

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

Complaint no.	427 of 2024
Date of filing complaint	15.02.2024
First date of hearing	03.04.2024
Date of decision	04.09.2024

Praveen Kumar Gupta

R/o: Signature Global, The Millennia, Tower no. 3, Flat
no. 801, Sector 37D, Gurugram, Haryana- 122006

Complainant

Versus

Signature Global (India) Private Limited

Registered office: 1302, 13th floor, Tower-A, Signature
Towers, South City-I, Gurugram, Haryana-122001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Praveen Kumar Gupta

Shri Harshit Batra (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 under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name and location of the project	"The Millennia", Sector 37D, Gurugram
	Project Area	9.701 acres
2.	Nature of the project	Affordable Group Housing Colony
3.	DTCP license no.	04 of 2017 dated 02.02.2017 valid upto 01.02.2022
	Name of licensee	Signature Global (India) Pvt. Ltd.
4.	RERA Registered/ not registered	Registered 03 of 2017 dated 20.06.2017 upto 4 years from the date of environment clearance, i.e., upto 21.08.2021
5.	Unit no.	Unit no. 801, Tower 3, 8 th Floor (As per BBA at page 17 of complaint)
6.	Unit admeasuring area	519.23 sq. ft. (Carpet Area) 79.65 sq. ft. (Balcony Area) (As per BBA at page 17 of complaint)
7.	Allotment letter	26.07.2018 (Page 12 of complaint)
8.	Date of builder buyer agreement	05.09.2018 (Page 14 of complaint)
	Possession clause as per builder buyer agreement	5. Possession <i>"5.1 Within 60 (sixty) day 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 the Developer in terms of the Agreement and not being in default under any part hereof....."</i>
	Possession clause as per Affordable Housing Policy, 2013	<i>1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance,</i>

		<i>whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>
9.	Date of approval of building plan	08.06.2017 (Page 28 of reply)
10.	Date of environment clearance	21.08.2017 (Page 32 of reply)
11.	Due date of possession	21.02.2022 (Calculated from date of environment clearances i.e., 21.08.2017 being later, which comes out to be 21.08.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic)
12.	Basic sale consideration	Rs. 21,16,742.5/- (BBA at page no. 23 of complaint)
13.	Total amount paid by the complainant	Rs. 23,68,669/- (As per Customer ledger dated 02.04.2024 at page no. 50 of reply)
14.	Offer of Possession	15.02.2023 (Page 51 of complaint)
15.	Occupation certificate	15.02.2023 (Page 43 of reply)
16.	Possession Certificate	24.06.2023 (Page 47 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- a) That successful allotment in the draw was conducted on 24.07.2018 and immediately after that the complainant applied for housing loan from HDFC Bank. However, the said loan was sanctioned with a little delay in processing and disbursements were being carried out after sanctioning of the loan from the bank.
- b) That the respondent builder levied interest charges @ 15% per annum on the complainant owing to delay in sanctioning of loan, though for a few days

- only. The complainant wrote to the respondent to waive off the said interest but the respondent replied to settle the same at the time of possession.
- c) That after few disbursements, HDFC denied further loan disbursement owing to slow progress at the site and as a result of the same, the complainant withdrew some amount from his old age pension scheme (PF/Savings) to pay the respondent builder on time in anticipation that the respondent will also deliver the possession of the unit allotted to him on time but the same did not happened at all.
- d) That the respondent had promised to deliver the possession of the unit in four years time frame as per the buyer's agreement. The same was also assured by the respondent via email while demanding money from the complainant and as a result of which the complainant made timely payments against the demands raised by the respondent.
- e) That the complainant is paying both the home loan EMI as well as house rent as the respondent had failed to give timely possession of the unit allotted to the complainant.
- f) That the interest charged by the respondent must be waived off as the complainant already informed the respondent via email that HDFC is not disbursing further loan owing to slow construction at the site.
- g) That the complainant forcefully paid Rs. 32,564/- on account of external electrification charges, however till date no such work is being carried out. The complainant is suffering power shortage atleast 5 to 8 hours per day, however there must be no demand when the service is not there even before handing over the possession of the flat.
- h) That the expected date of delivery of possession was 21.08.2021, however the actual possession was received on 24.06.2023 and due to delay in handing over the possession, the complainant seeks delay penalty from the respondent with 15% interest charges as per the buyer's agreement. ✓

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- I. Direct the respondent to pay delay possession charges at the prescribed rate of interest.
 - II. Direct the respondent to refund interest paid i.e., Rs.5,148/- and waive off total interest charges Rs.15,148/-.
 - III. Direct the respondent to pay interest at prevailing rate on Rs.32,564/- paid on 15.03.2023 for external electrification charges but still the work is not completed. (33KV line to come in March 2024 as committed by the builder via email).
 - IV. Direct the respondent to levy maintenance charges from the date of actual possession instead of 60 days from the date of offer of possession (15.04.2023) as actual possession was received on 24.06.2023.
 - V. Direct the respondent to refund excess money charged towards GST as the respondent forcefully charged administration charges (for conveyance deed registration) of Rs.17,700/- including GST whereas actual expenses were Rs.3500/- only without GST paid to the lawyers.
5. 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.

6. The respondent contested the complaint on the following on the following grounds vide its reply dated 25.04.2024:
- a) That the complainant approached the respondent and expressed interest in booking of an apartment in the affordable housing developed by the respondent, namely "The Millennia" situated in Sector 37D, Gurugram, Haryana.
 - b) That thereafter, the complainant vide an application form dated 06.05.2018 applied to the respondent for allotment of the unit. Pursuant thereto, a ✓

residential unit bearing no. 3-801 in tower 3, admeasuring carpet area of 519.23 sq. ft. and balcony area of 79.65 sq. ft. was allotted vide allotment letter dated 26.07.2018. The complainant represented to the respondent that he shall remit every instalment as per the payment plan. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in his favour.

- c) That a buyer's agreement dated 05.09.2018 was executed between the complainant and the respondent. The agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- d) That as per clause 5.1 of the agreement, the due date of possession was subject to the allottee having complied with all the terms and conditions of the agreement. Being a contractual relationship, reciprocal promises are bound to be maintained. The rights and obligations of the allottee as well as the builder are completely and entirely determined by the covenants incorporated in the builder buyer agreement.
- e) That as per clause 5.1 of the agreement, the respondent endeavoured to offer possession within a period of four years from the date of approval of building plans or grant of environment clearance, whichever is later. The possession clause of the agreement is at par with clause 1(iv) of the Affordable Housing Policy.
- f) That the building plan of the project was approved on 08.06.2017 from DGTCP vide memo dated ZP-1140/SD(BS)/2017/12572 and the environment clearance of the project was received on 21.08.2017. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. The Authority vide notification no. 9/3-2020 dated 26.05.2020 had allowed extension of 6 months for completion of the project the due date of which expired on or after 25.03.2020 on account of

unprecedented conditions due to outbreak of Covid-19. Hence, the proposed due date comes out to be 21.02.2022.

- g) That the offer of possession was also subject to the incidence of force majeure circumstances under clause 19 of the agreement. The construction and development of the project was deeply affected by circumstances beyond the control of the respondent.
- h) That the respondent faced certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab and Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by judicial authorities in NCR on account of environmental conditions, usage of water, etc. The development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, which have been delineated as under:

Sr. No	Date of Order	Directions	Period Of Restriction	Days Affected	Comments
1.	07.11.2017	Environment Pollution (Prevention and Control Authority) had directed the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 07.11.2017 till further notice.		90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21.12.2019 and

					30.01.2020.
2.	Notification HSPC B/MS/2018/2939-52 dated 29.10.2018	Haryana State Pollution Control Board	01.11.2018 to 10.11.2018	11 days	All construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR Districts from November 01.10.2018
3.	Notification DPCC/PA to MS/2018/79 19-7954 dated 24-12-2018	DELHI POLLUTION CONTROL COMMITTEE	24-12-2018 to 26-12-2018	3 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December 26 2018
4.	Direction dated 01.11.2019 bearing no. EPCAR/2019 /L-53	Environment Pollution (Prevention and Control) Authority for National Capital Region	01.11.2019 to 05.11.2019	6 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on construction was only 6 PM to 6 AM and this is new extended to be complete banned till Monday, November 5, 2019, morning)
5.	01.11.2019	Environmental Pollution (Prevention and Control) Authority, NCR vide its notification bearing no. R/2019/L-53 dated 01.11.2019 converted the partial ban of 12 hours to a complete ban	01.11.2019 to 05.11.2019	4 days	This was in addition to the partial ban on construction by the EPCA vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to by
6.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was	04.11.2019 - 14.02.2020	103 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court

		partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.			
7.	11.10.2019	Commissioner of Municipal Corporation Gurugram issued direction to issue Challan for Construction Activities and lodging of FIR from 11 th October to 31 st December, 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.	11.10.2019 to 31.12.2019	81 days	
			Total days	304 days	

- i) That the world was hit by covid-19 pandemic which resulted in serious challenges to the project with no available labourers, contractors, etc. for the construction of the project. That during the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. The Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing Projects vide order/direction dated 26.05.2020 on account of first wave of COVID-19 pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.
- j) That as per license condition developer are required to complete these projects within a span of 4 years from the date of issuance of environmental clearance since they fall in the category of special time bound project under ✓

section 7B of the Haryana Development and Regulation of Urban Area Act 1975, it is needless to mention that for a normal group housing project there is no such condition applied hence it is required that 4 years prescribed period for completion of construction of project shall be hindrance free and if any prohibitory order is passed by competent authority like National Green Tribunal Or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also. Section 7B(2)(i) of the Haryana Development and Regulation of Urban Area Act 1975 of the act itself recognizes the relaxation for renewal of license in case the delay in execution of development work was the reason beyond control of the colonizer, here also colonizers were estopped because of force majeure.

- k) That the said delay of 428 days in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing delay. In complaint case no. 3890 of 2021 titled "Shuchi Sur and Anr. Vs M/s Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence the benefit of above affected 166 days needs to be rightly given to the respondent.
- l) That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR.
- m) That the Hon'ble UP REAT at Lucknow while deciding appeal no. 541 of 2011 in the matter of Arun Chauhan Versus Gaur sons Hi- Tech Infrastructure Pvt Ltd vide order dated 02.11.2021 has also granted the extension of 116 days to the Developer/Promoter on account of delay in completion of construction on account of restriction/ban imposed by the

Environment Pollution (Prevention & Control) Authority as well vide order of Hon'ble Supreme Court Dated 14.11.2019.

- n) That the construction of the project was also hampered due to non-payments of the outstanding dues by the allottees like the complainant in a timely manner. The complainant was under an obligation to remit the outstanding dues not only as per the agreement but also as per the RERA Act, 2016 and Affordable Housing Policy, 2013.
- o) That the complainant has *malafidely* contended that the loan was not disbursed by the bank hence, the interest should not be imposed upon the complainant, however, clause 4.9(b) and 16.7 of the agreement dated 05.09.2018 clearly states that the responsibility of getting the loan disbursed by the bank is solely upon the complainant and in the event of non-payment of dues for any reason whatsoever, the complainant shall be liable to pay the interest as stipulated under the agreement.
- p) That occupation certificate was obtained on 15.02.2023 and thereafter, the complainant was offered possession of the unit in question through letter of offer of possession dated 15.02.2023 and the same was communicated to the complainant vide email dated 15.02.2023. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. However, despite multiple follow up were made by the respondent to the complainant in regard to handing over the possession of the said unit, all requests fell on deaf ears of the complainant. The complainant delayed the procedure of taking the possession of the said unit on their own account. Finally, possession certificate was issued in favour of the complainant on 09.05.2023.
- q) That the complainant has not only in breach of the buyer's agreement but also in breach of Section 19(10) and 19(11) of RERA, 2016 (assuming

without in any manner admitting the provisions of the Act to be applicable to the project in question), by failing to take possession of the unit even after two months from the date of receipt of the occupation certificate. The complainant is responsible for all the consequences of breach of the buyer's agreement and violation of RERA.

- r) That by signing the possession certificate dated 09.05.2023, the complainant stood satisfied with respect to all the liabilities and obligations of the respondent. The relevant part of same is reiterated as under:

"I/We have received the vacant physical possession with locks and keys (3 sets of Keys) of the said allotted unit in accordance with the provisions of said Agreement after having done a complete, detailed and thorough inspection and have been fully satisfied with the quality of finishing, workmanship of the construction work, standard of the material used, amenities fixtures and fittings thereof and the project. I/we have independently verified the carpet area measurement of said allotted unit and confirm that said allotted unit is complete in accordance with the plans and specifications agreed in terms of Builder Buyer Agreement executed between me/us and the Company. I/ We furthermore confirm that there is proper light provision and C.P. fittings etc. is in good working condition. I/we have no claims whatsoever against the Company against the said allotted unit."

- s) That furthermore, the complainant is liable to pay the maintenance charges as per the agreement executed between the parties. It is categorically submitted that the Affordable Group Housing Policy, 2013 was notified under Section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975 (the "Act, 1975") thus, the meaning and scope of maintenance given under the Act, 1975 shall be applicable for the Policy.
- t) That as per office order dated 31.01.2024 bearing no. PF-27A/2024/3676, issued by the Directorate of Town and Country Planning, Haryana a detailed table of clarification of maintenance charges/utility charges chargeable from the allottees as per consumption levied on Affordable Group Housing projects, has been provided. The contents of the same are reiterated hereinbelow:

Category- II

"Maintenance/ Use/utility charges which can be charged from the allottees as per consumptions:

- i. Electricity bill (as per consumption)
- ii. Water bill (proportionate to the net consumption)
- iii. Property tax (in case the colony is within MC limits)
- iv. Door to door waste collection charges, garbage collection and upkeep of each floor (other than common areas).
- v. Any repair inside the individual flat for which services i.e. repair/ replacement of tap, sanitary works, plumbing any damage of flooring, electrical installation etc. can either be got done through the builder or from any other person/ public agency chosen by allottees after taking possession of the flat.
- vi. Diesel cost for power back-up facilities.
- vii. Electricity bill of lifts (as part of common area facilities)
- viii. Running / fuel cost on DG sets/ generator sets for power back-up.
- ix. Any defect liability on part of allottee, but excluding any damage caused on account of lapse on part of developer.
- x. Any other State or Central taxes, any other utility charges. which can be governed through individual bills, telephone, internet etc."

- u) That the aforesaid office order further holds that "any charges decided through bilateral agreements i.e. facility for security services etc., may be charged as per bilateral agreements.". Therefore, the complainant is liable to pay the maintenance charges as agreed by him while executing clause 8 of the agreement.
- v) That furthermore, the complainant has sought a refund of the excess of administrative charges including GST, however, such relief cannot be entertained. The complainant had himself agreed to pay the administrative charges while execution of the agreement. That the said charges were raised as per the terms and conditions of clause 5.1 and clause 4.7 of the agreement and hence, the complainant is liable to pay the same.
- w) That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottee/complainant towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any"

payment made by the allottees/complainant towards delayed payment charges (DPC) or any taxes/statutory payments, etc.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority

9. 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

10. 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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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."

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

F. Findings on the objections raised by the respondent.

F.1 Objection regarding force majeure conditions.

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as 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) and various court orders. But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. 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 by August 2021. 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 on the relief sought by the complainant.

G.I Direct the respondent to pay delay possession charges at the prescribed rate of interest.

14. The complainant was allotted unit no. 801, tower 3, 8th floor in the respondent's project at basic sale consideration of Rs. 21,16,742.5/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 05.09.2018. The possession of the unit was to be offered within 4 years from approval of building plans (08.06.2017) or from the date of environment clearance (21.08.2017), whichever is later, which comes out to be 21.08.2020 calculated from the date of environment clearance being later. 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 21.08.2020 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. Therefore, the due date of handing over possession comes out to be 21.02.2022.
15. The complainants paid a sum of Rs. 23,68,669/- towards the subject unit and are ready and willing to retain the allotted unit in question. The respondent obtained occupation certificate on 15.02.2023 from the competent authorities and offered possession of the unit to the complainant on the same day, i.e., on 15.02.2023 itself. Subsequently, a possession certificate dated 09.05.2023 was also issued in favour of the complainant.

16. The complainant herein 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."*

17. **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 allottee 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.

18. 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.

19. 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., 04.09.2024

is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

20. 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;"

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondents/ promoters which is the same as is being granted to them in case of delayed possession charges.

22. On consideration of the documents available on record and submissions made by both the parties, 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 dated 05.09.2018. By virtue of clause 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject apartment was to be delivered by 21.08.2021. As far as grace period is concerned, the same is allowed for a period of 6 months in lieu of HARERA notification no. 9/3-2020 dated 26.05.2020. 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.

23. However, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 21.02.2022 till the date of actual handing over of possession or till offer of possession (15.02.2023) plus two months i.e., 15.04.2023, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

G.II Direct the respondent to refund interest paid i.e., Rs.5,148/- and waive off total interest charges Rs.15,148/-.

24. The complainant submitted that the interest charged by the respondent must be waived off as the complainant already informed the respondent via email that HDFC is not disbursing further loan owing to slow construction at the site.
25. On the other hand, respondent submitted that clause 4.9(b) and clause 16.7 of the agreement dated 05.09.2018 clearly states that the responsibility of getting the loan disbursed by the bank is solely upon the complainant and in the event of non-payment of dues for any reason whatsoever, the complainant shall be liable to pay the interest as stipulated under the agreement. Clause 4.9 and clause 16.7 of the buyer's agreement is reiterated as under:

"4.9 In-case the Allottee(s) wants to avail of a loan facility from his employer or Bank/financing bodies to facilitate purchase of the Said Flat, the Developer shall facilitate the process subject to the following:
(a) The terms of the financing agency shall exclusively be binding and applicable upon the Allottee(s) only.

- (b) *The responsibility of getting the loan sanctioned and disbursed as per the Developer's payment plan will rest exclusively on the Allottee(s). In the event of the loan not being sanctioned or the disbursement getting delayed, due to any reason whatsoever, the payment to the Developer, as per Payment Plan, shall be ensured by the Allottee(s), failing which, the Allottee(s) shall be governed by time provision contained in Clause 6.4.*
- (c) *In case of default in repayment of dues of the Bank/financial institution/agency by the Allottee(s), the Allottee(s) authorizes the Developer to cancel the allotment of the Said Flat and repay the amount received till that date after deduction of Earnest Money, directly to Bank/financing/institution agency on receipt of such request from financing agency without any reference to the Allottee(s)."*

"16.7 *In-case the Allottee(s) wants to avail of a loan facility from his employer or Bank/financing bodies to facilitate purchase of the Said Flat, the Developer shall facilitate the process subject to the following: (a) The terms of the financing agency shall exclusively be binding and applicable upon the Allottee(s) only. (b) The responsibility of getting the loan sanctioned and disbursed as per the Developer's payment plan will rest exclusively on the Allottee(s). In the event of the loan not being sanctioned or the disbursement getting delayed, due to any reason whatsoever, the payment to the Developer, as per Payment Plan, shall be ensured by the Allottee(s), failing which, the Allottee(s) shall be charged interest, as contemplated in this Agreement."*

26. 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.
27. 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.III Direct the respondent to pay interest at prevailing rate on Rs.32,564/- paid on 15.03.2023 for external electrification charges but still the ✓

work is not completed. (33KV line to come in March 2024 as committed by the builder via email)

28. Herein, the complainant is seeking interest on amount paid by him towards the external electrification charges due to failure on part of the respondent to complete the work of 33KV line. On the other hand, the respondent submitted that 33KV line had been duly constructed and same was communicated to the complainant vide e-mail dated 10.08.2023 at page 53 of its reply.

29. The Authority is of the view that the said relief sought by the complainant does not fall under any of the provisions of the Act, 2016, *ibid*. Therefore, no direction can be given to this effect.

G.IV Direct the respondent to levy maintenance charges from the date of actual possession instead of 60 days from the date of offer of possession (15.04.2023) as actual possession was received on 24.06.2023.

30. The issue of maintenance charges has already been clarified by the office of DTCP, Haryana vide office order dated 31.01.2024 wherein it has categorically clarified the mandatory services to be provided by the colonizer/developer in Affordable Group Housing Colonies and services for which maintenance charges can be charged from the allottees as per consumption. According, the promoter can charge maintenance/use/utility charges from the complainant-allottee as per consumption as prescribed in Category-II of the office order dated 31.01.2024. However, such maintenance charges can only be charged from the date possession of unit is being offered to the complainant, i.e., from 15.02.2023.

G.V Direct the respondent to refund excess money charged towards GST as the respondent forcefully charged administration charges (for conveyance deed registration) of Rs.17,700/- including GST whereas actual expenses were Rs.3500/- only without GST paid to the lawyers.

31. In response to the specific query the authority is of the view that the administrative charges to meet the miscellaneous expenses for getting the conveyance deed registered in favour of the allottee are admissible. These

are as per the practice allowed by the administration and are thereby allowed. However, administrative charges of upto Rs.15000/- can be charged by the promoter-developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard vide circular dated 02.04.2018.

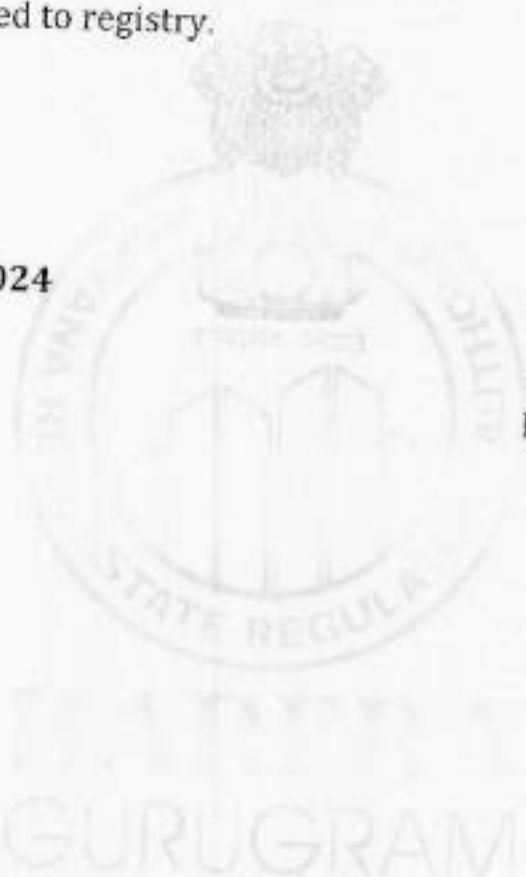
H. Directions of the authority

32. 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 pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 21.02.2022 till the date of offer of possession (15.02.2023) plus two months i.e. up to 15.04.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- II. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- III. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Further no interest shall be charged from complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
- IV. The respondent is further directed to charge maintenance charges from the date possession of unit is being offered to the complainant, i.e., from 15.02.2023.

- V. Further, the respondent is directed to charge administrative charges of upto Rs.15000/- only from the complainant 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 vide circular dated 02.04.2018.
- VI. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.
33. Complaint stands disposed of.
34. File be consigned to registry.

Dated:04.09.2024




Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram