

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

Date of filing of complaints : 17.10.2023
Date of first hearing : 17.01.2024
Date of decision : 09.10.2024

| Name of builder | | M/s Signature Global India Private Limited | |
|-----------------|--------------|---|--|
| Project name | | The Millennia, Sector 37 D Gurugram | |
| Sr. No. | Case No. | Case title | Appearance |
| 1. | CR/4606/2023 | Puneet Khaneja Vs. M/s Signature Global India Private Limited. | Sh. Akash Godhvani (Advocate) Sh. Mintu Kumar (AR of the company) |
| 2. | CR/4577/2023 | Asad Ali and Shehnaz Vs. M/s Signature Global India Private Limited. | Sh. Akash Godhvani (Advocate) Sh. Mintu Kumar (AR of the company) |
| 3. | CR/4614/2023 | Balbir Singh Narval Vs. M/s Signature Global India Private Limited | Sh. Akash Godhvani (Advocate) Sh. Mintu Kumar (AR of the company) |

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "The Millennia" situated at Sector 37 D, Gurugram being developed by the same respondent/promoter i.e., M/s Signature Global India Private Limited. The terms and conditions of the buyer's agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges, handing over of possession etc.
3. The details of the complaints, status of reply, 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 | "The Millennia, Sector 37 D Gurugram |
| Nature of the project | Affordable housing |
| DTCP License No. and validity status | 04 of 2017 dated 02.02.2017 valid upto 01.02.2022 |
| HRERA Registered | Registered 03 of 2017 dated 20.06.2017 valid upto 21.08.2021 |
| Occupation certificate | 25.01.2023 |
| Date of building plan | 08.06.2017 |
| Environment clearance | 21.08.2017 |
| Possession clause | "5. Possession <i>5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of</i> |



| | |
|-------------------------------|---|
| | <i>building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later."</i> |
| Due date of Possession | 21.02.2022 |

| S No | Complaint No., Case Title, and Date of filing of complaint | Unit no. & size | Date of execution of BBA | TSC / Total Amount paid by the complainants | Offer of possession/ Conveyance Deed | Relief sought |
|------|---|---|--------------------------------------|---|---|--|
| 1 | CR/4606/2023 Puneet Khaneja VS Signature Global India Private Limited. DOF: 17.10.2023 Reply:15.03.2024 | 10-1608, Tower 10, 16 th Floor | 03.01.2018 (Page 30 of complaint) | TSC- Rs.23,07,430 AP- Rs.23,07,430 (Both taken from Customer ledger dated 08.04.2023 at page no. 65 of complaint) | OOP: 23.03.2023 (Page 174 of reply) C.D- 28.06.2023 (Page 177 of reply) PC: 25.11.2023 (Page 197 of reply) | <ul style="list-style-type: none"> • DPC • Handover of possession • Return the interest charged from the complainant. • Not to charge anything which is not part of buyer agreement. • Not to charge skyful maintenance charges for a period of 5 years, refund if already paid. |
| 2 | CR/4577/2023 Asad Ali and Shehnaz VS Signature Global India Private Limited DOF: 17.10.2023 Reply:15.03.2024 | 10-2305, Tower 10, 23 rd Floor | 18.09.2019 (Page 34 of complaint) | TSC- Rs.22,49,267 AP- Rs.22,49,267 (Both taken from CD at page 187 of reply) | OOP: 23.03.2023 (Page 174 of reply) C.D- 18.10.2023 (Page 182 of reply) PC: 08.11.2023 (Page 201 of reply) | <ul style="list-style-type: none"> • DPC • Return pari pasu interest charged from the complainant while booking of unit of Rs.2,09,257/- • Handover of possession. • Not to charge anything which is not part of buyer agreement. • Not to charge skyful maintenance charges for a period of 5 years, refund if already paid. |
| 3 | CR/4614/2023 Balbir Singh Narval | 5-407, Tower 5, 4th Floor | 05.03.2021 (Page 29 of complaint) | TSC- Rs.24,24,331 | OOP: 17.02.2023 | <ul style="list-style-type: none"> • DPC • Not to charge anything which is not |



| | | | |
|--|---|---|--|
| VS Signature Global India Private Limited. DOF: 17.10.2023 Reply:15.03.2024 | AP- Rs.24,24,331 (Both taken from page 184 of reply) | (Page 174 of reply) C.D- 19.05.2023 (Page 178 of reply) PC: 03.07.2023 (Page 198 of reply) | part of buyer agreement. • Not to charge skyful maintenance charges for a period of 5 years, refund if already paid. |
| Abbreviations Used: | | | |
| BBA: Builder Buyer Agreement TSC: Total Sale Consideration AP: Amount Paid | | OOP: Offer of Possession CD: Conveyance Deed PC: Possession Certificate | |

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges and execution of conveyance deed.
5. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/4606/2023 titled as "Puneet Khaneja VS Signature Global India Private Limited"** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Unit and project related details

6. The particulars of unit details, 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:

CR/4606/2023: Puneet Khaneja VS Signature Global India Private Limited

| S.no. | Particulars | Details |
|-------|-----------------------|--|
| 1. | Name of the project | "The Milleannia", Sector 37-D, Gurugram, Haryana |
| 2. | Nature of the Project | Affordable Housing Project |
| 3. | DTCP License No | 04 of.2017 dated 02.02.2017 Valid up-to 01.02.2022 |
| 4. | Unit no. | 10-1608, Tower 10, 16 th Floor (page 30 of complaint) |

| | | |
|-----|---|--|
| | Unit admeasuring | 519.229 Sq. Ft. (page 30 of complaint) |
| 5. | Date of execution of agreement for sale | 03.01.2018 (page 30 of complaint) |
| 6. | Date of building plan | 08.06.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project) |
| 7. | Date of environment clearance | 21.08.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project) |
| 8. | 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 Allotee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allotee(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 Allotee(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. |
| 9. | Due date of delivery of possession | 21.02.2022 (Calculated from the date of grant of EC being later including grace period of 6 months in lieu of Covid-19) |
| 10. | Total sale consideration | Rs.23,07,430/- (Customer ledger dated 08.04.2023 at page no. 65 of complaint) |
| 11. | Total amount paid by the complainants | Rs.23,07,430/- (Customer ledger dated 08.04.2023 at page no. 65 of complaint) |
| 12. | Occupation certificate | 25.01.2023 (Mentioned in conveyance deed at Page 183 of reply) |
| 13. | Offer of possession | 23.03.2023 (page 174 of reply) |
| 14. | Conveyance deed | 28.06.2023 (page 177 of reply) |
| 15. | Possession Certificate | 25.11.2023 (page 197 of reply) |

B. Facts of the complaint.

7. The complainant has made the following submissions by way of filing the present complaint as well as vide written submissions dated 05.09.2024:
- a) That the complainant paid an initial amount of Rs.1,05,838/- to the respondent. The payment was acknowledged by the respondent and accordingly the complainant filled the application form for one unit. The complainant received an allotment letter for the unit bearing no. T10-1608 and consequently, a builder agreement was executed between the parties on 03.01.2018.
 - b) That the complainant paid an amount of Rs. 24,32,184/- to the respondent against the demand notices raised by it. Further, in terms of the Schedule "D" of builder buyer agreement, the complainant has made the payments as per the payment plan agreed to between the parties.
 - c) That the complainant had sent multiple e-mails communications and made calls intimating the respondent to give the possession of the said unit. However, the respondent did not revert back and kept assuring the complainant that the same shall be dealt and settled at the time possession on an individual basis.
 - d) That the respondent was never able to give any satisfactory response to the complainants or the governing body of the association regarding the status of the construction and was never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent as to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of delay on account of the Novel Corona Virus and on the account of paucity of funds.
 - e) That after losing all hope from the respondent company and having shattered and scattered dreams of owning a home and also losing considerable amount of money as per the buyer's agreement dated 03.01.2018, the complainants are constrained to approach the authority for redressal of their grievance.

- f) That the respondent has not only failed to adhere to the terms and conditions of buyer's agreement dated 03.01.2018 and affordable housing policy 2013 but has also illegally extracted money from the complainants by making false promises and statements.
- g) That the respondent has also charged maintenance charges from the complainant and hence the respondent is in gross violation of clause 4 (v) of the Affordable Housing Policy, 2013. Also, delay penalty amounting to Rs.1,14,918/- had been charged from the complainant herein and Rs.28,104/- had been charged from Mr. Asad Ali and Rs.2,235/- from Mr. Balbir Singh Narval.
- h) That "The Millennia" project was launched in the year 2017 with the promises to deliver in time and huge funds were collected over the period by the respondent. Even after taking more than 100% of the payments, the builder has delayed the project and is unable to handover possession after a delay of more than 19 months.
- i) That the complainant has paid the respondent a sum of Rs. 24,32,184/- as per the customer ledger furnished by the respondent to the complainant and the possession of unit to the complainant has not yet given. Hence, there is a delay of more than 25 months as on the date of filing this complaint.

C. Relief sought by the complainant:

8. The complainant has sought following relief:
- I. Direct the respondent to pay the interest for every month of delay at the rate of 15% per annum as per BBA on the entire amount paid by the complainant with effect from the committed date of possession till the actual possession is delivered with proper habitable conditions.
 - II. Direct the respondent to handover the physical possession of the flat no. 10-1608 in Block /Tower No. 10 having carpet area 519.229 Sq. Feet on 16th Floor and balcony area 79.653 sq. ft. along with two-wheeler open parking.
 - III. The respondent be directed to return the interest charged from the complainant.

- IV. Direct the respondent not to ask for any charges which are not as per the buyer's agreement. If paid, refund back the same.
- V. Direct the respondent not to charge skyfull maintenance charges for a period of 5 years. Refund, if already paid.
9. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

10. The respondent has contested the complaint on the following grounds: -
- a) That the complainant was allotted a flat bearing no. T10-1608 through draw of lots under the Affordable Group Housing Policy 2013 notified by Government of Haryana vide Town and Country Planning Department as applicable at relevant point of time.
- b) That subsequent to the allotment of the said flat the complainant entered into builder buyer 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 was excluding the other charges such as stamp duty, registration charges, other expenses etc and applicable GST, 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 it is respectfully submitted 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.

- f) 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 though lockdown was withdrawn various restrictions continued to be imposed.
- g) 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.
- h) That it is also matter of record 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.
- i) That the Respondent offered possession on 23-03-2023. the complainant paid amount against stamp duty, registration charges etc only on 22-May-2023 and he sought the registration of sale/conveyance deed in June 2023.
- j) Thereafter consequently sale/conveyance deed was registered on 28 June 2023. It is pertinent to mention that the execution and registration of sale/conveyance deed was delayed without any fault of respondent.
- k) That complainant took the possession of unit stating "I/we have no claims whatsoever against the Company against the said allotted unit."

11. All other averments made in the complaint were denied in toto.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and written submission made by the respondent.

E. Jurisdiction of the authority

13. 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

14. 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

15. 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.”

16. 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 objection raised by the respondent.

F.I Objection regarding force majeure conditions.

17. 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).

18. Additionally, the respondent during proceedings dated 21.08.2024 cited the observation made by **Hon'ble Maharashtra Real Estate Appellate Tribunal in M/s Laabh Buildwell vs Mr. Sanket Prabhakar Yadav**, in para 29 as under:

Para 29 " In view of the above discussion, I would like to point out that in the present matter as per the order of the Hon'ble Bombay High Court in PIL No. 36/16 Competent Authority was restrained from issuing commencement certificate or occupancy certificate in respect of the projects which fall within the area of Ghodbunder road for period of about six months. It is revealed from copy of order of the Hon'ble Bombay High Court that from 5th May, 2017 till 11th October, 2017 the prohibition was in force. Development of projects was withheld during that period. Promoter cannot be held responsible for the delay for about six months in completing the project. So, Promoter has a genuine reason for claiming exemption from paying interest for period of six months and this is a fit case to mould the relief accordingly by partly allowing the Appeal and modifying the impugned order to that extent only.... "

19. The Authority, after careful consideration, finds that the respondent's reliance on the cited observations does not align with the factual matrix of the present case. The factual circumstances under which the Hon'ble Maharashtra Real Estate Appellate Tribunal provided are different from the current matter. In the present case, the project falls under the Affordable ✓

Housing Policy, 2013, which contains specific stipulations regarding the completion of the project. As per Clause 1(iv) of the said Policy:

"All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the 'date of commencement of project' for the purpose of this policy. The licenses shall not be renewed beyond the said 4-year period from the date of commencement of project."

20. The respondent/promoter, having applied for the license under the Affordable Housing Policy, was fully aware of these terms and is bound by them. The Authority notes that the construction ban, cited by the respondent, was of a short duration and is a recurring annual event, usually implemented by the National Green Tribunal (NGT) in November. These are known occurring events, and the respondent, being a promoter, should have accounted for it during project planning. Hence, all the pleas advanced in this regard are devoid of merits.
21. Further, the respondent has not demonstrated whether it extended any equivalent relief to the allottees during the period of the construction ban. If the respondent did not relax the payment schedules for the allottees, its plea for relief due to delays caused by the construction ban appears unjustified. The Authority, therefore, holds that the respondent is not entitled to any relaxation or extension of time beyond the mandate of four-year completion period as prescribed under Affordable Housing Policy, 2013.
22. In accordance with the said policy the respondent was obligated 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. Granting any other additional relaxation would undermine the objectives of the said policy.

G. Findings on the reliefs sought by the complainant.

G.I Direct the respondent to pay the interest for every month of delay at the rate of 15% per annum as per BBA on the entire amount paid by the complainant with effect from the committed date of possession till the actual possession is delivered with proper habitable conditions.

23. 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. Section 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."

24. Further, clause 5.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

5. POSSESSION

*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 instalments 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.

25. Due date of handing over of possession along with admissibility of grace

period: As per clause 5 of buyer's agreement, the respondent promoter has proposed to handover the possession 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. The authority calculated due date of possession from the date of environment clearance being later i.e., 21.08.2017 being later which comes out to be 21.08.2021. Accordingly, 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 allows the grace period of 6 months to the promoter at this stage and the due date comes out to be 21.02.2022

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

The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottees does not intend to withdraw from the project, he shall be paid, by the promoters, 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, *ibid*. 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, *ibid*, 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., 09.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

29. 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—

(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 complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/ promoters which is the same as is being granted to them 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 of the buyer's agreement executed between the parties

on 12.02.2018, the possession of the subject unit was to be delivered within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later. The due date of possession is calculated from the date of environment clearance i.e., 21.08.2017 being later. 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 due date of possession of the aforesaid project in which the subject unit is being allotted to the complainant was 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. As such the due date for handing over of possession comes out to be 21.02.2022. Further, a relief of 6 months will be given to the allottee that no interest shall be charged from the complainant-allottees for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

32. 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 respective complainant after obtaining occupation certificate from competent authority. 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 the date of actual handing over of possession or offer of possession plus two months, whichever is earlier.

33. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. from the due date of possession till the date of offer of possession plus two months or actual handover, whichever is earlier, as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

34. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges at the prescribed rate i.e., 11.10 % p.a. as per Proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*:

| Sr. No. | Complaint no. | Due date of possession | Offer of possession | Date of actual handover of possession | Period for which the complainant is entitled to DPC |
|---------|---------------|------------------------|---------------------|---------------------------------------|---|
| 1. | CR/4606/2023 | 21.02.2022 | 23.03.2023 | 25.11.2023 | W.e.f. 21.02.2022 till 23.05.2023 |
| 2. | CR/4577/2023 | 21.02.2022 | 23.03.2023 | 08.11.2023 | W.e.f. 21.02.2022 till 23.05.2023 |
| 3. | CR/4614/2023 | 21.02.2022 | 17.02.2023 | 03.07.2023 | W.e.f. 21.02.2022 till 17.04.2023 |

G.II Direct the respondent to handover physical possession of the flat no. 10-1608 in Block /Tower No. 10 having carpet area 519.229 Sq. Feet on 16th Floor and balcony area 79.653 sq. ft. along with two-wheeler open parking.

35. The following table represent as to the date on which the respondent offered the possession of the subject unit to the allottee, the date on which the physical possession was handed over by the respondent.

| S.no. | Complaint no. | Offer of possession | Date of handover of actual physical possession |
|-------|---------------|---------------------|--|
| 1. | CR/4606/2023 | 23.03.2023 | 25.11.2023 |
| 2. | CR/4577/2023 | 23.03.2023 | 08.11.2023 |
| 3. | CR/4614/2023 | 17.02.2023 | 03.07.2023 |

36. As delineated in the aforesaid table, the physical possession has already handed over to the complainant-allottee(s) in all the above captioned complaint cases. Thus, no direction for possession is required.

G.III The respondent be directed to return the interest charged from the complainant.

37. The Authority has gone through submissions made by both the parties and is of the considered view that the respondent is well within its rights to charge interest for delay in making timely payments by the complainant. However, the rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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 as per Section 2(za) of the Act.

38. However, no interest shall be charged by the respondent, during the covid period i.e., from 01.03.2020 to 01.09.2020 in terms of **HARERA notification no. 9/3-2020 dated 26.05.2020.**

G.IV Direct the respondent not to ask for any charges which are not as per the buyer's agreement. If paid, refund back the same.

39. The complainant has failed to specifically mention as to what charges has not been charged by the respondent which do not form part of the buyer's agreement.

40. The authority vide order dated 09.12.2022, passed in case bearing no. **4147 of 2021 titled as, "Vineet Choubey V/s Pareena Infrastructure Private Limited"** and also in the complaint bearing no. **4031 of 2019 titled as, "Varun Gupta V/s Emaar MGF Land Limited"**, has already decided that the promoter cannot charge anything which is not part of the buyer's agreement subject to the condition that the same are in accordance with the prevailing law. 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 and is directed to charge the demands relying on the above said orders.

G.V Direct the respondent not to charge skyfull maintenance charges for a period of 5 years. Refund, if already paid.

41. The respondent in the present matter has demanded skyful maintenance charges from the complainant 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: *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.*

42. 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 from the complainants-allottees as per clarification by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

H.Directions of the authority

43. 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 delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 21.02.2022 till actual handover of possession or offer of possession plus two months, whichever is earlier, as per Proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. The due date of possession and the date of entitlement are detailed in table given in para 34 of this order. 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, *ibid*.
- 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., 11.10% 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.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement or provided under Affordable ✓


Housing Policy. Any sum charged in excess of the agreed terms under the agreement or contrary to the applicable affordable housing policy shall be refunded to the complainant.

iv. 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.

44. Complaint stands disposed of.

45. File be consigned to registry.

Date: 09.10.2024


Ashok Sangwan
Member

Haryana Real Estate Regulatory
Authority, Gurugram