on 18.05.2017. That as per clause 5.1 of the agreement, the due date of possession comes out to be 18.05.2021. However, the respondent failed in handing over the same. The complainants approached the project location several times during the said period to see the stage of construction but the project was nowhere near completion. The complainants subsequently approached the respondent representatives to know about the date of handing over of

- possession but to their utter shock, the respondent refrain from replying to the same.
- c. After a delay of almost one year, on 14.05.2022, the respondent issued the offer of possession letter of subject unit wherein the respondent has offered to take the possession of the unit upon which the complainant protested to the respondent that they issued the said letter of possession after 1 years from the due date without any justified reasons and the delay has caused hardship upon her as the wait of 1 year is not a short period for her and her family. Then thereafter, with the unjustified reasons to delay in handing over of possession after offering the possession and under the protest of fulfilling the illegal demand finally on 10.12.2022, the complainant has received the possession of the unit vide possession certificate or key handover letter dated 10.12.2022 wherein it is mentioned that the said unit has been obtained under protest.
- d. The aforesaid levies i.e., maintenance charges are absolutely illegal and unsustainable in light of the fact that the respondent is solely responsible for maintenance of the project for the initial period of 5 years under the policy, referred to above. The above said act of the respondent has incorporated the wrongful gain to the respondent and wrongful loss to the complainant. That additionally the complainant has sought clarification upon the imposed various charges amounting to Rs. 1,16,985/- in the name of administrative charges, meter connection charges, water connection charges, advanced consumption deposit, IFSD Charges and External Electrification charges, which were neither

disclosed at the time of booking of the unit nor at the time of execution of buyer's agreement. The aforesaid levies are absolutely illegal and unsustainable in light of the fact that the respondent is solely responsible for providing the basic amenities like electricity meter connection or water connection under the policy, referred to above.

- e. The complainants have already paid Rs. 22,69,150/- i.e., more than the total sale consideration amount as agreed under the buyer's agreement to the respondent. It is submitted that there has been a delay of almost 1 year in delivering possession of the said unit to them. The respondent has taken advantage of its dominant position vis-a-vis the complainants.
- f. The complainants are entitled to delayed possession interest and compensation in the facts and circumstances of the case. The complainant is liable to get refund of the excess amount charged by the respondent from the total sale consideration of the unit as well as illegally charged maintenance amount on account of Skyfull Maintenance Services and other charges imposed by the respondent.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s)
- Direct the respondent to pay delayed possession charges.
 - Direct the respondent to refund the excessed charged amount from the total sale consideration as well as to refund the maintenance charges charged on account of Skyfull maintenance charges and other charges as per Annexure-7.

- c. Direct the respondent not to charge the maintenance charges further.
- d. Direct the respondent to charge delay payment, if required at equitable rate of interest.

D. Reply by the respondent

10. The respondent contested the complaint on the following grounds: -

- i. In fact, Covid 19 Pandemic was an admitted Force Majeure event which was beyond the power and control of the Respondent. 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 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.
- ii. That it is respectfully submitted the Hon'ble Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 extended the date of completion for all Real Estate Projects registered under Real Estate Regulation and Development Act, where completion date, revised completion date or extended completion date was to expire on or after 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.

- iii. This makes it clear that the Ministry too stated that the period from 01.04.2020 to 31.03.2021 was excluded, for the purpose of calculation of the period of validity of prior environmental clearances, granted under the provisions of this notification in view of the Covid-19 lockdown. In this manner, similar relaxation ought to be granted for the construction of the project too.
- iv. That it is pertinent to mention 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 Complainant as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017.
- v. 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.

- vi. That the period of 142 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.
- vii. That it is respectfully submitted that 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 and hence there is no delay on the Respondent in handing over the possession of the flat to the Complainant.
- viii. That it is respectfully submitted that the Respondent after receipt of Occupancy Certificate from the Town & Country Planning Department Haryana, issued Offer of Possession vide letter dated 14.05.2022 requesting the Complainant to accept the possession and execute the necessary documents for the execution of the conveyance deed of the given flat. The conveyance Deed was executed and subsequently the physical possession was delivered to the Respondent on 10.12.2022. The copy of the offer of possession letter is already on record.

11. 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 made by the parties and written submissions filed by the complainants.

E. Jurisdiction of the authority

12. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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

Section 11

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent.

F.I Objection regarding force majeure conditions:

16. The respondent-promoter pleaded that though the due date for completion of the project and offer of possession of the allotted unit was fixed as 18.05.2021 as per buyer's agreement dated 07.09.2018 but due to outbreak of Covid 19, there was complete lockdown during the period March 2020 to different periods. Even the Government of Haryana termed that as Mahamari alert/Surakshit Haryana resulting in slowdown of all the activities within the state even though the authority granted six months general extension with effect from 25.03.2020 to 24.09.2020 considering it as a force majeure event. That decision was taken pursuant to the advisory issued by the State Government as well as The Government of India. Due to Covid 19, it took some time to mobilize the labour as well as the construction material. Despite all that the construction of the project was completed and its occupation certificate was received on 06.05.2022. So, the respondent-builder be allowed extension in offer of possession of the project. Though the request made in this regard is being opposed on behalf of the complainant, but a judicial notice of the fact can be taken that due to Covid 19, there was complete lockdown for a number of days resulting in the labour moving to their native places and the construction activities coming to a standstill. Even that fact was taken into

consideration and the authority allowed extension of the ongoing projects for a period of six months.

17. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, the due date of handing over of possession comes out to be 18.05.2021 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders. Also, a relief of 6 months will be given to the complainant/allottee and no interest shall be charged from him for the delayed payments if any, during the Covid period i.e., from 01.03.2020 to 01.09.2020.

G. Findings on the relief sought by the complainants

G. I Direct the respondent party to pay delayed possession interest.

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

"Section 18: - Return of amount and compensation

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

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

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

5. POSSESSION

- 5.1** *Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and-Allottee(s) having timely complied with all its obligations, formalities or documentation, as*

*prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, **the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.***

20. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

21. **Due date of handing over possession and admissibility of grace period:**
The promoter has proposed to hand over the possession of the said flat as per clause 5.1 of the buyer's agreement within a period of 4 years from the date of approval of building plans (09.01.2017) or grant of environment clearance,

(18.05.2017), whichever is later. Therefore, the due date of possession comes out to be 18.05.2021.

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

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

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

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

23. 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.
24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 26.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
25. 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.

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
27. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5.1 of the agreement executed between the parties on 07.09.2018, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan (09.01.2017) or grant of environment clearance i.e. (18.05.2017) whichever is later. Therefore, the due date of handing over possession is calculated by the receipt of environment clearance dated 18.05.2017 which comes out to be 18.05.2021. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.05.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 18.11.2021. Occupation certificate was granted by the concerned authority on

06.05.2022 and thereafter, the possession of the subject flat was offered to the complainant on 14.05.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 07.09.2018 to hand over the possession within the stipulated period.

28. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 06.05.2022. The respondent offered the possession of the unit in question to the complainants only on 14.05.2022, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till actual handing over of possession or offer of possession plus two months whichever is earlier.
29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession at prescribed rate

of interest i.e., 11 % p.a. w.e.f. 18.11.2021 till the expiry of 2 months from the date of offer of possession (14.05.2022) which comes out to be 14.07.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G.II b. Direct the respondent to refund the excessed charged amount from the total sale consideration as well as to refund the maintenance charges charged on account of Skyfull maintenance charges and other charges as per Annexure-7.

G.III c. Direct the respondent not to charge the maintenance charges further.

30. The complainants submitted that the respondent company has offered the possession of the allotted unit on 14.05.2022 along with statement of account the said letter contains several illegal/unreasonable demands under different heads i.e., administration charges, meter connection, water connection, advance consumption charges, IFSD charges, and electrification charges of Rs.91,294/-, and on 06.06.2022, a maintenance agency i.e., "Skyfull Maintenance Services Private Limited" raised an invoice for maintenance of Rs.24,686/-. The respondent has demanded certain amount on account of charges i.e., administrative charges, advance electricity consumption charges, IFSD charges, external electrification charges and the interest on delayed payment were cover under the head of "other charges and the same is mentioned below: -

S. No.	Particulars	Basic Amt.	Tax Amount	Due Amount	Received/ adjustment	Balance
1.	Administration Charges	15000	2700	17700	0	17700
2.	Meter connection charges	3700	666	4366	0	4365
3.	Water connection charges	549	99	648	0	648
4.	Advance consumption charges	4500	0	4500	0	4500
5.	IFSD charges	15000	0	15000	0	15000
6.	External Electrification charges	41593	7487	49080	0	49080

Sub Total	80342	10952	91294	0	91294
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31. Moreover clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project:

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.

32. As per the order issued by DTCP, Haryana vide clarification no. PF-27A/2024 /3676 dated 31.01.2024, it has been 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. Accordingly, the respondent is directed to charge the maintenance/use/utility charges and other charges from the complainants-allottees as per clarification issued by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024

G.III Direct the respondent to charge delay payment, if required at equitable rate of interest.

33. Further, the interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges

34. The complaint no listed at serial no. 4 in the table of paragraph 3, wherein complainant is seeking additional relief of refund of GST, collected/utility services etc. The Authority is of view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act, 2016. In view of the above, the complainant cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016

H. Directions of the authority

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

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 11% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 18.11.2021 till 14.07.2022 i.e., expiry of 2 months from the date of offer of possession (14.05.2022). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same rate of interest which the

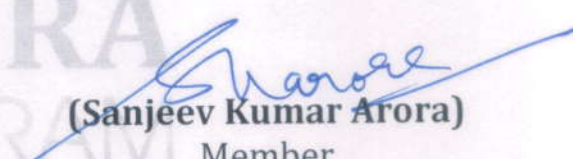
promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(z) of the Act. The benefit of grace period on account of Covid-19, shall be applicable to both the parties in the manner detailed herein above.

- iii. The complainant(s) is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any.
- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement and the provisions of Affordable Group Housing Policy of 2013.

36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
37. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
38. File be consigned to registry.

Dated: 26.07.2024

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram