

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**
Date of Order: 20.02.2025

NAME OF THE BUILDER		M/S FOREVER BUILDTECH PRIVATE LIMITED
PROJECT NAME		"The Roselia"
S.No.	Case No.	Case title
1.	CR/2334/2024	Priyanka Tripathi V/S M/s Forever Buildtech Pvt. Ltd.
2.	CR/2335/2024	Nilu Kumar Mishra & Amrita Kumari Pandey V/S M/s Forever Buildtech Pvt. Ltd.
3.	CR/2354/2024	Joni Kumar V/S M/s Forever Buildtech Pvt. Ltd.
4.	CR/2359/2024	Pratima V/S M/s Forever Buildtech Pvt. Ltd.
5.	CR/2362/2024	Sumit Dhall & Megha Rani V/S M/s Forever Buildtech Pvt. Ltd.
6.	CR/2365/2024	Ravi Rajan V/S M/s Forever Buildtech Pvt. Ltd.
7.	CR/2376/2024	Ravi Ranjan & Richa Ranjan V/S M/s Forever Buildtech Pvt. Ltd.
8.	CR/2377/2024	Rajeshwar Pratap Singh V/S M/s Forever Buildtech Pvt. Ltd.



9.	CR/2381/2024	Rupesh Kumar Mishra V/S M/s Forever Buildtech Pvt. Ltd.
10.	CR/2396/2024	Manoj Kumar Kushwaha & Rekha Kushwaha V/S M/s Forever Buildtech Pvt. Ltd.
11.	CR/2413/2024	Anna Sagar V/S M/s Forever Buildtech Pvt. Ltd.
12.	CR/2414/2024	Praveen Kumar Rawat V/S M/s Forever Buildtech Pvt. Ltd.
13.	CR/2464/2024	Payal Rakeshbhai Bhatti V/S M/s Forever Buildtech Pvt. Ltd.
14.	CR/2488/2024	Asha Rani V/S M/s Forever Buildtech Pvt. Ltd.
15.	CR/2472/2024	Neetu Kaushal & Harvind Kumar V/S M/s Forever Buildtech Pvt. Ltd.
16.	CR/2545/2024	Saroj Verma & Azad Verma V/S M/s Forever Buildtech Pvt. Ltd.

APPEARANCE:

Shri Garvit Gupta (Advocate)	Complainant
Shri Venkat Rao (Advocate)	Respondent
Shri Pankaj Chandola (Advocate)	AR for Respondent
Shri Amarjit Singh	

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of all the 16 complaints titled as above filed before the 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.
2. 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 Roselia**" being developed by the same respondent/promoter i.e., Forever Buildtech Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest and the other reliefs.
3. The details of the complaints, reply to 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: The Roselia, Sector- 95A, Gurugram
Possession clause: Clause 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.**

Note:

- 1. Date of approval of building plans-** Date of approval of building has been not provided by either of the parties on record. However, as per another file of the same project, the approval of building plans comes out to be 09.01.2017.
- 2. Date of Environment clearance-** Date of environment clearance is evident from the document annexed by the complainant with the complaint, specified as 18.05.2017. Therefore, date of environment clearance comes out to be 18.05.2017.
- 3. Due date of handing over of possession-** As per clause 5.1 of buyer's agreement, the due date of handing over of possession is 4 years from date of approval of building plans or grant of environment clearance, whichever is later and as specified above, date of approval of building plan is 09.01.2017 and the date of environment clearance is 18.05.2017. Therefore, due date of handing over of possession including 6 months of grace period is calculated from the date of environment clearance being later, which comes out to be **18.11.2021**.
- 4. Occupation certificate-** 06.05.2022 for towers- A, B, G, H, I.

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell and Offer of Possession	Date of Possession Certificate and Conveyance Deed	Total Consideration/ Total Amount paid by the complainants in Rs.
1.	CR/2334/2024 Priyanka Tripathi VS Forever Buildtech Private Limited Date of Filing of	Reply received on 26.09.2024	1208 on 12 th floor, Tower- G, Area admeasuring 569.243 sq. ft.	12.04.2018 (As per page no. 34 of the complaint) Offer of possession: -	26.07.2022 (As per page no. 79 of the complaint) Conveyance	TSC: - Rs. 23,26,972/- (As per page no. 45, of the complaint)

	complaint 03.06.2024		(As per page no. 48 of the complaint)	14.05.2022 (Page no. 74 of the complaint)	Deed: - 20.07.2022 (Page no. 35 of written arguments filed by respondent)	AP: - Rs. 26,33,511/- (As per page no. 76, 80, 81 of the complaint)
2.	CR/2335/2024 Nilu Kumar Mishra & Amrita Kumari Pandey V/S M/s Forever Buildtech Private Limited Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	1904 on 19th floor, Tower- K, Area admeasuring 569.243 sq. ft. (As per page no. 39 of the complaint)	05.04.2019 (As per page no. 37 of the complaint) Offer of possession: - 01.06.2022 (As per page no. 83 of the complaint)	22.08.2022 (As per page no. 01 of written arguments filed by respondent) Conveyance Deed: - 26.08.2022 (Page no. 01 of written arguments filed by respondent)	TSC: - Rs. 23,26,972/- (As per page no. 45 of the complaint) AP: - Rs. 26,38,175/- (As per page no. 89, 90, 93 of complaint)
3.	CR/2354/2024 Joni Kumar V/S M/s Forever Buildtech Private Limited Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	701 on 7th floor, Tower- D, Area admeasuring 569.243 sq. ft. (As per page no. 37 of the complaint)	03.08.2017 (As per page no. 34 of the complaint) Offer of possession: - 14.05.2022 (As per page no. 87 of the complaint)	01.08.2022 (As per page no. 88 of the complaint) Conveyance Deed: - 01.08.2022 (Page no. 01 of written arguments filed by respondent)	TSC: - Rs. 23,26,972/- (As per page no. 45 of the complaint) AP: - Rs. 26,74,153/- (As per page no. 89, 90, 93 of complaint)
4.	CR/2359/2024 Pratima V/S M/s Forever Buildtech Private Limited Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	701 on 7th floor, Tower- D, Area admeasuring 569.243 sq. ft. (As per page no. 37 of the complaint)	29.04.2019 (As per page no. 34 of the complaint) Offer of possession: - 14.05.2022 (As per page no. 71 of the complaint)	05.12.2022 (As per page no. 76 of the complaint) Conveyance Deed: - 05.12.2022 (Page no. 01 of written	TSC: - Rs. 20,97,050/- (As per page no. 43 of the complaint) AP: - Rs. 23,80,788/-

				complaint)	arguments filed by respondent)	(As per page no. 73, 77, 81 of the complaint)
5.	CR/2362/2024 Sumit Dhall & Megha Rani V/S M/s Forever Buildtech Private Limited Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	1002 on 10th floor, Tower- B, Area admeasuring 514.272 sq. ft. (As per page no. 40 of the complaint)	27.06.2019 (As per page no. 37 of the complaint) Offer of possession: - 14.05.2022 (As per page no. 86 of the complaint)	01.08.2022 (As per page no. 90 of the complaint) Conveyance Deed: - 01.08.2022 (Page no. 01 of written arguments filed by respondent)	TSC: - Rs. 20,97,049/- (As per page no. 43 of the complaint) AP: - Rs. 23,80,788/- (As per page no. 87, 91, 95 of the complaint)
6.	CR/2365/2024 Vishal Pathak V/S M/s Forever Buildtech Private Limited Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	1104 on 11th floor, Tower- L, Area admeasuring 569.243 sq. ft. (As per page no. 37 of the complaint)	08.03.2019 (As per page no. 34 of the complaint) Offer of possession: - 02.06.2022 (As per page no. 82 of the complaint)	07.10.2022 (As per page no. 87 of the complaint) Conveyance Deed: - 07.10.2022 (Page no. 01 of written arguments filed by respondent)	TSC: - Rs. 23,26,972/- (As per page no. 43 of the complaint) AP: - Rs. 26,41,374/- (As per page no. 80, 81, 84, 88 of the complaint)
7.	CR/2376/2024 Ravi Ranjan & Richa Ranjan V/S M/s Forever Buildtech Private Limited Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	1106 on 11th floor, Tower- B, Area admeasuring 514.272 sq. ft. (As per page no. 38 of the complaint)	19.04.2018 (As per page no. 36 of the complaint) Offer of possession: - 14.05.2022 (As per page no. 82 of the complaint)	29.07.2022 (As per page no. 87 of the complaint) Conveyance Deed: - 27.09.2022 (Page no. 01 of written arguments filed by respondent)	TSC: - Rs. 20,97,050/- (As per page no. 44 of the complaint) AP: - Rs. 26,41,374/- (As per page no. 84, 88, 90, 91 of the complaint)

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8.	CR/2377/2024 Rajeshwar Pratap Singh V/S M/s Forever Buildtech Private Limited Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	702 on 7th floor, Tower- B. Area admeasuring 514.272 sq. ft. (As per page no. 36 of the complaint)	18.02.2019 (As per page no. 34 of the complaint) Offer of possession: - 14.05.2022 (As per page no. 78 of the complaint)	22.08.2022 (As per page no. 83 of the complaint) Conveyance Deed: - 22.08.2022 (Page no. 01 of written arguments filed by respondent)	TSC: - Rs. 20,97,050/- (As per page no. 42 of the complaint) AP: - Rs. 25,35,278/- (As per page no. 80, 84, 85 of the complaint)
9.	CR/2381/2024 Rupesh Kumar Mishra V/S M/s Forever Buildtech Pvt. Ltd. Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	802 on 8th floor, Tower- G. Area admeasuring 514.272 sq. ft. (As per page no. 41 of the complaint)	20.11.2018 (As per page no. 38 of the complaint) Offer of possession: - 14.05.2022 (As per page no. 89 of the complaint)	23.08.2022 (As per page no. 94 of the complaint) Conveyance Deed: - 23.08.2022 (Page no. 01 of written arguments filed by respondent)	TSC: - Rs. 20,97,050/- (As per page no. 47 of the complaint) AP: - Rs. 23,80,790/- (As per page no. 91,95,101 of complaint)
10.	CR/2396/2024 Manoj Kumar Kushwaha & Rekha Kushwaha V/S M/s Forever Buildtech Pvt. Ltd. Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	202 on 2nd floor, Tower- I. Area admeasuring 514.272 sq. ft. (As per page no. 42 of the complaint)	12.04.2018 (As per page no. 37 of the complaint) Offer of possession: - 01.06.2022 (As per page no. 94 of the complaint)	23.08.2022 (As per page no. 98 of the complaint) Conveyance Deed: - 02.08.2022 (Page no. 01 of written arguments filed by respondent)	TSC: - Rs. 20,97,050/- (As per page no. 48 of the complaint) AP: - Rs. 23,80,793/- (As per page no. 96,100,101 of complaint)

11.	CR/2413/2024 Anna Sagar V/S M/s Forever Buildtech Pvt. Ltd. Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	907 on 9th floor, Tower- I, Area admeasuring 514.272sq. ft. (As per page no. 35 of the complaint)	18.04.2019 (As per page no. 33 of the complaint) Offer of possession: - 01.06.2022 (As per page no. 71 of the complaint)	2022 (Page no. 01 of written arguments filed by respondent) Conveyance Deed: - 25.08.2022 (Page no. 01 of written arguments filed by respondent)	TSC: - Rs. 20,97,050/- (As per page no. 41 of the complaint) AP: - Rs. 23,80,799/- (As per page no. 73,76,80 of complaint)
12.	CR/2414/2024 Praveen Kumar Rawat V/S M/s Forever Buildtech Pvt. Ltd. Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	907 on 9th floor, Tower- I, Area admeasuring 514.272sq. ft. (As per page no. 35 of the complaint)	03.06.2019 (As per page no. 34 of the complaint) Offer of possession: - 14.05.2022 (As per page no. 86 of the complaint)	17.08.2022 (As per page no. 88 of the complaint) Conveyance Deed: - 17.08.2022 (Page no. 02 of written arguments filed by respondent)	TSC: - Rs. 20,97,050/- (As per page no. 44 of the complaint) AP: - Rs. 23,80,786/- (As per page no. 89,93,96 of complaint)
13.	CR/2464/2024 Payal Rakeshbhai Bhatti V/S M/s Forever Buildtech Pvt. Ltd. Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	1103 on 11th floor, Tower- C, Area admeasuring 514.272 sq. ft. (As per page no. 35 of the complaint)	08.08.2017 (As per page no. 33 of the complaint) Offer of possession: - 14.05.2022 (As per page no. 81 of the complaint)	2022 (Page no. 02 of written arguments filed by respondent) Conveyance Deed:- 08.08.2022 (Page no. 02 of written arguments filed by respondent)	TSC: - Rs. 20,97,050/- (As per page no. 41 of the complaint) AP: - Rs. 23,80,799/- (As per page no. 73,76,80 of complaint)

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14.	CR/2488/2024 Asha Rani V/S M/s Forever Buildtech Pvt. Ltd. Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	707 on 7th floor, Tower- H. Area admeasuring 569.243 sq. ft. (As per page no. 40 of the complaint)	24.04.2018 (As per page no. 38 of the complaint) Offer of possession: - 14.05.2022 (Page no. 70 of the complaint)	03.08.2022 (As per page no. 73 of the complaint) Conveyance Deed:- 03.08.2022 (Page no. 02 of written arguments filed by respondent)	TSC: - Rs. 23,26,972/- (As per page no. 44, of the complaint) AP: - Rs. 27,86,651/- (As per page no. 75-76 of the complaint)
15.	CR/2472/2024 Neetu Kaushal & Harvind Kumar V/S M/s Forever Buildtech Pvt. Ltd. Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	502 on 5th floor, Tower- B. Area admeasuring 514.272 sq. ft. (As per page no. 38 of the complaint)	15.02.2019 (As per page no. 35 of the complaint) Offer of possession: - 02.06.2022 (As per page no. 72 of the complaint)	29.08.2022 (As per page no. 77 of the complaint) Conveyance Deed: - 29.08.2022 (Page no. 02 of written arguments filed by respondent)	TSC: - Rs. 20,97,050/- (As per page no. 44 of the complaint) AP: - Rs. 23,80,790/- (As per page no. 74,78,89 of complaint)
16.	CR/2545/2024 Saroj Verma & Azad Verma V/S M/s Forever Buildtech Pvt. Ltd. Date of Filing of complaint 03.06.2024	Reply received on 26.09.2024	502 on 5th floor, Tower- B. Area admeasuring 514.272 sq. ft. (As per page no. 38 of the complaint)	11.02.2019 (As per page no. 36 of the complaint) Offer of possession: - 14.05.2022 (As per page no. 80 of the complaint)	12.07.2022 (As per page no. 84 of the complaint) Conveyance Deed:- 12.07.2022 (Page no. 02 of written arguments filed by respondent)	TSC: - Rs. 20,97,050/- (As per page no. 46 of the complaint) AP: - Rs. 23,80,790/- (As per page no. 82,83,87 of complaint)

The complainants in the above complaints have sought the following relief(s):

1. Direct the respondent to pay interest for every month of delay at prevailing rate of interest from the due date of possession i.e., 17.05.2021 till actual handing over of possession.
2. Direct the respondent to provide interest for the excess amount taken by it from the complainant at the stage of allotment which was in violation of the Affordable Group Housing Policy, 2013.
3. Direct the respondent to refund the excess amount taken from the complainant under the garb of

- the previous GST rates along with interest.
4. Direct the respondent to refund the excess amount paid by the complainant towards the Operational Cost of Utility Services.
 5. Direct the respondent to refund the excess amount paid by the complainant towards the Meter and Water connection charges.
 6. Direct the respondent to refund the excess amount paid by the complainant towards the IFSD Charges.
 7. Direct the respondent to refund the excess amount paid by the complainant towards the External Electrification charges.
 8. Direct the respondent to refund the excess amount paid by the complainant towards the Advance Consumption Charges.
 9. Direct the respondent to refund excess payment demanded from the complainant and paid by her towards delay interest charges at the higher rate than prescribed in the provisions of RERA Act, 2016.
 10. Pass an order imposing penalty on the builder on account of various defaults under RERA Act, 2016 and the same be ordered to be paid to the complainant.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC: Total Sale consideration

AP: Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges and other reliefs.
5. It has been decided to treat the said complaint(s) 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 complaint(s) filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2334/2024 Priyanka Tripathi V/s Forever Buildtech Private Limited**

are being taken into consideration for determining the rights of the allottee(s) qua interest for every month of delay and other reliefs sought.

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/2334/2024 Priyanka Tripathi V/s Forever Buildtech Private Limited

S. No.	Particulars	Details
1.	Name of the project	"The Roselia,"
2.	Project location	Sector 95-A, Gurugram, Haryana
3.	Project type	Affordable Group Housing Colony
4.	DTCP License no. & validity status	13 of 2016 26.09.2016 up to 25.09.2021
5.	HRERA registration	Registered 05 of 2017 20.06.2017 up to 17.05.2021
6.	Allotment Letter	02.04.2018 [Page 32 of complaint]
7.	Unit no.	1208, 12 th Floor, Tower-G [Page 48 of complaint]
8.	Unit area admeasuring	514.272 sq. ft. carpet area [As per page no. 42 of complaint]
9.	Builder-Buyer Agreement	12.04.2018 [Page 34 of complaint]
10.	Possession clause	5. Possession 5.1: The developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever is later. [Page 47 of complaint]
11.	Date of Building Plan	09.01.2017 (Taken from another file of the same project)

12.	Environment clearance	18.05.2017 [Page 73 of complaint]
13.	Total sale consideration	Rs.23,26,972/- [Page no. 44 of complaint]
14.	Amount paid by the complainant	Rs.26,33,511/- [Page no. 76, 80, 81 of complaint]
15.	Due date of possession	18.11.2021 [Note: Due date to be calculated from date of environment clearance i.e., 18.05.2017 as per possession clause of BBA including grace period of 6 months in lieu of covid]
16.	Occupation certificate	06.05.2022 [Page 10 of written arguments filed by respondent dated 04.03.2025]
17.	Offer of possession	14.05.2022 [Page 74 of complaint]
18.	Possession Certificate	26.07.2022 [Page 79 of complaint]
19.	Conveyance Deed dated	20.07.2022 [Page 10 of written arguments filed by respondent dated 04.03.2025]

B. Facts of the complaint:

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

- I. The respondent offered a unit in Affordable Group Housing complex known 'The Roselia' which claimed to comprise of multi-storied apartments, residential units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in sector 95A, Gurugram, Haryana. The said project was represented to be developed by the respondent in accordance with the approvals and other sanctions in terms of the Affordable Group Housing Policy, 2013 notified by the Government of Haryana vide Town and Country Planning Department notification dated 19.08.2013.

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- II. Accordingly, the complainant applied for the booking vide her application no. 50567 dated 22.01.2018 by making payment of 5% towards the total sale consideration as per the provisions laid down in Affordable Group Housing Policy, 2013. Pursuant to the application, the draw of lots were held on 23.03.2018 and the complainant was allotted unit no. G-1208, Tower G on 12th Floor having carpet area of 569.243 sq. ft. together with a two-wheeler parking. The booking was made under the Affordable Group Housing Policy, 2013. However, it is astonishing to note that despite being aware of the terms and provisions of the Affordable Group Housing Policy, 2013, the respondent deliberately sent a payment demand cum allotment letter which was not as per the provisions of the said Policy.
- III. However, it is evident from a bare perusal of the said demand cum letter dated 02.04.2018 that the respondent had demanded Rs. 8,26,076/- from the complainant out of the total sale consideration of Rs. 23,26,972/- i.e., the respondent had demanded 35% out of the total sale consideration when as per the said policy, the respondent could have demanded only 20% at the time of allotment of the unit.
- IV. The complainant confronted the respondent about the said illegality vide several telephonic conversations and intimated to it that the respondent cannot charge excess amount from the complainant under the garb of a unilateral allotment letter and that since the project falls within the ambit of the Affordable Group Housing Policy, 2013. Hence, all the payment demands were to be raised strictly as per the provisions of the said policy.
- V. Accordingly, a copy of the apartment buyer's agreement was sent to the complainant. The agreement which was shared was a wholly one-sided

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document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favoring the respondent and was totally against the interest of the purchasers, including the complainant herein.

- VI. That while in the case of the complainant making the delay in the payment of instalments, the respondent is shown to be entitled to charge interest @15% per annum. It is thus clear, that the delayed penalty demanded from the complainant, in case of default of the complainant, has deliberately been formulated to the detriment of the complainant and the same is illegal and unsustainable.
- VII. The complainant made vocal her objections to the arbitrary and unilateral clauses of the agreement to the respondent. Further, that prior to the signing of the agreement, complainant had made payment of Rs.1,16,349/- out of the consideration amount of Rs. 23,26,972/- . The respondent categorically assured the complainant that she need not worry and that the respondent would strictly adhere to the timeline, terms of the allotment and the provisions laid down by law including Real Estate (Regulation and Development) Act, 2016 and Affordable Group Housing Policy, 2013. Since the complainant had already parted with a considerable amount, she was left with no other option but to accept the lopsided and one-sided terms of the agreement. Hence, the builder buyer agreement dated 24.04.2018 was executed between the parties.
- VIII. The complainant made all the payments strictly as per the terms of the allotment and the construction linked payment plan and no default in making timely payment towards the instalment demands was committed by the complainant. That despite having made the apartment buyer agreement dated 24.04.2018 containing terms very much favorable as

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per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent failed to perform the most fundamental obligation of the agreement which was to handover the possession of the flat within the promised time frame, which in the present case was delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large.

- IX. As per clause 5.1 of the agreement, the possession of the unit was to be handed over by the respondent within a period of 4 years from the date of approval of the building plans or grant of environment clearance. A copy of the environment clearance submitted by the respondent with this Hon'ble Authority at the time of registration, that the environment clearance of the project was obtained on 18.05.2017. Thus, the due date to deliver the possession as per the agreed terms of the apartment buyer's agreement was on 17.05.2021.
- X. On the lapse of the due date to handover the possession, the complainant visited the project site in June, 2021 and was shocked to see that no construction activity was going on there and the work was at standstill. There was inordinate delay in developing the project well beyond what was promised and assured to the complainant. This further shows that the demands which were raised by the respondent didn't correspond to the actual construction status on the site.
- XI. The respondent finally offered the possession of the unit to the complainant vide its letter dated 14.05.2022. On-going through the terms of the offer of possession, the complainant realized that respondent had not adjusted the delayed possession charges nor the interest towards the excess amount which the complainant was made to pay during the time of allotment and which the respondent had assured that they would

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compensate the complainant with at the time of offer of possession. The respondent threatened the complainant, when confronted, that in case the complainant fails to make the payment, respondent would be at the liberty to charge interest, holding charges and invoke the provisions of the agreement against the complainant. Since, the complainant had made majority of the payment till the offer of possession, the complainant was left with no choice but to accept the possession of the unit under protest. The respondent had charged certain unlawful charges from the complainant vide the annexure attached with the offer of possession. The said unlawful charges were vehemently protested by the complainant as aforesaid. However, the complainant was constrained to pay the said unlawful charges despite the protests. It is submitted that the respondent had issued a possession certificate on 26.07.2022.

- XII. The respondent in the present matter has charged operational cost of utility of Rs. 27,325/-. Moreover Clause 4(v) of the Affordable Housing Policy, 2013 talks about maintenance of colony after completion of project. Furthermore, as per the clarification regarding maintenance charges to be levied on affordable group housing projects being given by DTCP, Haryana vide clarification no. PF -27 A/2024 /3676 dated 31.01.2024 it is 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 only as per actual consumptions. The complainant had paid the said amount towards the utility charges and is thus entitled to get the refund of the said amount and the same is evident from the fact that without the payment of such charges, the respondent would not made the facility of electricity available in the unit in question.

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XIII. As per the statement of account forming part of the offer of possession, it is also clear that the respondent had unlawfully demanded payment towards several parameters, which as per law, cannot be demanded from the complainant. The said illegal charges are as follows:

- a. **Meter connection charges and water connection charges:** The Respondent had demanded Rs. 4366/- towards the meter connection charges and Rs. 648/- towards water connection charges. In the landmark judgment 'Varun Gupta vs Emaar MGF Land Limited' decided by this Hon'ble Authority on 12.08.2021, it has been categorically held that in Para 169 that the promoter can only be held entitled to recover the said charges paid to the concerned departments on pro-rata basis depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant in such scenario is entitled to proof of such payment to the concerned department along with computation proportionate to the allotted flat. Hence, the complainant is liable to be refunded with any additional amount paid by her which is more than the amount which is computed on pro-rate basis depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project.
- b. **External Electrification Charges:** The respondent has also demanded the payment of Rs. 50,837/- towards the external electrification charges. The said demand is completely illegal as the said charges are to be demanded at the appropriate stage from the complainant on a pro-rata basis after the completion of the project.

in question and the said amount is liable to be refunded back to the complainant.

- c. **IFSD Charges:** The respondent has illegally demanded Rs. 15,000/- from the complainant against IFSD charges. Being an affordable housing project and considering the fact that the project is to be maintained free of cost for first 5 years, there was no occasion for the respondent to have demanded IFSD charges from the complainant. Hence, the complainant is entitled to refund of the said charges from the respondent.
- d. **Advance Consumption Deposit:** The respondent has illegally demanded Rs.4,500/- towards the advance consumption deposit. The complainant is completely unaware as to why the said charges have been demanded from the complainant. The complainant is entitled to refund of the said charges.

XIV. The complainant has made a payment of Rs. 26,33,511/- out of the total sale consideration of Rs.23,26,972/- which is more than 100% of the total sale consideration and the same is evident from the statement of account dated 14.05.2022 and 02.06.2022. The respondent has been charging GST at the rate of 8% when the GST council in its 34th meeting held on 19.03.2019 took the decision vide a press release for a lower effective GST rate of 1% in case of affordable housing scheme instead of the earlier rate of 8% effective from 01.04.2019.

XV. Even as per clause 4.1(ii) of the agreement, it was agreed that if there was change in the taxes, the subsequent amount payable by the allottee(s) to the developer shall be increased or decreased based on such change. Despite being aware of the latest notification as well as the terms of the Agreement, the respondent kept on demanding the GST at

the old rates instead of the revised ones. it is clear that the complainant is entitled to the refund of the excess amount beyond 1% paid by her to the respondent towards the GST from 01.04.2019 onwards along with interest.

- XVI. Due to the illegalities of the respondent, the complainant has been deprived of what she is entitled to as per law. The respondent is bound to comply with provisions of the Act and the Rules and Regulations made thereunder.
- XVII. That the cause of action for the present complaint is recurring one on account of the failure of respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to give delayed possession charges, compensation and refund of illegal charges and finally about a week ago when the respondent refused to compensate the complainant with the delayed possession interest amount, compensation and refund of illegal charges. The complainant reserves her right to approach the appropriate Forum to seek compensation.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- Direct the respondent to pay interest for every month of delay at prevailing rate of interest from the due date of possession i.e., 17.05.2021 till actual handing over of possession.
 - Direct the respondent to provide interest for the excess amount taken by it from the complainant at the stage of allotment which was in violation of the Affordable Group Housing Policy, 2013.
 - Direct the respondent to refund the excess amount taken from the complainant under the garb of the previous GST rates along with interest.

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- iv. Direct the respondent to refund the excess amount paid by the complainant towards the Operational Cost of Utility Services.
- v. Direct the respondent to refund the excess amount paid by the complainant towards the Meter and Water connection charges.
- vi. Direct the respondent to refund the excess amount paid by the complainant towards the IFSD Charges.
- vii. Direct the respondent to refund the excess amount paid by the complainant towards the External Electrification Charges.
- viii. Direct the respondent to refund the excess amount paid by the complainant towards the Advance Consumption Charges.
- ix. Direct the respondent to refund excess payment demanded from the complainant and paid by her towards delay interest charges at the higher rate than prescribed in the provisions of RERA Act, 2016.
- x. Pass an order imposing penalty on the builder on account of various defaults under RERA Act, 2016 and the same be ordered to be paid to the complainant.

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.

- I. That the project of the respondent was launched under the Affordable Group Housing Policy 2013 and as per the said policy, the unit only allots to the allottee after conducting a draw in the presence of officials of DGTCP/DC Gurugram, hence the fact that the respondent offered the unit in the project of the respondent on its face are false and frivolous hence denied.



- II. The BBA which has been executed between the complainant and the respondent is as per the RERA rule and regulations hence it is false and frivolous that it is one sided. It is further submitted that the complainant is trying to mislead the Hon'ble authority by only mentioning limited clause of the entire BBA, hence the complainant cannot be permitted to rely upon selected clauses/covenants of the flat buyer's agreement. Further, the complainant may be put to provide strict proof in support of its allegations.
- III. The delivery of the possession of unit and execution of the conveyance deed is subject to force majeure circumstances, intervention of statutory Authorities, receipt of occupation certificate and allottee having complied with all obligations of allotment in a timely manner and further subject to completion of formalities/documentation as prescribed by the respondent and not being in default of any clause of the agreement. In case performance of any of the obligation or undertaking mentioned in BBA is prevented due to force majeure conditions in that case respondent neither responsible nor liable for not performing any of the obligations or undertakings mentioned in BBA.
- IV. That it is specifically mentioned in clause 19.3 that if possession of the flat is delayed due to force majeure in that case the time-period for offering possession shall stand extended automatically to the extent of the delay caused under the force majeure circumstances. It is pertinent to mention here that, the complainant is well aware about these facts that the project of the respondent was affected by force majeure circumstances of the covid-19 and other various prohibitions order issued/passed by the courts and different statutory authorities on construction, which result into derailment of the progress of the project,

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however the complainant deliberately choose not to bring these facts before the Hon'ble Authority with malafide intention to mislead the Hon'ble Authority and to extort the money from the respondent under aegis of the litigation. The delay, if any, caused was neither intentional nor deliberate, therefore in the light of the above-mentioned facts & circumstance the respondent is not liable for any payment for the delay.

- V. The complainant cannot be permitted to rely upon selected clauses/covenants of flat buyer agreement. The delay, if any, caused was neither intentional nor deliberate, therefore in the light of the above-mentioned facts & circumstance the respondent is not liable for any payment for the delay.
- VI. The proposed period of delivery of physical possession was subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having complied with all obligations of allotment in a timely manner and further subject to completion of formalities/documentation as prescribed by the Respondent and not being in default of any clause of the agreement.
- VII. That as per the complainant, the respondent was supposed to offer the possession, of the apartment in question up to 18.05.2021. However, the said 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 expiry of said period the deadly and contagious Covid-19 pandemic had struck. The same had resulted in unavoidable delay in delivery of physical possession of the apartment. The Novel Coronavirus had been declared as a pandemic by World Health Organisation. In fact,



on 14th of March 2020 the Central Government had declared the pandemic as a "notified disaster" under the Disaster Management Act, 2005.

- VIII. In the first wave of Covid as many as 32 states and Union Territories had enforced lockdowns with some ordering a curfew as well. The lockdown meant that all rail and air services stood completely suspended. The outbreak had been declared an epidemic in almost all States of India including Haryana. The Department of Expenditure, Procurement Policy Division, Ministry of Finance had issued an Office Memorandum on 19th of February, 2020, in relation to the Government's 'Manual for Procurement of Goods, 2017', which serves as a guideline for procurement by the Government. The office memorandum effectively stated that the covid-19 outbreak could be covered by a force majeure clause on the basis that it was a 'natural calamity'.
- IX. 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 15th of March, 2020, the period of validity for registration of such projects had been ordered to be extended by Haryana Real Estate Regulatory Authority vide order dated 27th of March, 2020. The Haryana Real Estate Regulatory Authority, Gurugram had issued order/direction dated 26th of May, 2020 whereby the Hon'ble Authority had been pleased to extend the registration and completion date of Real Estate Projects by 6 months, due to outbreak of Covid-19. However, 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'.

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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".

- X. Thereafter, during the second wave of Covid also the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula had issued order/direction dated 2nd of August 2021 wherein it was specifically observed that taking into reckoning the second wave of Covid 19, it was evident that the same had adversely hit all sections of the society and the same had been a case of natural calamity. It had been mentioned in direction/order dated 2nd of August 2021 that in accordance with provisions of Section 37 of the Real Estate Regulation and Development Act, 2016, the Honourable Haryana Real Estate Regulatory Authority, Panchkula had decided to grant extension of 3 months from 1st of April 2021 to 30th of June 2021 considering the same as a force majeure event.
- XI. That it was further specifically observed in the direction/order dated 2nd of August 2021 that the aforesaid period of 3 months would be treated 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. It needs to be highlighted that Haryana Government had imposed 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.
- XII. That therefore, it is manifest that both the first wave and second wave of Covid had been recognised by this Hon'ble Authority and the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula to be Force Majeure events being calamities caused by nature which had adversely

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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. That the respondent had also suffered devastatingly because of outbreak and spread of Covid-19. 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 was done and further 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 of the complainant.

- XIII. 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. That in addition to the aforesaid period of 9 months, the following period also deserves to be excluded for the purpose of computation of period available to the Respondent to deliver physical

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possession of the apartment to the Complainant as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017.

- XIV. Environment Pollution (Prevention and Control Authority) had directed the closure of all brick kilns stones crusher hot mix plants etc, with effect from 07.11.2017. Haryana State Pollution Control Board, Panchkula had passed the order dated 29th of October 2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27th of October 2018. By virtue of order dated 29th of October 2018 all construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material was used) were directed to remain closed in Delhi and other NCR districts from 1st to 10th November 2018. On account of passing of aforesaid order, no construction activity could have been legally carried on by the respondent. Directions vide Notification DPCC/PA to MS/2018/7919-7954 dated 24.12.2018, Delhi Pollution Control Committee banned the Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida till December 26, 2018. Commissioner, Municipal Corporation, Gurugram had passed order dated 11th of October 2019 whereby construction activity had been prohibited from 11th of October 2019 to 31st of December 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period. On account of passing of aforesaid order, no construction activity could have been legally carried on by the respondent. Environment Pollution (Prevention & Control) Authority for the National Capital Region had passed order dated 01 November 2019 whereby construction activity had been prohibited from 01.11.2019 to 05.11.2019. It was specifically mentioned in the aforesaid order that construction activity

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would be completely stopped during this period. Hon'ble Supreme Court vide its order dated 04.11.2019 in the W.P.(Civil) no.13029/1985 had directed that no demolition and construction activities take place in Delhi and NCR region. On account of passing of aforesaid order, no construction activity could have been legally carried on by the respondent. Commission for air quality management (NCR and Adjoining Areas) vide its order dated 16.11.2021 had directed to stop construction and demolition activities in NCR till 21st November, 2021. The period of 293 days 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.

XV. The charges charged by the respondent are of the basic amenities such as electricity charges and water charges which the complainant is liable to pay and as per the clause 4 (v) of Affordable Group Housing Policy 2013 the respondent is only liable to maintain the common areas of the project free of cost for a period of five years from the date of grant of occupation certificate and not liable to provide the basic amenities free of cost for a period of five years from the date of grant of occupation certificate. The complainant failed to make the payment on time due to which liable pay the delay payment charges.

XVI. Moreover, after the receipt of the occupation certificate, the complainant has rightly taken the handover of the unit and executed possession certificate dated 22.08.2022 as well. That by signing the possession certificate, 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

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*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.***

- XVII. 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 aforesaid office order further holds that *"any charges decided through bilateral agreements i.e. facility for security services etc., may be charged as per bilateral agreements."* Therefore, the complainant is liable to pay the maintenance charges as demanded and agreed by the complainant while executing the agreement. Recently the Ld. Authority in the matter of Emaar India Limited v. Manish Dawar in complaint no. 4526 of 2022 decided on 13.03.2024, had held that Promoter/Builder is entitled to charge the maintenance charges as per the terms and conditions of the agreement to sale/ buyer's agreement.
- XVIII. 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.

XIX. In light of the *bona fide* conduct of the respondent and no delay for development of project as the respondent was severely affected by the *force majeure* circumstances and no cause of action to file the present complaint this complaint is bound be dismissed in favor of the respondent.

12. 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 submissions made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the Authority

13. 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

14. 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

15. 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.

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

F. Findings on the objections raised by the respondent:

F.1 Objection regarding force majeure conditions:

21. The respondent-promoter pleaded that though the due date for completion of the project and offer of possession of the allotted unit was fixed as 18.05.2021 as per buyer's agreement dated 24.04.2018 but due to outbreak of Covid-19 there was complete lockdown during the period March 2020 to different periods. Even the Government of Haryana termed that as Mahamari alert/Surakshit Haryana resulting in slowdown of all the activities within the state even though the authority granted six months general extension with effect from 25.03.2020 to 24.09.2020 considering it as force majeure event. That decision was taken pursuant to the advisory issued by the State Government as well as The Government of India due to Covid-19, it took some time to mobilize the labour as well as the construction material. Despite all that the construction of the project was completed and its occupation certificate was received on 06.05.2022. So, the respondent-builder be allowed extension in offer of possession of the project. So, keeping in view the above-mentioned facts, the due date for



completion of the project and offer of possession of the allotted unit comes to be 18.11.2021 including 6 months grace period on account of covid.

G. Findings on the relief sought by the complainant

G.1 Direct the respondent to pay interest for every month of delay at prevailing rate of interest from the due date of possession i.e., 17.05.2021 till actual handing over of possession.

22. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

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

23. As per clause 5.1 of the flat buyer's agreement provides for handing over of possession and is reproduced below:

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 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.*

24. Due date of handing over possession and admissibility of grace period:

The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans or grant of environment clearance, (18.05.2017), whichever is later and has sought further extension of grace period (after the expiry of the said time

period of 4 year) for force majeure. Therefore, the due date of possession comes to 18.05.2021. Also, a grace period of 6 months 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 and hence, the due date of handing over possession in view of afore-mentioned notification comes to 18.11.2021. This grace period on account of covid-19 shall be available to the complainants-allottee as well as respondent-promoter.

25. **Admissibility of delay possession charges at prescribed rate of interest:** However, proviso to section 18 provides 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 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.

26. 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.

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27. 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., 20.02.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
28. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.
29. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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. The due date of handing over possession comes out as 18.11.2021. Occupation certificate was granted by the concerned authority on 06.05.2022 and thereafter, the possession of the subject unit was offered to the complainant on 14.05.2022. Copies of the same have 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 subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per agreement to sell dated 12.04.2018 to hand over the possession within the stipulated period.
31. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation

certificate. In the present complaint, the occupation certificate was granted by the competent authority on 06.05.2022. The respondent offered the possession of the unit in question to the complainant only on 14.05.2022, 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. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till actual handing over of possession or offer of possession plus two months whichever is earlier.

32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10 % p.a. w.e.f. 18.11.2021 till 13.07.2022 i.e., expiry of 2 months from the date of offer of possession (14.05.2022) or actual taking over of possession (26.07.2022) whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G.II Direct the respondent to refund the excess amount taken from the complainant under the garb of the previous GST rates along with interest.

33. The respondent stated that while booking the unit as well as entering into flat buyer's agreement, the allottee agreed to pay any tax/charges including

any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit was required to be delivered by 18.11.2021 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees where the same was leviable, at the applicable rate, the respondent-builder has to pass on the benefit of input tax credit to allottees as per applicable GST rules pertaining to the share of the complainant allottee subject to furnishing of such proof of payment and relevant details. However, if any amount has been charged over and above the applicable rate mentioned in input tax credit, the complainant-allottee can approach the competent forum for redressal of its grievance, if any, remains.

- G.III Direct the respondent to provide interest for the excess amount taken by it from the complainant at the stage of allotment which was in violation of the Affordable Group Housing Policy, 2013.**
 - G.IV Direct the respondent to refund the excess amount paid by the complainant towards the Operational Cost of Utility Services.**
 - G.V Direct the respondent to refund the excess amount paid by the complainant towards the Meter and Water connection charges.**
 - G.VI Direct the respondent to refund the excess amount paid by the complainant towards the IFSD Charges.**
 - G.VII Direct the respondent to refund the excess amount paid by the complainant towards the External Electrification Charges.**
 - G.VIII Direct the respondent to refund the excess amount paid by the complainant towards the Advance Consumption Charges.**
 - G.IX Direct the respondent to refund excess payment demanded from the complainant and paid by her towards delay interest charges at the higher rate than prescribed in the provisions of RERA Act, 2016.**
34. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

35. In the above mentioned relief sought by the complainant the financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainant could have asked for the claim before the conveyance deed got executed between the parties.
36. The counsel for the respondent vide proceedings dated 20.02.2025 brought to the attention of the Authority that as per possession certificate dated 26.07.2022 placed on page no. 79 of the complaint, the complainant has relinquished all her claims on handing over of possession of the unit. The relevant portion of the possession certificate dated 26.07.2022 is reproduced hereunder for ready reference:

I/we have received the vacant physical possession with locks and keys (03 sets of keys), of the said allotted unit accordance with the provisions of the 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's 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.

37. Also, on execution of the conveyance deed, the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

G.X Pass an order imposing penalty on the builder on account of various defaults under RERA Act, 2016 and the same be ordered to be paid to the complainant.

38. In the absence of any document pertaining to the said violation of the respondent, no direction can be being given to this effect.

H. Directions of the authority

39. 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 interest to the complainant against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 18.11.2021 till 13.07.2022 i.e., expiry of 2 months from the date of offer of possession (14.05.2022) or actual taking over of possession (26.07.2022) whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, offer of possession,



offer of possession, total sale consideration, amount paid by the complainant and execution of conveyance deed is mentioned in each of the complaints.

41. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
42. Files be consigned to registry.

Dated: 20.02.2025


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

HARERA
GURUGRAM