

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

Complaint no.	5581 of 2023
Date of filing complaint	18.12.2023
First date of hearing	03.04.2024
Date of decision	08.01.2025

1. Laxmi Narain
2. Sunita Rani

Both R/o: 19-C, Pocket-'J', Sheikhsarai Phase- II,
South Delhi, New Delhi- 110017

Complainants

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 Ashish Budhiraja (Advocate)

Complainant

Shri Harshit Batra (Advocate)

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 Millenia, 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.	Flat no. 11-2507, tower 11, 25 th floor (As per BBA at page 58 of complaint)
6.	Unit admeasuring area	596.126 sq. ft. (Carpet Area) 79.653 sq. ft. (Balcony Area) (As per BBA at page 58 of complaint)
8.	Date of builder buyer agreement	15.01.2018
	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, 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</i>

		<i>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 41 of reply)
10.	Date of environment clearance	21.08.2017 (Page 45 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. 24,24,330/- (As per Customer Ledger dated 29.03.2024 at page no. 69 of reply)
13.	Total amount paid by the complainant	Rs. 27,99,049/- (As per Customer Ledger dated 29.03.2024 at page no. 69 of reply)
14.	Occupation certificate	25.01.2023 (Page 53 of reply)
15.	Offer of possession	28.03.2023 (Page 59 of reply)
16.	Possession Certificate	11.04.2024 (Page 65 of reply)
17.	Conveyance Deed	25.09.2023 (Page 96 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -
- That relying on the promise and undertakings given by the respondent the complainants filed an application dated 13.07.2017 bearing no. 10022 for affordable apartment to be allotted by the draw of lots held by the respondent.
 - That through the online draw of lots conducted, complainants were allotted a residential apartment bearing unit no. 11-2507 on 25th floor in tower-11 admeasuring carpet area 596.13 sq. feet and balcony area 79.653 sq. ft. for total sale consideration of Rs 24,24,331/- which includes BSP, IFMS, club

membership, PLC etc. including taxes and paid the booking amount of Rs. 1,21,216/- to the respondent, duly acknowledged by the respondent and the allotment letter dated 01.11.2017 for the said unit was issued.

- c) That agreement to sell/apartment buyer's agreement was duly executed between the complainants and the respondent on 25.01.2018. The said agreement to sell was registered in the office of Sub Registrar, Kadipur, Gurugram vide vasika no. 4740 dated 15.01.2018. Further, as per clause 5.1 of the said agreement, the respondent is liable to deliver the possession to the complainants within a period of 4 years from the date of the approval of the building plans or environmental clearance whichever is later. That as per clause 6.1 of the agreement to sell the due date for the delivery of the possession was 20.08.2021. As per clause 6.2, the developer shall pay to allottees interest at the rate of 15% per annum for every month of delay till handing over of possession of the said flat within 45 days of it become due.
- d) That the complainants have taken home loan for the said unit for Rs.21,93,172/- from IIFL Home Finance Limited against which the complainants are paying an EMI. The complainants have paid a total amount of Rs.27,24,783/- since the booking date.
- e) That the respondent had offered the possession of the unit on 28.03.2023 after the delay of 1.5 years from the due date of possession. A final demand letter for the payment at the time of possession was also sent to the complainants. The complainants paid the final demand of payment raised by the respondent. An amount of Rs. 29,459/- was also paid to the respondent's maintenance agency i.e. Skyfull Maintenance Services Pvt Ltd.
- f) That the complainants have taken a huge sum of loan for the said unit and is still paying the EMI without having the physical possession of the unit till date and after offering the possession, the respondent executed the conveyance deed for the said apartment with the complainants vide vasika

no. 7556 dated 25.09.2023 at Sub Registrar Kadipur, District Gurugram office. The respondent just to fulfil its part and to run away from the delayed possession interest has executed the said conveyance deed.

- g) That respondent has not handed over the actual physical possession and the keys to the complainants as the apartment is not ready. The respondent had to deliver the possession of the apartment till 20.08.2021 and it has been more than 2 years, complainants are waiting to get their apartment delivered and shift in their new home. After getting the conveyance deed registered for the apartment, respondent is not handing over the actual physical possession of the unit. The complainants wrote to the officials of the respondent regarding the possession, but no reply was ever received regarding the physical possession of the unit.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- I. Direct the respondent to pay delay possession charges @ 15% per annum from date of each payment till physical handover of possession of unit as per clause 6.2 of the agreement to sell dated 15.01.2018.
 - II. Direct the respondent to handover the physical possession of the unit.
 - III. Direct the respondent not to charge the maintenance from the complainants till the actual handover of the possession of the unit. Further, withdraw the demands sent to complainants for the maintenance and adjust the amount of maintenance paid to maintenance agency M/s Skyfull Maintenance Services Pvt Ltd. of the respondent and interest @18% may kindly be granted on the maintenance already paid to the respondent.
 - IV. Direct the respondent not to ask for any charges which are not as per the buyer's agreement.
 - V. Direct the respondent to pay litigation expenses amounting to Rs.1,00,000/-.
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 grounds:

- 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. Thereafter, the complainant vide an application form dated 13.07.2017 applied to the respondent for allotment of the unit. Pursuant thereto, a residential unit bearing no. 11-2507 in tower 11, 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.
- b) That a buyer's agreement dated 15.01.2018 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.
- c) 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.
- d) 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.
- e) 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.

- f) 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.
- g) 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 3 months. An extension of only six months was granted against three months of lockdown.
- h) 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.

- i) 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.
- j) That 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.
- k) 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.
- l) 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 28.03.2023 and the same was communicated to the complainant vide email dated 28.03.2023. 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.

- m) That after signing of possession certificate dated 11.04.2024, conveyance deed was executed between the parties on 25.09.2023. 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.
- n) 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.
- o) 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."
- p) 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.
- q) 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.
- r) 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. I 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 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.

14. 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."

15. 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 the AHP, 2013.

16. 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 delay possession charges @ 15% per annum from date of each payment till physical handover of possession of unit as per clause 6.2 of the agreement to sell dated 15.01.2018.**

17. The factual matrix of the case reveals that the complainant was allotted unit no. 11-2507, tower 11, 25th floor in the respondent's project at the basic sale consideration of Rs. 24,24,330/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 15.01.2018. 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.
18. The complainant paid a sum of Rs. 27,99,049/- towards the subject unit and is ready and willing to retain the allotted unit in question. The respondent obtained occupation certificate on 25.01.2023 from the competent authorities and offered possession to the complainant on 28.03.2023.
19. 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."

20. 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.

21. 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.

22. 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%.

23. 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:

“(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;”

24. 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.
25. 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 09.04.2018. 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.
26. 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 offer of possession (28.03.2023) plus two months i.e., 28.05.2023 or actual handing over of possession (11.04.2024), whichever is earlier. The date of offer of possession plus two months being earlier than the date of actual handing over of possession, 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 offer of possession (28.03.2023) plus two months i.e., till 28.05.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid.*

Note: *It has been inadvertently mentioned in POD dated 08.01.2025 that "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 the date of actual handing over of possession, i.e., till 11.04.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid.*..."*

G.II Direct the respondent to handover the physical possession of the unit.

27. Perusal of case file reveals that a conveyance deed dated 25.09.2023 had already been executed between the parties and clause 14 of the said conveyance deed clearly mentions that the actual physical possession had been handed over to the complainant at the time of execution of the said deed. Clause 14 of the conveyance deed is reiterated as under:

"14. Thereafter the Vendor has scheduled to handover the actual physical possession of the apartment to the Vendee as per the specifications and amenities mentioned in the agreement and the Vendee also confirms the taking over the actual physical possession at the time of execution of the present deed pursuant to the offer of possession letter."

Thus, the Authority is of the view that no direction to this effect is required.

G.III Direct the respondent not to charge the maintenance from the complainants till the actual handover of the possession of the unit. Further, withdraw the demands sent to complainants for the maintenance and adjust the amount of maintenance paid to

maintenance agency M/s Skyfull Maintenance Services Pvt Ltd. of the respondent and interest @18% may kindly be granted on the maintenance already paid to the respondent.

28. The respondent in the present matter has demanded skyful maintenance charges from the complainant at the time of offer of possession. 'the authority observes that clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project: A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The coloniser shall not be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983.
29. As per the order issued by DTCP, Haryana vide clarification no. PF 27A/2024/3676 dated 31.01.2024, it has been very clearly mentioned that the utility charges [which includes electricity bill, water bill, property tax waste collection charges or any repair inside the individual flat etc.] can be charged from the allottees as per consumptions. Accordingly, the respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per clarification by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

G.IV Direct the respondent not to ask for any charges which are not as per the buyer's agreement.

30. 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. Further, 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 more than the agreed terms and agreement or contrary to the applicable affordable housing policy shall be refunded to the complainants.

G.V Direct the respondent to pay litigation expenses amounting to Rs.1,00,000/-.

31. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in **Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.** has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainants are at liberty to approach the adjudicating officer for redressal of their grievances w.r.t. compensation.

H. Directions of the authority

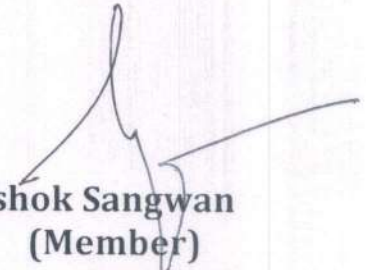
32. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed pay delay possession charges 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 plus two months i.e., till 28.05.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. 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 promoter is directed to handover the physical possession of the subject unit complete in all respect as per specifications mentioned in BBA as per provisions of Section 17 of the Act on making due payment by the allottee after adjusting the delayed possession charges and thereafter, the complainant is obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
- 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(z) 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 directed to charge the maintenance/use/utility charges from the complainants-allottees as per clarification by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.
- V. 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:08.01.2025


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



HARERA
GURUGRAM