

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

Date of first hearing: 03.04.2024

Date of decision: 08.01.2025

Name of the Builder		M/s Signature Global (India) Private Limited	
Project name		The Millennia, Sector 37D, Gurugram, Haryana	
Sr. No.	Case No.	Case title	Appearance
1.	CR/5397/2023	Meena Godhvani and Bharat Godhvani Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani (Advocate) Shri Harshit Batra (Advocate)
2.	CR/5643/2023	Umesh Chandra Sanwal Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani (Advocate) Shri Harshit Batra (Advocate)
3.	CR/5727/2023	Shalini Gothawal and Rakesh Gothawal Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani (Advocate) Shri Harshit Batra (Advocate)
4.	CR/5750/2023	Priyank Kumar Sharma and Poonam Sharma Vs. M/s Signature Global (India) Private Limited	Shri Akash Godhvani (Advocate) Shri Harshit Batra (Advocate)

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.

- 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.
- The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"The Millennia", Sector 37D, Gurugram
Nature of the Project	Affordable Housing
Project area	9.7015625 acres
DTCP License No. and validity	04 of 2017 dated 02.02.2017 valid up to 01.02.2022
HRERA Registered	Registered 03 of 2017 dated 20.06.2017 valid up to 21.08.2021
Date of approval of building plans	08.06.2017
Date of environment clearance	21.08.2017
Possession Clause	5. Possession 5.1 Within 60 (sixty) days from the date of issuance of Occupation Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to force majeure circumstances, receipt of Occupation 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 including but not limited to the



	<i>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."</i>
Due date of possession	21.02.2022 (21.08.2021+ 6 months) (Calculated from the date of environment clearance + 6 months of grace period of COVID-19)
Occupation certificate	25.01.2023

Sr. 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 complainant	OOP/ (Actual Handover) PC	Relief sought
1.	CR/5397/2023 Meena Godhvani and Bharat Godhvani Vs. Signature Global (India) Pvt. Ltd. DOF: 15.12.2023 Reply: 25.04.2024	5-107, 1 st floor Tower 5 Carpet area- 596.126 sq.ft. Balcony area- 79.653 sq.ft.	12.03.2018 (Page 32 of complaint)	BSP-Rs. 24,24,331/- AP-Rs. 27,27,317/- (Both taken from Customer Ledger dated 23.03.2024 on page 62 of reply)	OOP- 23.02.2023 (Page 55 of reply) PC/Actual handover- 26.06.2023 (Page 58 of reply)	<ul style="list-style-type: none"> DPC Refund skyfull maintenance charges of Rs. 28,956/-. Refund the charges which are not as per the buyer's agreement. Not to charge skyfull maintenance charges for a period of 5 years
2.	CR/5643/2023 Umesh Chandra Sanwal Vs. Signature Global (India) Pvt. Ltd. DOF: 18.12.2023	5-1106, 11 th floor Tower 5 Carpet area- 585.944 sq. ft. Balcony area- 79.545	01.05.2019 (Page 29 of complaint)	BSP-Rs. 23,83,548/- AP-Rs. 25,74,234/- (Both taken from Customer Ledger dated 30.03.2024)	OOP- 04.02.2023 (Page 56 of reply) PC/Actual handover- 24.04.2023 (Page 61 of reply)	<ul style="list-style-type: none"> DPC Refund skyfull maintenance charges of Rs. 28,956/-. Refund the charges which are not as per



	Reply: 25.04.2024	sq. ft.		on page 68 and 69 of reply)		the buyer's agreement • Not to charge skyfull maintenance charges for a period of 5 years						
3.	CR/5727/2023 Shalini Gothawal and Rakesh Gothawal Vs. Signature Global (India) Pvt. Ltd. DOF: 26.12.2023 Reply: 25.04.2024	10-2201, 22 nd floor Tower 10 Carpet area- 519.23 sq. ft. Balcony area- 79.65 sq. ft.	20.08.2018 (Page 30 of complaint)	BSP-Rs. 21,16,742/- AP-Rs. 23,77,123 /- (Both taken from Customer Ledger dated 28.03.2024 on page 65 of reply)	OOP- 23.03.2023 (Page 55 of reply) PC/Actual handover- 24.06.2023 (Page 60 of reply) (Inadvertently recorded as 12.06.2023 in POD dated 13.11.2024)	• DPC • Refund skyfull maintenance charges of Rs. 25,659/- • Refund the charges which are not as per the buyer's agreement • Not to charge skyfull maintenance charges for a period of 5 years						
4.	CR/5750/2023 Priyank Kumar Sharma and Poonam Sharma Vs. Signature Global (India) Pvt. Ltd. DOF: 26.12.2023 Reply: 25.04.2024	8-103, 1 st floor Tower 8 Carpet area- 585,944 sq. ft. Balcony area- 79,545 sq. ft.	15.11.2017 (Page 31 of complaint)	BSP-Rs. 23,83,548/- AP-Rs. 23,83,548/- (Both taken from Customer Ledger dated 04.01.2024 on page 68 and 69 of reply)	OOP- 20.03.2023 (Page 56 of reply) (Inadvertently recorded as 23.02.2023 in POD dated 13.11.2024) PC/Actual handover- 17.05.2023 (Page 59 of reply) (Inadvertently recorded as 26.06.2023 in POD dated 13.11.2024)	• DPC • Refund skyfull maintenance charges of Rs. 28,956/- • Refund the charges which are not as per the buyer's agreement • Not to charge skyfull maintenance charges for a period of 5 years						
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <table border="1"> <thead> <tr> <th>Abbreviation</th> <th>Full form</th> </tr> </thead> <tbody> <tr> <td>DOF</td> <td>Date of filing of complaint</td> </tr> <tr> <td>OOP</td> <td>Offer of Possession</td> </tr> </tbody> </table>							Abbreviation	Full form	DOF	Date of filing of complaint	OOP	Offer of Possession
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DOF	Date of filing of complaint											
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DPC	Delayed possession charges
BSP	Basic Sale Price
AP	Amount paid by the allottee(s)
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 maintenance charges.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/5397/2023 titled as "Meena Godhvani and Bharat Godhvani Vs. M/s 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. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/5397/2023 titled as "Meena Godhvani and Bharat Godhvani Vs. M/s Signature Global (India) Private Limited"

Sr. No.	Particulars	Details
	Name of the project	"The Millennia", Sector 37D, Gurugram

1.	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 vide no. 3 of 2017 dated 20.06.2017 Validity- The registration shall be valid for a period of 4 years commencing from 20.06.2017 and ending on 4 years from the date of environment clearance, i.e., upto 21.08.2021
5.	Unit no.	Flat no. 5-107, tower 5, 1 st floor (As per BBA at page 34 of complaint)
6.	Unit admeasuring area	596.126 sq. ft. (Carpet Area)
		79.653 sq. ft. (Balcony Area) (As per BBA at page 34 of complaint)
7.	Date of builder buyer agreement	12.03.2018 (As on page 31 of complaint)
	Possession clause as per builder buyer agreement	5. Possession "5.1 Within 60 (sixty) days from the date of issuance of occupancy certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by the 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 within a period of 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later."
	Possession clause as per Affordable Housing Policy, 2013	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, whichever is later. This date shall be referred to as the "date of

		<i>commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>
8.	Date of approval of building plan	08.06.2017 (As confirmed from another file CR/5675/2022 decided on 21.09.2023 of same project)
9.	Date of environment clearance	21.08.2017 (As confirmed from another file CR/5675/2022 decided on 21.09.2023 of same project)
10.	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)
11.	Basic sale consideration	Rs.24,24,331/- (As per Customer Ledger dated 23.03.2024 at page no. 62 of reply)
12.	Total amount paid by the complainant	Rs. 27,27,317/- (As per Customer Ledger dated 23.03.2024 at page no. 62 of reply)
13.	Occupation certificate	25.01.2023 (Page 52 of reply)
14.	Offer of possession	23.02.2023 (Page 55 of reply)
15.	Actual handover of possession/ Possession Certificate	26.06.2023 (Page 58 of reply)

B. Facts of the complaint

8. The complainant has made following submissions in the complaint:

- a) That 2017, the respondent company issued an advertisement announcing a residential group housing project called 'The Millennia' Sector 37D, Gurugram, Haryana in terms of the provisions of Affordable Group Housing Policy 2013 and thereby invited applications from prospective buyers for the

- purchase of allotments in the said project. The respondent confirmed that the project had got building plan approval from the authority.
- b) That the complainant was caught in the web of false promises of the agents of the respondent company, paid an initial amount of Rs. 1,21,217/- to the respondent. The payment was acknowledged by the respondent and the complainant was allotted one unit being in the above said project. The complainant received an allotment letter for the unit bearing no. T5-107.
- c) That the complainant caught in the web of lies and false promises of the respondent company duly executed the builder buyer agreement on the 12.03.2018.
- d) That the Complainant against the demand notices raised by the respondent have paid a total sum of Rs. 27,55,117/- in favour of the respondent. In terms of Scheduled "D" of builder buyer agreement, the complainant has made the payments as per the payment plan.
- e) That the complainant had sent multiple e-mails communications and made calls during the time intimating the respondent for the possession of the said unit. With great regret the complainant did not receive any revert from the respondent.
- f) That the respondent being very well aware of the guidelines laid in The Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation & Development) Rules, 2017, and the interest the complainant is entitled for as well as being aware of plethora of judgments issued by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent has not given the complainant the interest that he is eligible for the delayed compensation based on the clause 6.2(ii) of the BBA.
- g) That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent individually chasing the

respondent for construction on very regular basis. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession. The complainant 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 Corona Virus and on the account of paucity of funds.

- h) That the respondent is guilty of deficiency in service within the purview of provisions of the Act and the Rules. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act and Rules.
- i) That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their floors and the provisions allied to it. The modus operandi adopted by the respondent, from the respondents point of view may be unique and innovative but from the consumers point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the consumers, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time. The respondent not only failed to adhere to the terms and conditions of buyer's agreement dated 12.03.2018 and affordable housing policy 2013 but has also illegally extracted money from the complainant by stating false promises and statements.
- j) That as per clause 6.1(i) of the builder buyer's agreements, which was signed on 12.03.2018, the possession of the said unit was supposed to be delivered

by 20.08.2021. The actual habitable possession was given to the complainant on 05.08.2023 which is after 24 months from the promised date of possession. The respondent is liable to pay interest at the rate prescribed in clause 6.2(ii) i.e., at 15% per annum for every month of delay till the handing over of the possession of the said flat within 45 days of it becoming due. The said clause is reproduced hereunder:

- k) That as per Section 18 of the Act, the respondent is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession. Accordingly, the complainant is entitled to get interest on the paid amount at the rate as prescribed per annum from due date of possession as per builder buyer agreement till the date of handing over of actual possession.
- l) That the respondent has issued final demand notice wherein the respondent has made various unnecessary demands which are not as per the builder buyer agreement and hence are baseless, unfounded, unlawful, untenable, unsustainable, grossly misconceived, illegal and unwarranted including the advance maintenance charges. Hence the respondent is in gross violation of clause 4(v) affordable housing policy 2013. Maintenance services are to be provided by the respondent as per Section 3(3)(a)(iii) of the Act no. 8 of 1975 and Rule of 1976 and the facilities provided by the developer/respondent in Affordable housing colonies.
- m) The grievance of the complainant is that as per many judgments passed by the authority, the complainant is entitled for delayed possession charges at prescribed rate of interest from due date of possession till actual possession which is not given by the respondent till date.

C. Relief sought by the complainant

9. The complainant has sought the following relief(s):

- 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 condition.
 - II. Direct the respondent to refund the charges which are not as per the buyer's agreement.
 - III. Direct the respondent to refund the skyfull maintenance charges of Rs.28,956/-.
 - IV. Direct the respondent not to charge the amount of skyfull maintenance charges for the period of 5 years.
10. 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**
11. The respondent has contested the complaint on the following grounds vide its reply dated 25.04.2024:
- a) That the complainants approached the respondent and expressed interest in booking an apartment in the affordable housing developed by the respondent, namely "The Millennia" situated in Sector 37D, Gurugram, Haryana.
 - b) Thereafter, the complainant vide an application form dated 27.10.2017 applied to the respondent for allotment of the unit. Pursuant thereto, a residential unit bearing no. 5-107 in tower 5, admeasuring carpet area of 596.126 sq. ft. and balcony area of 79.653 sq. ft. was allotted vide allotment letter dated 01.11.2017. The complainant represented to the respondent that he shall remit every instalment as per the payment plan.
 - c) That a buyer's agreement dated 12.03.2018 was executed between the complainants 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. 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. During the period from 12.04.2021 to 24.07.2021 (103 days), each 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.

- i) 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.
- j) That the said delay of 422 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.

- k) 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.
- l) 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.
- m) That occupation certificate was obtained on 25.01.2023 and thereafter, the complainant was offered possession of the unit in question through letter of offer of possession dated 23.02.2023 and the same was communicated to the complainant vide email dated 23.02.2023. 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-ups being made by the respondent to the complainant regarding 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, a possession certificate was issued in favour of the complainant on 26.06.2023.
- n) 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.

- o) That by signing the possession certificate dated 26.06.2023, 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."

- p) 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.
- q) 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."
- r) 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 in terms of clause 8 of the agreement.
- s) 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.
- t) 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.

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

E. Jurisdiction of the authority

14. 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

15. 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 purposes 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 the complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

16. 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.

17. 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 adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent**F.I Objection regarding the complaint being time barred.**

18. During the course of the last proceedings dated 13.11.2024, the counsel for the respondent stated that the present complaint is time barred. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the RERA Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that "*the law assists those who are vigilant, not those who sleep over their rights.*" Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
19. In the present matter, the cause of action arose on 21.02.2022. The complainant filed the present complaint on 15.12.2023 which is 1 year and 10 months from the date the cause of action arose. Therefore, it is determined that the present complaint is within limitation. Even the occupation certificate was obtained by the respondent on 25.01.2023, i.e., after a delay of 11 months from the date the cause of action arose in favor of the complainants to file the present complaint. Therefore, the contention of promoter that the complaint is time barred stands rejected.

F. II Objection regarding delay due to force majeure circumstances.

20. 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 labor and orders passed by National Green Tribunal.
21. The Authority, after careful consideration, finds that 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."

22. 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 merits. 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 years completion period as prescribed under Affordable Housing Policy, 2013.

23. 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 the 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 for handing over possession in view of *notification no. 9/3-2020 dated 26.05.2020*, on account of force majeure conditions due to the outbreak of Covid-19 pandemic. So, in such a 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 relief sought by the complainant

G.I Direct the respondent to pay delayed possession interest on the amount paid by the allottee at the prescribed rate from the due date of possession to till the actual possession of the flat is handed over as per the proviso to Section 18(1) of the Act.

24. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of

interest on amount already paid by them as provided under the proviso to Section 18(1) of the Act which 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."*

25. Clause 5.1 of the apartment buyer's agreement (in short, the agreement) dated 12.03.2018, provides for handing over possession and the same is reproduced below:

"5.1Subject to Force Majeure circumstances, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of 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 proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later."

26. **Due date of handing over possession:** As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject 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. As detailed hereinabove, 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 has allowed the grace period of 6 months to the promoter. Therefore, the due date of handing over possession comes out to be 21.02.2022.

27. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainants are seeking delay possession charges. However, proviso to

Section 18 provides that where the allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *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.

28. The legislature in its wisdom in the subordinate legislation under 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.
29. 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., 08.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
30. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(z) "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;"

31. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered 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. As such the due date of handing over of possession comes out to be 21.02.2022 including grace period of 6 months on account of COVID-19. However, no interest shall be charged from the complainant in case of delayed payment during this 6-month COVID-19 period from 25.03.2020 to 25.09.2020.
32. The respondent obtained the occupation certificate on 25.01.2023 and has offered the possession of the allotted unit on 23.02.2023. 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 complainants as per the terms and conditions of the buyer's agreement dated 12.03.2018 executed between the parties. It is the failure on the part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 12.03.2018 to hand over the possession within the stipulated period.
33. 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 the 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. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he 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 offer of possession plus two months or actual handover of possession, whichever is earlier.

34. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondent is established. As such, the complainants shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 21.02.2022 till offer of possession plus two months or actual handover of possession, whichever is earlier, 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*.
35. Accordingly, the following table concludes the time period for which the complainant-allottee(s) are entitled to delayed possession charges at the prescribed rate i.e., 11.10% in terms of proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*:

Sr. No.	Complaint no.	Due date of possession	OOP	Date of actual handover of possession	DPC Period
1.	CR/5397/2023	21.02.2022	23.02.2023	26.06.2023	W.e.f. 21.02.2022

					till 23.04.2023
2.	CR/5643/2023	21.02.2022	04.02.2023	24.04.2023	W.e.f. 21.02.2022 till 04.04.2023
3.	CR/5727/2023	21.02.2022	23.03.2023	24.06.2023	W.e.f. 21.02.2022 till 23.05.2023
4.	CR/5750/2023	21.02.2022	20.03.2023	17.05.2023	W.e.f. 21.02.2022 till 17.05.2023

G.II Direct the respondent to refund the charges which are not as per the buyer's agreement.

36. The complainant has failed to specifically mention as to what charges have been charged by the respondent which do not form part of the buyer's agreement.
37. 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 is directed to charge the demands relying on the above said orders. Any sum charged in excess of the agreed terms and agreement or contrary to the applicable affordable housing policy shall be refunded to the complainants.

G.III Direct the respondent to refund the skyfull maintenance charges of Rs.28,956/-.

G.IV Direct the respondent not to charge the amount of skyfull maintenance charges for the period of 5 years.

38. 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 a% 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.*
39. 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 issued by the Directorate of Town and Country Planning, Haryana dated 31.01.2024.

H. Directions of the authority

40. 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 complainants to the respondent from the due date of possession 21.02.2022 till offer of possession plus two months or actual handover of possession, 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 36 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 complainants are 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 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.
- IV. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and the provisions of Affordable Group Housing Policy of 2013. Any sum charged in excess of the agreed terms and agreement or contrary to the applicable affordable housing policy shall be refunded to the complainants.
- V. The respondent is directed to charge the maintenance/use/utility charges from the complainant-allottees as per consumption basis has

been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
42. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
43. Files be consigned to registry.

Dated: 08.01.2025



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

HARERA
GURUGRAM