

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

Date of order: 03.04.2025

NAME OF THE BUILDER		M/s SIGNATURE GLOBAL (INDIA) PRIVATE LIMITED
PROJECT NAME		The Millennia at sector 37D, Gurgaon, Haryana
S. No.	Case No.	Case title
1.	CR/962/2024	Anju Kumari Vs. M/s Signature Global (India) Private Limited
2.	CR/1001/2024	Mayank Phutela Vs. M/s Signature Global (India) Private Limited
3.	CR/1006/2024	Prateek Jain. Vs. M/s Signature Global (India) Private Limited

CORAM:

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Akash Godhvani (Advocate)

Complainants

Sh. Venkat Rao (Advocate)

Respondent

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and



functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, ***The Millennia situated at Sector-37 D, Gurugram*** being developed by the same respondent/promoter i.e., ***M/s Signature Global (India) Private Limited***. The terms and conditions of the buyer's agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking delay possession charges.
- The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"The Millennia" at sector 37D, Gurugram, Haryana
Project area	9.7015625 acres
DTCP License No. and validity	04 of 2017 dated 02.02.2017 Valid up to 01.02.2022
HRERA Registered	Registered 03 of 2017 dated 20.06.2017
Date of approval of building plans	08.06.2017 (taken from CR/5581/2023 of same project)
Date of environment clearance	21.08.2017 (taken from CR/5581/2023 of same project)
Occupation certificate	25.01.2023

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Consideration / Sale Total Amount paid by the complainant	Offer of possession
1.	CR/962/2024 Anju Kumari Vs.	10-2405, Tower-10, 24 th floor Carpet area - 552.360 sq. ft. Balcony area - 79.653 sq. ft.	22.11.2017 (page 30 of complaint)	TSC-Rs.22,49,266/- (as per BBA page 40 of complaint) AP- Rs.24,51,697/-	O.O.P - 23.03.2023 (page 193 of reply) P.C. - 10.09.2023 (page 217 of reply)

	Signature Global (India) Pvt. Ltd.	(page 33 of complaint)		(as per SOA dated 03.04.2025 amount paid till offer of possession submitted by respondent along with written submissions on 09.04.2025)	
	DOF: 01.04.2024				
	Reply: 22.07.2024				
2.	CR/1001/2024 Mayank Phutela Vs. Signature Global (India) Pvt. Ltd. DOF: 01.04.2024 Reply: 22.07.2024	10-2203, Tower- 10, 22 nd floor Carpet area - 585.944 sq. ft. Balcony area - 79.545 sq. ft. (page 33 of complaint)	08.12.2017 (page 31 of complaint)	TSC- Rs.23,83,548/- (as per BBA page 40 of complaint) AP- Rs.25,98,157/- (as per SOA dated 03.04.2025 amount paid till offer of possession submitted by respondent along with written submissions on 09.04.2025)	O.O.P - 23.03.2023 (page 194 of reply) P.C. - 18.10.2023 (page 68 of complaint)
3.	CR/1006/2024 Prateek Jain Vs. Signature Global (India) Pvt. Ltd. DOF: 01.04.2024 Reply: 22.07.2024	3-302, Tower-3, 3 rd floor Carpet area - 596.126 sq. ft. Balcony area - 79.653 sq. ft. (page 33 of complaint)	15.11.2017 (page 31 of complaint)	TSC- Rs.24,24,330/- (as per BBA page 40 of complaint) AP- Rs.26,42,525/- (as per SOA dated 03.04.2025 amount paid till offer of possession submitted by respondent along with written submissions on 09.04.2025)	O.O.P - 16.02.2023 (page 194 of reply) P.C. - 22.08.2023 (page 69 of complaint)

The complainants in the above complaints have sought the following reliefs:

1. Direct the respondent to pay delay possession charges.
2. Direct the respondent to refund the skyful maintenance charges.
3. Direct the respondent not to charge the amount of skyful maintenance charges for a period of 5 years.
4. Direct the respondent to refund the charges which are not the part of BBA.

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

Abbreviation	Full form
DOF	Date of filing of complaint
TSC	Total sale consideration

AP	Amount paid by the allottee/s
O.O.P	Offer of Possession
P.C.	Possession Certificate

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking delayed possession charges and relief w.r.t maintenance charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/962/2024 Anju Kumari Vs. M/s Signature Global (India) Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details.

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/962/2024 Anju Kumari Vs. M/s Signature Global (India) Pvt. Ltd.

S.no.	Particulars	Details
1.	Name of the project	The Millennia,37-D, Gurugram, Haryana
2.	DTCP License No	04 of 2017 dated 02.02.2017 Valid up-to 01.02.2022
3.	Unit no.	10-2405, Tower-10, 24 th floor (page 33 of complaint)

	Unit admeasuring	Carpet area -552.360 sq. ft. Balcony area - 79.653 sq. ft. (page 33 of complaint)
4.	Allotment letter	01.11.2017 (page 28 of complaint)
5.	Date of execution of agreement for sale	22.11.2017 (page 30 of complaint)
6.	Date of building plan	08.06.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project)
7.	Date of environment clearance	21.08.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project)
8.	Possession clause	5. Possession <i>5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i>
9.	Due date of delivery of possession	21.02.2022 (Calculated from date of environment clearances i.e., 21.08.2017 being later, which comes out to be 21.08.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic)
10.	Total sale consideration	Rs.22,49,266/- (as per BBA page 40 of complaint)
11.	Amount paid by complainant	Rs.24,51,697/- (as per SOA dated 03.04.2025 till offer of possession submitted by respondent along with written submissions on 09.04.2025)

12.	Occupation certificate	25.01.2023 (page 218 of reply)
13.	Offer of possession	23.03.2023 (page 193 of reply)
14.	Conveyance Deed	13.06.2023 (page 196 of reply)
15.	Possession Certificate/Handover	10.09.2023 (page 217 of reply)

B. Facts of the complaint.

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

- i. That in 2017, the respondent issued an advertisement announcing a Residential Group Housing Project called 'The Millenia' Sector 37D, Gurugram, Haryana in terms of the provisions of Affordable Group Housing Policy 2013 and thereby invited applications from prospective buyers for the purchase of allotments in the said project. Respondent confirmed that the project had got building plan approval from the Authority.
- ii. That the complainants were caught in the web of false promises of the agents of the respondent. The complainants paid an initial amount of Rs.1,12,463/- to respondent. The payment was acknowledged by the respondent and complainant was allotted subject unit in the said project.
- iii. That the complainant received an allotment letter for the unit bearing No. T10-2405. Further, the builder buyer agreement was executed on 20.11.2017 between the parties. The complainant against the demand notices raised by the respondent have paid a total sum of Rs.22,49,267/- in favor of the respondent. In terms of Scheduled "D" of builder buyer agreement the complainant has made the payments as per the payment plan.
- iv. That the complainant had sent multiple e-mails communications and made calls during the time intimating the respondent for the possession of the subject unit. With great regret the complainant did not receive any revert from the

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respondent and kept excusing the complainant that the same shall be dealt and settled at the time possession on individual basis.

- v. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent individually chasing the respondent for construction on very regular basis. The respondent was never able to give any satisfactory response to the complainants for delay in construction of the unit and was never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent as to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of delay on account of the Novel Corona Virus and on the account of paucity of funds.
- vi. That after losing all hope from the respondent company and having shattered and scattered dreams of owning a home and also losing considerable amount of money (as per the Buyer's Agreement dated 20.11.2017).
- vii. As per clause 6.1(i) of the builder buyer's agreements executed between the parties the possession of the subject unit was supposed to be delivered by 20.08.2021. The actual habitable possession was given to complainant on 10.09.2023. That under Clause 4.6 of the builder buyer's agreement, upon delay of payment by the allottees, the respondent can charge 15% simple interest per annum. On the other hand, as per clause 6.2(ii), the respondent is equally liable to pay to complainant, interest at the rate of 15% per annum for every month of delay till the handing over of the possession of the subject unit within 45 days of becoming due. Whereas respondent has deliberately indulged in mis-statement, prevarications and innuendos and has not paid a single penny on account of delayed compensation. Accordingly, the complainants are entitled to get interest on the paid amount at the rate as prescribed per annum from due date of

possession as per builder buyer agreement till the date of handing over of actual possession.

- viii. That the respondent has issued final demand notice wherein the respondent has made various unnecessary demands which are not as per the builder buyer agreement and hence are baseless, unfounded, unlawful, untenable, unsustainable, grossly misconceived, illegal and unwarranted including the advance maintenance charges.

C. Relief sought by the complainant

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

- I. Direct the respondent to pay delay possession charges.
- II. Direct the respondent to refund the skyful maintenance charges.
- III. Direct the respondent not to charge the amount of skyful maintenance charges for a period of 5 years.
- IV. Direct the respondent to refund the charges which are not the part of BBA.

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 complainants had made detailed and elaborated enquiries with regard to the location of the project, sanctions accorded by the concerned statutory authorities, specifications of the project as well as capacity, competence and capability of the respondent to successfully undertake the conceptualization, promotion, construction, development and implementation of the project. Only after being fully satisfied in all respects, the complainants and other allottees proceed to submit their applications for obtaining allotment of apartments in the Affordable Group Housing Project.

- ii. That 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 at clause 19.2 executed on 17.11.2017.
- iii. As per clause 19.3 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.
- iv. That the physical possession of the unit was delivered to the complainant on 15.06.2023. 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.
- v. That as per the complainants, the respondent was supposed to offer the possession, of the apartment in question up to 20.08.2021. 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.
- vi. That 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. In fact, Covid-19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent.
- vii. That almost the entire world had struggled in its grapple with the Coronavirus menace. The Novel Coronavirus had been declared as a pandemic by World

Health Organization. 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.

- viii. That in order to prevent the outbreak and spread of the Novel Coronavirus The Haryana Epidemic Disease, COVID-19 Regulations, 2020, had been brought into operation. 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. That 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 (Corona Virus).
- x. 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' 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".
- xi. That 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.

- xii. 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.
- xiii. That therefore, it is manifest that both the first wave and second wave of Covid had been recognized 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 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.
- xiv. 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 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 complainants.
- xv. Moreover, 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 possession of the apartment to the Complainants as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017.

- xvi. That 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. 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. 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.
- xvii. That under clause 4.6 of the builder buyer's agreement, upon delay of payment by the allottees, the respondent can charge 15 % simple interest per annum. As per clause 6.2 (ii), the respondent is equally liable to pay to complainant, 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 45 days of becoming due.
- xviii. That as per the Haryana Real Estate (Regulation and Development) Rules, 2017 Part V rule 15 the interest for which the complainants are eligible is the State Bank of India highest marginal cost of lending rate + 2%.
- xix. That as per para 21 i.e. 4 (v) Maintenance of colony after completion of project: A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free of cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand



transferred to the association of apartment owners constituted under the Haryana Apartment Ownership Act 1983, for maintenance. However, the charges charged by the respondent are of the basic amenities such as electricity charges and water charges which the complainants are liable to pay and as per the above mentioned clause the respondent is only liable 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.

- xx. That the respondent is providing the maintenance service as per the Section 3 (3) (a) (iii) of the Act no.8 of 1975 and rule of 1976 and providing the facilities as per Affordable housing colonies.
- xxi. Further, the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts.
- xxii. 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 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.

- xxiii. That in light of the bona fide conduct of the respondent, the fact that no delay has been caused to the complainant, the peaceful possession of the unit having been offered to the complainant, non-existence of cause of action this complaint is bound to be dismissed.
- xxiv. That the complainant has also sought the refund of maintenance charges and not to charge maintenance charges for a period of 5 years. The Affordable Group Housing Policy, 2013 was notified under Section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975 (the "Act, 1975") thus, the meaning and scope of maintenance given under the Act, 1975 shall be applicable for the Policy.
- xxv. That as per affordable group housing policy Haryana and as per the clause 3 (3) (iii) of the Haryana Development and Regulation of Urban Areas Act, 1975 the responsibility of the respondent for maintenance and upkeep are limited to roads, open space, public park and public health service for a period of five years from the date of issue of the completion certificate and not to basic amenities. The respondent has not charged anything which is adverse to the term and conditions mentioned in BBA.
- xxvi. That the respondent is duty bound to abide by the order of Authority however it is submitted that the skyfull maintenance charges charged by the respondent is against the basic amenities and the complainant is liable to pay the same as the same is charged as per BBA.
12. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction.

15. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all 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.

16. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

“(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.



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

F. Findings on the objections raised by the respondent

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

18. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labor, orders passed by National Green Tribunal and other statutory Authorities.
19. The Authority, after careful consideration, finds that in the present case, the project falls under the Affordable Housing Policy, 2013, which contains specific stipulations regarding the completion of the project. As per Clause 1(iv) of the said Policy:

"All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the 'date of commencement of project' for the purpose of this policy. The licenses shall not be renewed beyond the said 4-year period from the date of commencement of project."

20. The respondent/promoter, having applied for the license under the Affordable Housing Policy, was fully aware of these terms and is bound by them. The Authority notes that the construction ban, cited by the respondent was of a short duration and is a recurring annual event, usually implemented by the National Green Tribunal (NGT) in November. These are known occurring events, and the respondent being a promoter, should have accounted for it during project planning. Hence, all the pleas advanced in this regard are devoid of merits. Further, the respondent has not demonstrated whether it extended any equivalent relief to the

allottees during the period of the construction ban. If the respondent did not relax the payment schedules for the allottees, its plea for relief due to delays caused by the construction ban appears unjustified.

21. In accordance with the said policy the respondent was obligated to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of the building plan is 08.06.2017 and environment clearance is 21.08.2017 as taken from the project details. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 21.08.2021. Further ***as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 21.08.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date for handing over possession ***in view of notification no. 9/3-2020 dated 26.05.2020***, on account of force majeure conditions due to the outbreak of Covid-19 pandemic. So, in such a case the due date for handing over of possession comes out to 21.02.2022. Granting any other additional relaxation would undermine the objectives of the said policy.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to pay delay possession charges.

22. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by her as provided under the proviso to section 18(1) of the Act which reads as under: -

"Section 18: - Return of amount and compensation

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

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

23. Clause 5.1 of the apartment buyer's agreement (in short, the agreement) dated 22.11.2017, provides for handing over possession and the same is reproduced below:

5.1 "Within 60 (sixty) day from the date of issuance of occupancy certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by the Developer in terms of the Agreement and not being in default under any part hereof....."

(Emphasis Supplied)

24. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and 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 favor of the promoter and against the allottees that even a single default by him 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 time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such one-

sided clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

25. Due date of handing over possession: As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. As detailed hereinabove, the authority in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic has allowed the grace period of 6 months to the promoter. Therefore, the due date of handing over possession comes out to be 21.02.2022.

26. 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(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. 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%.

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., **03.04.2025** 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(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.

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 to them in case of delayed possession charges
30. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. As such the due date of handing over of possession comes out to be 21.02.2022 including grace period of 6 months on account of COVID-19. However, no interest shall be charged from the complainants in case of delayed payment during this 6 months COVID-19 period from 25.03.2020 to 25.09.2020.
31. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 25.01.2023. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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 i.e., 21.02.2022 till the expiry of 2 months from the date of offer of possession plus two months.

32. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 21.02.2022 till offer of possession plus two months, at the prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
33. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

S.no.	Complaint no.	Due date of possession	Offer of possession	Period for which the complainant is entitled to DPC
1.	CR/962/2024	21.02.2022	23.03.2023	W.e.f. 21.02.2022 till 23.05.2023
2.	CR/1001/2024	21.02.2022	23.03.2023	W.e.f. 21.02.2022 till 23.05.2023
3.	CR/1006/2024	21.02.2022	16.02.2023	W.e.f. 21.02.2022 till 16.04.2023

G.II. Direct the respondent to refund the skyful maintenance charges.

G.III. Direct the respondent not to charge the amount of skyful maintenance charges for a period of 5 years.

34. The respondent in the present matter has raised invoice of skyful maintenance charges amounting to through maintenance agency i.e., "Skyfull Maintenance Services Pvt. Ltd." from the complainants at the time of offer of possession. The

authority observes that clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project which is reproduced as under:

A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The coloniser shall not be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983.

35. It is pertinent to mention here that the authority on 11.04.2022 requested DTCP, Haryana to give clarification with respect to the issue of maintenance. In response of the said letter sent by the Authority, an email dated 29.11.2022 has been received from DTCP intimating that the issue of free maintenance of the colony in terms of section 4(v) of the Affordable Group Housing Policy, stands referred to the Government and clarification will be issued by DTCP as and when the approvals is received from the Government.
36. As per the clarification regarding maintenance charges to be levied on affordable group housing projects being given by DTCP, Haryana vide clarification no. PF-27A/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 as per consumptions.
37. Accordingly, the respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per consumptions basis as has been clarified by the Directorate of town and Country Planning, Haryana vide clarification dated 31.01.2024. In case any amount charged extra from the complainants same may be adjusted towards future maintenance.

G.IV Direct the respondent to refund the charges which are not the part of BBA.

38. Upon perusal of the documents, the Authority finds that the complainants have not submitted any specific documentary evidence or detailed pleadings to support their claim regarding payments made beyond the buyer's agreement executed between the parties. Nevertheless, if any amount has been charged by the respondent that is not part of the buyer's agreement, such amount shall be refunded to the complainants.

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 delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 21.02.2022 till offer of possession plus two months as per proviso to section 18(1) of the Act read with rule 15 of the rules. The due date of possession and the date of entitlement are detailed in table given in para 33 of this order. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the 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. Further no interest shall be charged

from complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

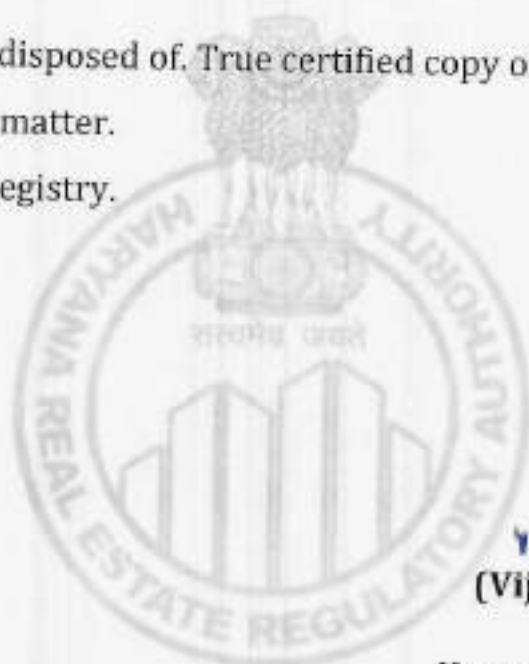
iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and the provisions of Affordable Group Housing Policy of 2013.

40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

41. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

42. Files be consigned to registry.

Dated: 03.04.2025




(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM