

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

Complaint no. 5308 of 2023
Date of complaint: 10.11.2023
Order pronounced on: 22.08.2024

Renu Arora

R/o:- 7C Raavi Apartment, D, Block, Vikaspuri New
Delhi-110018

Complainant

Versus

M/s Signature Global India Private Limited
Regd. Office at: 1302, 13th floor, Tower-A, Signature
Tower, South City 1, Gurugram Haryana

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Bhajan Lal Jangra (Advocate)

Sh. Dhruv Rohtagi (Advocate)

Complainant

Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Name of the project	The Milleannia,37-D, Gurugram, Haryana
2.	DTCP License No	04 of.2017 dated 02.02.2017 Valid up-to 01.02.2022
3.	Unit no.	10-1802, Tower-10, 18 th floor (page 28 of complaint)
	Unit admeasuring	Carpet area -596.126 sq. ft. Balcony area - 79.653 sq. ft. (Page 28 of complaint)
4.	Date of execution of agreement for sale	12.02.2018 (page 27 of complaint)
5.	Date of building plan	08.06.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project)
6.	Date of environment clearance	21.08.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project)
7.	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 building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i>
8.	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)

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9.	Total sale consideration	Rs.24,24,331/- (as per BBA page 34 of complaint)
10.	Total amount paid by the complainants	Rs.24,24,331/- (as per conveyance deed page 114 of reply)
11.	Occupation certificate	25.01.2023 (page 104 of reply)
12.	Offer of possession	23.03.2023 (page 69 of complaint)
13.	Conveyance deed	15.06.2023 (page 109 of reply)
14.	Possession Certificate	25.10.2023 (page 128 of reply)

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That the respondent represented that a project namely "The Millennia" consisting of residential and commercial complex multi-storeyed affordable group housing. The respondent represented that it has procured necessary approval i.e. approvals and other sanctions which include environment clearance as per affordable Group Housing Policy 2013 Govt. of Haryana vide Town and Country Planning Department notification dated 21.08.2017. The respondent further represented that the said project is been registered with the Haryana Real Estate Regulatory Authority, Panchkula.
- II. That the complainant submitted an application for allotment of the unit under Affordable Group Housing Policy 2013 notified by Govt. of Haryana and draw of the same was conducted on 27.10.2017 in the presence of official of the DTCP/DC Gurugram and the complainant was allotted a unit no. 10-1802 in Block/Tower no. 10 admeasuring carpet area 596.126 sq. ft. on 18th floor and balcony area 79.653 sq. ft. along with two-wheeler open parking.
- III. That believing upon the representation and assurance about the completion of the said project, the complainant paid substantial amount against the



allotment of subject unit. The sale price of the subject unit was fixed sum of Rs.26,42,525/-.

- IV. That on 12.02.2018, an agreement to sell was executed between the parties wherein all the terms and condition were incorporated. In terms of agreement to sell the respondent was under contractual obligation to perform its duty and obligation towards the allottee and development of the project was to be completed in all respect on or before 20.08.2021 in terms of agreement to sell.
- V. That the project was to be developed in terms of the provisions of Affordable Group Housing Policy 2013 notified by Govt. of Haryana. The complainant had paid total sale consideration of Rs.26,43,016/- as per payment plan. However, the respondent despite receipt of huge sale consideration from the complainant could not complete the project. Subsequent to signing of agreement to sell, the complainant met to the office of the respondent and sought progress but the respondent never shared progress of the project. The respondent raised demand without achieving milestone and it was told by the respondent that construction of the project has been banned by Hon`ble NGT, Delhi but kept demanding upon the complainant despite the knowledge of the facts that the complainant never in defaulted in making payment as and when demanded in terms of agreement to sell.
- VI. That the complainant wrote many mails to the respondent about progress of the construction of the project but same of no consequence. The respondent without completing the construction work of the project, raised demand notice claiming that work of the project is going on and if the demand not met within the time line the same be attracted penalty.
- VII. That it is evident from communication held through mails on various dates that the construction and development of the project was not completed within time. The respondent sent a mail dated 31.01.2023 claiming that

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occupancy certificate has been received and called upon the complainant to clear all the dues. However, no completion certificate was sent and the complainant was compelled to execute conveyance deed failing which holding charges, delayed interest will be applicable therefore the conveyance deed/sale deed dated 15.06.2023 was executed between the parties but as on 22.09.2023 the subject unit is incomplete. The respondent without handing over or the physical possession of the flat and without obtaining OC sent an invoice dated 23.03.2023 whereby the respondent called upon to pay Rs.29,459/- as operational cost of utility services of the flat which is liable to be refunded.

- VIII. That the respondent without setting off delayed possession charges took entire sale consideration from the complainant which is illegal and amount to unfair trade practice.
- IX. That the respondent failed to fulfil contractual obligation, thus committed breach of terms and condition of the agreement to sell and utilized the invested money to develop other project thereby played fraud upon the complainant. The complainant left with no other efficacious remedy available except to file the present complaint before the Authority for seeking possession and delayed interest along with statutory penalty for wilful breach of agreement to sell dated 12.02.2018. The respondent by its acts, conduct, acquiescence and omission violated the proviso of section 11, 14 and 18 of the RERA Act, therefore is liable to be prosecuted.
- X. That respondent had failed to complete the project and failed to give offer of possession within time hence cause of action arose to file the present complaint on 20.09.2023 when the respondent refused to pay the interest on paid amount.

C. Relief sought by the complainant:

4. The complainant has sought following relief:

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- I. Direct the Respondent to pay the interest on the total amount paid i.e. 26,43,250/- by the Complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the Respondent in spite of the fact that the complainant desires to take the possession.
 - II. Direct the respondent to handover the physical possession of the Flat no. 10-1802 in Block /Tower No. 10 having carpet area 596.126 Sq. Feet on 18th Floor and balcony area 79.653/- along with two-wheeler car parking.
 - III. The respondent be directed to provide copy of Occupation Certificate of the project.
 - IV. The respondent be directed not to impose maintenance charge or holding charges till handing over the physical possession of the flat.
 - V. The respondent be directed to refund sum of Rs.29,459.60/- to be paid to the complainant.
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 has contested the complaint on the following grounds: -
- I. That the delivery of possession and the execution of the conveyance deed are intricately linked to several conditions that must be met, including the impact of force majeure events, statutory restrictions, and the receipt of the occupation certificate. Additionally, the allottee needs to meet all their obligations in a timely manner, and the completion of necessary formalities and documentation is crucial.
 - II. That according to the terms outlined in clause 19.2 of the builder-buyer agreement, the respondent cannot be held liable for any delays in performance caused by force majeure. If unforeseen events beyond respondent control affect the project's progress, respondent/builders are not accountable for the resulting delays.

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- III. That the extension of the possession period, as detailed in clause 19.3, stipulates that if the delivery of possession is delayed due to force majeure, the possession period is extended by the duration of the delay caused. This is relevant in light of the delays encountered during the Covid-19 pandemic and other statutory restrictions that affected the project.
- IV. That the project faced significant delays due to Covid-19 and other statutory interventions. The complainant's claims regarding these delays were not acknowledged, they seem to have been used to mislead and extort. The project's timeline was significantly impacted by these external factors, and the respondent is entitled to extensions as per the agreement.
- V. Moreover, the agreement of sale, under the Haryana Real Estate (Regulation and Development) Rules, 2017, excludes delays caused by force majeure, court orders, and government policies affecting real estate development. The respondent's delay in delivering possession of the apartment is justified due to several prohibitory orders: the Haryana State Pollution Control Board's order (1st to 10th November 2018, 10 days), Municipal Corporation of Gurugram's order (11th October 2019 to 31st December 2019, 81 days), Environment Pollution Authority's order (1st to 5th November 2019, 5 days), the Supreme Court's order (4th November 2019 to 14th February 2020, 44 days), and the Commission for Air Quality Management's order (16th to 21st November 2021, 6 days). The cumulative period of 141 days, due to external restrictions, should be excluded in computing the construction and delivery timeline.
- VI. That the respondent is a public limited company, not a private limited company. The complainant was fully aware of the project's details and relied on their judgment when making their purchase decision. The respondent has faced various restrictions and delays that were beyond their control. The complainant's assertions about these issues are

inaccurate, and the project was subject to numerous regulatory constraints. Such as orders from the Haryana Real Estate Regulatory Authority (HRERA) extended the project's deadlines due to Covid-19 and other factors. These extensions are crucial for understanding the timeline of the project's completion and should be factored into the calculation of any delays.

VII. In addition to the delays caused by statutory orders and restrictions, there were other factors impacting the project's completion. These delays were not intentional but were the result of circumstances beyond the respondent's control. Despite these challenges, the complainant eventually took possession of the unit on 25.10.2023, and the conveyance deed was executed accordingly after the complainant fulfilled their obligations. The respondent's actions throughout this period have been in line with the agreement and the provisions for force majeure.

VIII. That an invoice for operational costs was issued in accordance with the agreement, and the respondent is not liable to refund this amount. The final possession date and the overall handling of the project were consistent with the terms agreed upon.

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 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

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

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.

11. 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.

12. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to

10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT).

13. Additionally, the respondent during proceedings dated 22.08.2024 cited the observation made by **Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. vs The Union Of India And ors**, in para 126 as under:

Para 126 "*In a given case in spite of making genuine efforts, a Promoter fails to complete the project, then the concerned authorities, adjudicators, forums, tribunals would certainly look into genuine cases and mould their reliefs accordingly.*"

14. Also, cited that the Hon'ble Supreme Court while answering "can the Tribunal rewrite the contract and create a new bargain/" categorically observed in **Civil Appeal No. 11826 of 2018 titled as Haryana Power Purchase Centre v. Sasan Power Ltd. and other (Sasan judgment) [2023 SCC OnLine SC 577, 2023 Live Law (SC) 409]** decided on 06.04.2023, as under:

"91. We are of the view that the Tribunal cannot indeed make a new bargain for the parties. The Tribunal cannot rewrite a contract solemnly entered into. It cannot ink a new agreement. Such residuary powers to act which varies the written contract cannot be located in the power to regulate. The power cannot, at any rate, be exercised in the teeth of express provisions of the contract."

15. 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 Bombay High Court and the Hon'ble Supreme Court 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."

16. 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 respondent/promoter, should have accounted for it during project planning. Hence, all the pleas advanced in this regard are devoid of merit

17. 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.
18. 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 on the total amount paid i.e. Rs.26,43,250/- by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession

19. In the present complainant 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."*

20. 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.***

21. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under

any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.

22. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottees are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit.

23. **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

24. 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. 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.

25. 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.

26. 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., 22.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

27. 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;"

28. 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.

29. 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.

30. The respondent has obtained the occupation certificate on 25.01.2023 and has offered the possession of the allotted unit on 23.03.2023. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 12.02.2018 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 12.02.2018 to hand over the possession within the stipulated period.

31. 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 offered the possession of the unit in question to the complainants only on 23.03.2023, so it can be said that the complainant 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.

32. 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. w.e.f. 21.02.2022 till 23.05.2023 i.e., expiry of 2 months from the date of offer of possession (23.03.2023) 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 Direct the respondent to handover the physical possession of the flat no. 10-1802 in Block /Tower No. 10 having carpet area 596.126 sq. ft. on 18th floor and balcony area 79.653 sq. ft. along with two-wheeler car parking.

33. The complainant filed the present complaint before the Authority seeking for physical possession of the allotted unit along with delay possession charges. The respondent has placed on record a possession certificate dated 25.10.2023. Moreover, the counsel for complainant during proceedings dated 04.07.2024 submitted that the physical possession was only handed over on 25.10.2023. Consequently, no further directions can be issued concerning the relief sought for handing over of physical possession.

G.III Direct the respondent to provide copy of occupation certificate of the project.

34. In accordance with Section 11(4)(b) of the Act 2016, which mandates the promoter to obtain occupation certificate and make it available to allottees, the respondent/promoter is directed to provide a copy of occupation certificate to the complainant. Even otherwise, it being a public document, the complainant/allottee can have access to it from the website of DTCP, Haryana

G.IV The respondent be directed not to impose maintenance charge or holding charges till handing over the physical possession of the flat.

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G.V The respondent be directed to refund sum of Rs.29,459.60/- to be paid to the complainant.


35. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief.
36. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by *Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020*. In addition, any sum charged in excess of the agreed terms under the agreement dated 12.02.2018 or contrary to the applicable affordable housing policy shall be refunded to the complainant.

H. Directions of the authority

37. 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):
- The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 21.02.2022 till 23.05.2023 i.e., expiry of 2 months from the date of offer of possession (23.03.2023) as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act. 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., 11.10% 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(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 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 dated 12.02.2018 or contrary to the applicable affordable housing policy shall be refunded to the complainant
38. Complaint stands disposed of.
39. File be consigned to registry.

Date: 22.08.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory
Authority, Gurugram