

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

Complaint no. 5446 of 2022
Date of filing: 08.08.2022
Date of decision 03.04.2025

Amit Kumar

R/o: - F-58 Village Mahipalpur
Near Old Water Tank, New Delhi,
Delhi 110037

Complainant

Versus

1. M/s Sternal Buildcon Private Limited

Regd. Office at: - 12th Floor, Dr.
Gopal Das Bhawan, 28
Barakhamba Road, New Delhi-
110001

Respondent no.1

2. HDFC Ltd.

Registered office: Ramon House,
HT Parekh Marg, 169, Backbay
Reclamation, Churchgate, Mumbai-
400020

Respondent no.2

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Amit Kumar (Advocate)

Complainant

Sh. Niraj Kumar (Advocate)

Respondent

ORDER

1. The present 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 there under 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, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	"The Serenas", Sector- 36, Sohna, Gurugram
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Registered 02 of 2017 dated 19.06.2017 valid up to 17.05.2021
4.	DTPC License no.	14 of 2016 dated 26.09.2016
	Validity status	25.09.2021
	Name of licensee	Pardeep, Sandeep, Neera and Chander Bala
	Licensed area	9.775 acre
5.	Unit no.	1-207, tower 1, 2 nd floor (as per BBA page 39 of complaint)
6.	Unit measuring	531.57 sq. ft. (carpet area) 82.12 sq. ft. (balcony area) (as per BBA page 39 of complaint)
7.	Agreement to sell	08.09.2017 (Page no. 36 of complaint)
8.	Building plan	09.01.2017 (as submitted by respondent in its reply para b)
9.	Environment clearance	18.05.2017 (taken from another case CR/7880/2022 DOD:26.10.2023 of same project)
10.	Possession clause	5. Possession 5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its

		<i>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>
11.	Due date of possession	18.11.2021 (calculated from the date of environment clearance being later including grace period of six months in lieu of covid-19)
12.	Total sale consideration	Rs. 19,54,712/- (page no. 47 of complaint)
13.	Total amount paid by the complainant	Rs. 21,59,290/- (page 29 of complaint)
14.	Occupation certificate	25.03.2022 (As per page no. 99 of reply)
15.	Offer of possession	27.03.2022 (page 77 of complaint)
16.	Possession letter	02.08.2022 (page no. 161 of reply)

B. Facts of the complaint.

3. The complainant has made the following submissions:

- a) That the project in question is known as "THE SERANAS", Sector 36, SOHNA, Gurugram, Haryana. The flat in question is unit no. 1-207 in tower 1 at 2nd floor 2 BHK having carpet area of 531.57 sq. ft. and balcony area 82.12 sq. ft.
- b) That complainant received a marketing call from the office of respondent/ builder about investment in their upcoming project. Marketing staff of the respondent no.1 showed rosy pictures of the project and allure with proposed specifications and invited for site visit.

- c) That on 06.03.2017 the complainant paid Rs.97,736/- vide Cheque no. 000118 towards expression of Interest for the subject unit. Further, on 16.09.2017 a preprinted one sided, arbitrary and unilateral allotment letter- cum-flat buyer's agreement for unit no. 1-207 in Tower 1 at 2nd floor 2BHK admeasuring carpet area of 531.57 sq. ft. and balcony area 82.12 sq. ft in the project "THE SERENAS" at Sector 36, SOHNA, Gurgaon (Haryana) was executed between complainants and respondent no. 1.
- d) That as per clause 6.1(i) of the buyer's agreement the respondent has to complete the construction of subject unit by 18.05.2021 for the purpose of this clause, 'ready to move in possession' shall mean that the said flat shall be in habitable condition which is complete in all respects for which occupancy certificate has been issued by the concerned Governmental Authority.
- e) That from march 2017 respondent no. 1 kept raising the demand and the complainant paid all the demands on time. The payment plan as agreed was subvention payment plan. Out of total sale consideration of Rs.19,54,712/-, the complainant has already paid an amount of Rs.21,59,290/- to the respondent no.1 till 31.07.2020.
- f) That till date the respondent no. 1 had called Rs.21,59,290/- for payment and the complainant has paid Rs.21,59,290/- i.e. 100 % of total money called including with interest and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject unit for a long time, complainant raised his grievance to respondent no. 1 through various verbal communications over a period of time, but no satisfactory answer was received.
- g) That in spite of enforcement of clear RERA law in the state of Haryana, the respondent no. 1 has not fully reimbursed or adjusted the delay possession charges in the account maintained by the respondent no. 1.

- h) Further, main grievance of the complainant from respondent no. 2 is that the respondent no. 2 is hand in glove with the respondent no.1. The respondent no. 2 has failed miserably in doing due-diligence of the project and has issued the loan amount to the respondent no. 1 without any actual construction on ground as per the promised time line hereby indulging in gross negligence and being a criminal party along with respondent no. 2 in frauding the innocent complainant. The respondent no. 2 has not kept a tab of usage of funds by the respondent no.1 whereby even after getting the funds, the respondent no. 1 has failed miserably in providing the possession on time and is so far from it.
- i) It was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat along like surface parking as shown in broucher at the time of sale would be handed over to the complainant as soon as construction work is complete i.e. by MAY 2021 (as per flat buyer agreement and further addendum, possession of flat need to be given by this time).
- j) That the complainant visited the project site in March 2022 and found that the flat is not habitable and require time for completion. The current stage of the project shows that it will take more than a year to complete. The facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent no. 1 and such, they are liable to be punished and compensate the complainant.
- k) That the basic amenities like electrification, water supply, road and green belt, park etc. have not been provided and more than 60% work is pending, electric sub- station is under construction, no water supply, no sewerage treatment plant and roads and park work has been completed. The possession was agreed upon to be offered only if the said area is completely developed and all the basic amenities are made available and it is surprising

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to state that the developers just to wriggle away from their liability to pay interest for the delayed possession and to escape from legal liability and making this project just the way to earn money.

- l) That pre-possession letters along with demand were issued to the complainant on 27.03.2022 by the respondent. Demand sheet sent by respondent to complainant whereby a demand was raised under various heads and complainant is raising a strong objection on these irrelevant demands and are outside agreement and RERA provisions.
- m) That the demand under subpoint 2 (Additional Cost Sternal Buildcon Pvt Ltd) is totally wrong as there is demand of Interest Free Security Deposit (Rs 15,000/-) and administrative charges (Rs.17,700/-) which are baseless as there is no ground to deposit interest free security as no one will pick the piece of land and run away. Administration charges are also not applicable as these are baseless and outside RERA provisions. Also, the External Electricity Consumption Deposit charges (Rs.42,350/-) and Advance Electricity Consumption Deposit charges (Rs.6,000/-) are baseless and outside the law of RERA.
- n) That the respondent is also demanding charges of the water connection, electricity charges, sewerage connection, advanced maintenance charges of Rs.24,010/-. These demands are quiet non reasonable, aggressive and exponent high compare to actual cost. since the above said services are not available yet and these demands are outside the four corners of agreement as well as outside the law of RERA.
- o) That there is demand of additional/administrative charges of around Rs.15000/- under possession letter without any base and logic. The complainants have been unnecessarily harassed mentally as well as financially, therefore the opposite party i.e respondent no. 1 is liable to



provide delayed possession penalty and liable to be punished for aforesaid act of unfair trade practice.

- p) That there is clear unfair trade practices and breach of contract and deficiency in the services of the respondent no. 1 and respondent no. 2 and much more a smell of playing fraud with the complainants and others is prima facie clear on the part of respondent party which makes them liable to answer this Authority.
- q) That for the first-time cause of action for the present complaint arose in 16.09.2017, when a one sided, arbitrary and unilateral flat buyer agreement was executed between the parties. Further the cause of action arose on MAY 2021 when the respondent no. 1 failed to provide the possession as agreed mutually in builder buyer's agreement. The cause of action is alive and continuing and will continue to subsist till such time as this Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.
- r) As per the clause 6.2 under flat buyer agreement builder is liable to pay delay possession interest at the rate of 15% per annum for every month of delay till the handing over of the possession of the said Flat within forty-five (45 Days) days of it becoming due.

C. Relief sought by the complainant:

4. The complainants herein are seeking the following relief(s):
- I. Pass an appropriate an appropriate award directing the respondent no. 1 to pay delayed possession interest @ 15% compounding from due date possession i.e., May 2021 till actual date of possession.
 - II. Pass an order to quash the statement given by respondent as almost every demand is aggressive and not the actual.
 - III. Pass an appropriate order against respondent no. 1 to provide an actual date of possession
 - IV. Pass an appropriate order of penalty against respondent no. 2 who has issued the payment to the respondent no.1 without checking and keeping a tab on construction which resulted in delay in Possession.

- V. Direct respondent no. 1 to place on record before the Authority the record file maintained for this flat by respondent No. 1
- VI. Pass an order for refund of actual rent paid by the complainant due to delayed possession.

D. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds.

- I. That the complainant was allotted a flat bearing no.1-207 in Block/Tower 1 admeasuring carpet area of 531.57 sq. ft. on the 2nd floor and balcony Area 82.12 sq. ft. together with the two-wheeler open parking site and the pro rata share in the common areas through draw of lots held on 20.07.2017 under the Affordable Group Housing Policy 2013.
- II. That the building plan of the project was approved vide Memo No.ZP-1130/SD(BS)/2017/487 dated 09.01.2017 and the Environment Clearance was provided vide No. SEIAA/HR/2017/328 dated 18.05.2017.
- III. That subsequent to the allotment of the subject unit the complainant entered into agreement with the respondent for the delivery of possession of the subject unit on the terms and conditions as contained therein.
- IV. That the total cost of the allotted flat including balcony area was Rs.19,54,712/- excluding the other charges such as stamp duty, registration charges, other expenses etc. and the payment was time link payment as stipulated by the policy. The Goods and Service Tax was payable extra as applicable.
- V. That the total cost of the subject unit was escalation free, save and except increase on account of development charges payable to the Governmental Authority and/or any other charges which may be levied or imposed by the Governmental Authority from time to time, which the complainant had agreed to pay on demand by the respondent.
- VI. That the delivery of the possession of the subject unit was agreed to be offered within 4 (four) years, from the approval of building plans or grant of environmental clearance, whichever is later. However, the delivery of

possession was subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely completed with all its obligations. The relevant para of the agreement is reproduced herein for the sake of better appreciation.

- VII. That the agreed possession period would have been applicable provided no disturbance/hindrance had been caused either due to Force Majeure circumstances or on account of intervention by statutory Authorities etc.
- VIII. That the agreed possession period would have been applicable provided no disturbance/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory Authorities etc. Prior to the completion of the project, various force majeure circumstances (such as construction bans, Covid-19 pandemic, various lockdowns etc.) affected the regular development of the real estate project. The deadly and contagious Covid-19 pandemic had struck which have resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent.
- IX. That in fact, almost the entire world had struggled to cope with the Coronavirus menace. The novel coronavirus had been declared as a pandemic by world health organization. Following the declaration of the World Health Organization, the Ministry of Home Affairs, Government of India had imposed lockdown for whole of India for 21 days with effect from 25.03.2020 wherein all the commercial and private establishments was directed to be closed down including transport services besides others. Further, the lockdown was extended vide direction dated 17.05.2020 upto 31.05.2020.
- X. Further Ministry of Finance recognized that given the restriction placed on the goods, services and manpower on account of the lockdown situation

prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 and the respective State and UT Government, it may not be possible for the parties to the contract to fulfil contractual obligations and permitted the parties to the contracting with the Government for all construction/works contracts, goods and services contracts and PPP contract to invoke Force Majeure Clause and thereby extended the contract by six months.

- XI. That the Hon'ble Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM (Admn.) dated 26.05.2020 extended the date of completion for all Real Estate Projects registered under Real Estate Regulation and Development Act, where completion date, revised completion date or extended completion date was to expire on or after 25th of March, 2020 automatically by 6 months, due to outbreak of the COVID - 19 (Corona Virus), which is calamity caused by nature and is adversely affecting regular development of real estate projects by invoking "force majeure" clause.
- XII. That even before the expiry of said extended period, it is very much in public domain and had also been widely reported that second wave of Covid-19 had also hit the country badly 'like a tsunami' and Haryana was no exception thereof. Copy of a news as published saying "Not A Wave, It's A Tsunami: Delhi High Court On Covid-19 Surge" in Outlook Web Bureau on 21.04.2021.
- XIII. That thereafter, during the second wave of Covid-19 the Authority, Panchkula by way of resolution in the meeting held on 2nd of August 2021 ordered for extension of three months from 01.04.2021 to 30.06.2021 due to second wave of Covid-19 as a force majeure event. The Panchkula Authority observed that the second wave of Covid-19 has adversely hit all sections of the society and it being a case of natural calamity, the Authority pursuant to Section-37 of the Real Estate Regulations & Development Act,

2016, decides to grant three months general extension from 01.04.2021 to 30.06.2021, considering it as a force majeure event. The Hon'ble Authority was also pleased to treat the aforesaid period as zero period and compliance of various provisions of Real Estate Regulation and Development Act and Rules and Regulations framed thereunder would stand extended without even there being a requirement of filing of formal application. The Hon'ble Authority was further pleased to direct that no fee/penalty shall be paid/payable by the developer on account of delay in filing/submission of requisite information/documents pertaining to the registered projects during the said three months period. These particular circumstances in a state considered as force majeure by the similar authority under the same statute should also be considered as Force Majeure by another authority under same statute.

- XIV. That Haryana Government had imposed various lockdown for different periods even after January 2021 terming it as "Mahamari Alert/Surkshit Haryana (Epidemic Alert/Safe Haryana) resulting in virtual stoppage of all activity within the state of Haryana. Copy of the orders imposing lockdown even post January 2021 and thus are in public domain being public documents.
- XV. That disturbance due to lockdown in different phases of covid19 has been considered as force majeure even by the Ministry of Ministry of Environment, Forest and Climate Change, and issued a notification dated 18.01.2021, wherein it specifically extended relief in terms of the substitution
- XVI. That the Ministry of Environment, Forest and Climate Change examining the number of requests, as a result of lockdowns (total or partial), for extension of the validity of prior environmental clearances beyond the maximum period found that the concern is genuine keeping in view the fact that due

to lockdowns (total or partial), continuation of activities in the field has been difficult. The Ministry has categorically admitted in the said notification dated 18.01.2021 that in view of the outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control, implementation of projects or activities in the field has been affected. This makes it clear that the Ministry too stated that the period from 01.04.2020 to 31.03.2021 was excluded, for the purpose of calculation of the period of validity of prior environmental clearances, granted under the provisions of this notification in view of the Covid-19 lockdown. In this manner, similar relaxation ought to be granted for the construction of the project too.

XVII. That therefore, it is manifest that both the first wave and second wave of Covid had been recognized by this Authority and the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula to be Force Majeure events being calamities caused by nature which had adversely affected regular development of real estate projects. All these facts have been mentioned hereinabove to highlight the devastating impact of Covid-19 on businesses all over the globe.

XVIII. That the respondent had also suffered devastatingly because of blanket ban on raising of construction, advisories etc. The concerned statutory authorities had earlier imposed a blanket ban on raising of construction, advisories had been issued by the statutory authorities to the developers to ensure that no retrenchment of staff/labour are done and further to ensure that the staff/labour were adequately fed and provided for. Subsequently, the said embargo had been lifted to a limited extent. However, in the interregnum, large scale migration of labour had occurred which had also been extensively reported in printed and electronic media. Availability of raw material remained a major cause of concern. In fact, the aforesaid force

majeure events had completely affected the ability of the respondent to continue with the construction. Despite diligent efforts, the respondent had been unable to carry on construction/ development/implementation of its projects including the project in question during the aforesaid period which in any case should not be considered for determining the period for delivery of physical possession of the apartment to the complainant.

- XIX. That the agreement of sale notified under the Haryana Real Estate (Regulation and Development) Rules, 2017 categorically excludes any delay due to "force majeure", Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project. In addition to the aforesaid period, the following period also deserves to be excluded for the purpose of computation of period available to the respondent to deliver physical possession of the apartment to the Complainant as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017.
- XX. That the development of project of the respondent was also adversely affected due to various directions of Haryana State Pollution Control Board, Orders passed by Municipal Commissioner of Gurgaon, Environment Pollution (Prevention & Control) Authority for National Capital Region for varying period during the year 2017, 2018, 2019, 2020 and 2021.
- XXI. That the period of 151 days in addition to the period affected by Covid-19 (6+3= 9 months) mentioned hereinabove was consumed on account of circumstances beyond the power and control of the respondent owing to passing of orders by statutory authorities affecting the regular development of the real estate project. Since, the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of time already indicated hereinbefore, the said period ought to be

excluded, while computing the period availed by the respondent for the purpose of raising construction and delivering possession.

- XXII. That in a recent publication in mint dated 07.10.2022 wherein it has been published that a one-month ban on the construction activities would delay the project by 3-4 months on account of mobilization of the labour, machinery, resumption of supplies of various materials etc. Accordingly, the Hon'ble Authority may consider grant of benefit of extension to the respondent on account of time consumed in re-mobilization of the various construction activities.
- XXIII. That it is also in public domain that the third wave of Covid-19 had also badly hit all the activities not only in Haryana but also in India and rest of the world. Haryana Government had imposed lockdown for varying periods owing to Covid19 third wave resulting in virtual closure of construction activities in their entirety within the state of Haryana.
- XXIV. That the aforesaid incidence was unforeseen events and beyond the control of the respondent which adversely affected the respondent's ability to perform its obligations under the agreement are within the meaning of force majeure as defined in the clause 19 of the agreement is reproduced herein below for better appreciation.
- XXV. That the respondent is entitled for extension of the following period from the date of handing over the possession of the flat to the complainant.
- XXVI. That all these facts were and are in the notice and knowledge of the complainant and the complainant has pleaded deliberate ignorance about the same. The complainant has intentionally omitted any reference to the aforesaid clauses of agreement and hence there is no delay on the respondent in handing over the possession of the flat to the complainant.

- XXVII. That the respondent received the occupancy certificate on 25.03.2022 from the Town & Country Planning Department Haryana and the respondent issued offer of possession vide letter dated 27.03.2022 requesting the complainant to accept the possession and execute the necessary documents for the execution of the conveyance deed of the given unit.
- XXVIII. That the conveyance deed dated 11.07.2023 has been executed with the complainant and the possession of the subject unit has been handed over to the complainant vide possession letter dated 02.08.2023.

6. All other averments made in the complaint were denied in toto.
7. On the date of hearing, the authority explained to the respondent no.1/ 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.
8. The present complaint was filed on 08.08.2022 in the Authority. The respondent no.2 was granted several opportunities to put in appearance and file reply. However, despite specific opportunities respondent failed to appear and file reply. In view of the same respondent no.2 defence was struck off and the matter was proceeded ex-parte against the respondent no.2 vide order dated 03.04.2025.
9. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority.

10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

11. 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

12. 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)(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."

13. 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 objection raised by the respondent.

F.I Objection regarding force majeure conditions.

14. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as construction ban due to orders passed by various Authorities including orders passed by National Green Tribunal (hereinafter, referred as NGT), lockdown due to outbreak of Covid-19 pandemic But, all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the

month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit 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 09.01.2017 and date of environment clearance is 18.05.2017 as per the submissions made by respondent no.1 in reply. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 18.05.2021. 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 18.05.2021 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 18.11.2021.

G. Findings on the relief sought by the complainants.

G.1 Pass an appropriate an appropriate award directing the respondent no. 1 to pay delayed possession interest @ 15% compounding from due date possession i.e., May 2021 till actual date of possession.

15. The complainant booked a unit bearing no. 1-207 in Block/Tower 1 admeasuring carpet area of 531.57 sq. ft. balcony area 82.12 sq. ft. on the 2nd floor in the project "The Serenas" being developed by the respondent. The complainant has paid Rs.21,59,290/-against the sale consideration of

Rs.19,54,712/-. A buyer agreement w.r.t the subject unit was executed between the parties on 08.09.2017.

16. The complainant herein intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso reads as under: -

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

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

"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.

18. 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.

19. 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.

20. **Admissibility of grace period:** As per clause 5.1 of buyer's agreement, the respondent no.1/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., 18.05.2017 which comes out to be 18.05.2021. 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 18.11.2021.

21. **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. 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]

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."

22. 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.
23. 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., 03.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. 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;"

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent which is the same as is being granted to them in case of delayed possession charges.
26. 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 on 08.09.2017, 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., 18.05.2017. 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 18.05.2021 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 18.11.2021. Further, a relief of 6 months will be given to the allottee that no interest shall be charged from the complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
27. The respondent has obtained the occupation certificate on 25.03.2022 and offer of possession for the subject unit was sent to the complainant on 27.03.2022. Copy of the same has been placed on record. The authority is of



the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 08.09.2017 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period as per the buyer's agreement dated 08.09.2017.

28. 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 25.03.2022. The respondent offered the possession of the unit in question to the complainant only on 27.03.2022. 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. This 2 month 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 the expiry of 2 months from the date of offer of possession (27.03.2022) which comes out to be 27.05.2022.

29. 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. 18.11.2021 till the offer

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shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, ibid.

- II. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent no.1 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 6 months grace period due to Covid-19 shall also apply to the allottee in case of any default in making payment.
 - IV. The respondent no.1 shall not charge anything from the complainant which is not the part of the buyer's agreement.
32. The complaint stands disposed of.
33. File be consigned to the registry.

Date: 03.04.2025


(Vijay Kumar Goyal)

Member
Haryana Real Estate Regulatory
Authority, Gurugram