

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

Complaint no.: 7883 of 2022
Date of filing: 06.01.2023
Date of order: 24.04.2025

1. Sandeep Fogaat
 2. Neeru Fogaat
- R/o:** T18-601 Emaar Gurgaon
Greens, Sector 102, Gurgaon 122505

Complainants

Versus

Forever Buildtech Private Limited
Corporate Office: Ground Floor,
Tower-A, South City-1, Gurugram,
Haryana-122001.

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

In person
Ms. Varsha Singh (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details.

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

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 upto 25.09.2021
5.	HRERA registration	Registered 05 of 2017 20.06.2017 upto 17.05.2021
6.	Unit no.	K-1102, Tower-K (page 44 of complaint)
7.	Unit area admeasuring	514.270 sq. ft. (carpet area) 79.923 sq. ft. (balcony area) (page 44 of complaint)
8.	Builder-Buyer Agreement	07.08.2019 (page 41 of complaint)
9.	Possession clause	5. Possession <i>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.</i> (page 55 of complaint)
10.	Date of Building Plan	09.01.2017 (page 23 of reply)
11.	Environment clearance	18.05.2017 (taken from CR/1282/2023 disposed on 26.07.2024 of same project)
12.	Due date of possession	18.11.2021 (Calculated from date of Environment clearance being later including grace period of 6 months in lieu of Covid-19)
13.	Total sale consideration	Rs.20,97,041/- (page 51 of complaint)

14.	Amount paid by the complainant	Rs.22,64,810/- (as per SOA dated 01.06.2022 page 85 of complaint)
15.	Occupation certificate	06.05.2022 (as confirmed by the both the parties during proceedings dated 24.04.2025)
16.	Offer of possession	01.06.2022 (as confirmed by the both the parties during proceedings dated 24.04.2025)
17.	Possession Certificate	01.10.2022 (page 84 of complaint)
18.	Conveyance Deed	26.07.2022 (page 17 of complaint)

B. Facts of the complaint.

3. The complainants have made the following submissions in the complaint:-

- That the complainants were allotted a 2BHK flat under 'Haryana Affordable Housing Policy 2013' via draw conducted on 24.01.2019 with reference to Application number 90010 unit bearing unit no. K-1102 in the project 'The Roselia Sector 95A' developed by the respondent, the carpet area admeasuring 514.272 sq. ft. and balcony area 79.923 sq. ft. with two-wheeler parking space and the sale consideration of the subject unit was Rs.22,64,810/-. As per the BBA the possession date of the subject unit was 18.05.2021. But the respondent gave the possession of the subject unit to the complainants on 01.10.2022 which is 1 Year 4 months and 13 days delay in possession.
- That the respondent issued offer of possession letter dated 01.06.2022 for the subject unit and demanded Rs.91,294/- under multiple heads. The respondent also demanded Rs.24,686/- in advance for utility services for 1 year. The respondent can't demand such charges as per sections of builder buyer agreement and Haryana Affordable Housing Policy 2013. The promoter also collected GST at the rate of 8%.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
- Direct the respondent to pay delay period interest charges @15% per annum from the given date of possession i.e. 18.05.2021 the date of actual possession i.e. 01.10.2022.
 - Direct the respondent to refund the collected additional cost of Rs.91,924/- with applicable interest.
 - Direct the respondent to refund the collected utility services charges Rs.24,686/- with interest and provide free maintenance for 5 years.
 - Direct the respondent to refund the excess amount collected on the name of good and services or pass the full benefit of input tax credit to the complainant.
 - Direct the respondent to register the association of allottees as per Act and provide membership to the complainants.
5. On the date of hearing the authority explained the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on following grounds:
- That the complainant was allotted a unit bearing no. K-1102 in Block/Tower K admeasuring carpet area of 514.270 sq. ft. on the 11th floor and balcony area 79.923 sq. ft. together with the two-wheeler open parking site and the pro rata share in the common areas through draw of lots held on 24.01.2019 under the Affordable Group Housing Policy 2013.
 - That subsequent to the allotment of the subject unit the complainant entered into agreement with the respondent for the delivery of possession of the subject unit on the terms and conditions as contained therein.
 - That the total cost of the subject unit including balcony area was Rs.20,97,041/- excluding the other charges such as stamp duty, registration charges, other expenses etc. and the payment was time link payment as



stipulated by the Policy. The Goods and Service Tax was payable extra as applicable.

- d. That the total cost of the subject unit was escalation free, save and except increase on account of development charges payable to the Governmental Authority and/ or any other charges which may be levied or imposed by the Governmental Authority from time to time, which the complainant had agreed to pay on demand by the respondent.
- e. That the delivery of the possession of the subject unit was agreed to be offered within 4 (four) years, from the approval of building plans or grant of environmental clearance, whichever is later. However, the delivery of possession was subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely completed with all its obligations.
- f. That environmental clearance was granted on 18.05.2017 and building plan was approved on 09.01.2017 and as such, prima facie, possession period should be counted from the date of environmental clearance being later date. However, said building plan was revised on 06.07.2018 with the consent of the complainant and accordingly, possession period finally should be counted from 06.07.2018 being later date. The consent of the complainant to revise the building plan was taken as prescribed by the direction of competent authority vide Memo No. Misc-2157/7/16/2006-2TCP dated: 28.01.2013. The said direction emerges to be issued in exercise of the powers conferred under Section 9A of Haryana Development and Regulation of Urban Areas Act, 1975.
- g. That 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.

- h. That the agreed possession period would have been applicable provided no disturbance/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory Authorities etc. Prior to the completion of the project, various force majeure circumstances (such as construction bans, Covid-19 pandemic, various lockdowns etc) affected the regular development of the real estate project. The deadly and contagious Covid-19 pandemic had struck which have resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent.
- i. That in fact, almost the entire world had struggled to cope with the Coronavirus menace. The Novel Coronavirus had been declared as a pandemic by World Health Organization. Following the declaration of the World Health Organization, the Ministry of Home Affairs, Government of India vide notification 40-3/2020-DM-I(A) dated 24.03.2020 under the Disaster Management Act, 2005, had imposed lockdown for whole of India for 21 days with effect from 25.03.2020 wherein all the commercial and private establishments was directed to be closed down including transport services besides others. Further, the lockdown was extended vide direction dated 17.05.2020 upto 31.05.2020.
- j. Further Ministry of Finance vide Office Memorandum No.F-18/4/2020-PPD dated 13.05.2020 recognized that given the restriction placed on the goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under



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

- k. That the Authority vide order no.9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 extended the date of completion for all Real Estate Projects registered under Real Estate Regulation and Development Act, where completion date, revised completion date or extended completion date was to expire on or after 25th of March, 2020 automatically by 6 months, due to outbreak of the COVID -19 (Corona Virus), which is calamity caused by nature and is adversely affecting regular development of real estate projects by invoking "force majeure" clause.
- l. That even before the expiry of said extended period, it is very much in public domain and had also been widely reported that second wave of Covid-19 had also hit the country badly 'like a tsunami' and Haryana was no exception thereof. Thereafter, during the second wave of Covid-19 the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula by way of resolution in the meeting held on 2nd of August 2021 ordered for extension of three months from 01.04.2021 to 30.06.2021 due to second wave of Covid-19 as a force majeure event. The Hon'ble Authority observed that the second wave of Covid-19 has adversely hit all sections of the society and it being a case of natural calamity, the Authority pursuant to Section-37 of the Real Estate Regulations & Development Act, 2016, decides to grant three months general extension from 01.04.2021 to 30.06.2021, considering it as a force majeure event. The

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

- m. That Haryana Government had imposed various lockdown for different periods even after January 2021 terming it as "Mahamari Alert/Surkshit Haryana (Epidemic Alert/Safe Haryana) resulting in virtual stoppage of all activity within the state of Haryana. 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.
- n. That the respondent had also suffered devastatingly because of blanket ban on raising of construction, advisories etc. The concerned statutory authorities had earlier imposed a blanket ban on raising of construction, advisories had been issued by the statutory authorities to the developers to ensure that no retrenchment of staff/labour are done and further to ensure that the

staff/labour were adequately fed and provided for. Subsequently, the said embargo had been lifted to a limited extent. However, in the interregnum, large scale migration of labour had occurred which had also been extensively reported in printed and electronic media. Availability of raw material remained a major cause of concern. In fact, the aforesaid force majeure events had completely affected the ability of the respondent to continue with the construction. Despite diligent efforts, the respondent had been unable to carry on construction/ development/implementation of its projects including the project in question during the aforesaid period which in any case should not be considered for determining the period for delivery of physical possession of the apartment to the complainant.

- o. 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, the following period also deserves to be excluded for the purpose of computation of period available to the respondent to deliver physical possession of the apartment to the Complainant as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017.
- p. That the development of project of the respondent was also adversely affected due to various orders of Hon'ble Supreme Court, National Green Tribunal, directions of Haryana State Pollution Control Board, Orders passed by Municipal Commissioner of Gurgaon, Environment Pollution (Prevention & Control) Authority for National Capital Region for varying period during the year 2017, 2018, 2019 and 2020.

- q. That the period of 142 days in addition to the period affected by Covid-19 (6+3= 9 months) 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.
- r. That in a recent publication in mint dated 07.10.2022 wherein it has been published that a one-month ban on the construction activities would delay the project by 3-4 months on account of mobilization of the labour, machinery, resumption of supplies of various materials etc. Accordingly, the Authority may consider grant of benefit of extension to the respondent on account of time consumed in re-mobilization of the various construction activities.
- s. That it is also in public domain that the third wave of Covid-19 had also badly hit all the activities not only in Haryana but also in India and rest of the world. Haryana Government had imposed lockdown for varying periods owing to Covid19 third wave resulting in virtual closure of construction activities in their entirety within the state of Haryana. The aforesaid incidence was unforeseen events and beyond the control of the Respondent which adversely affected the respondent's ability to perform its obligations under the agreement are within the meaning of force majeure as defined in the clause 19 of the agreement.
- t. That the respondent after receipt of occupancy certificate from the Town & Country Planning Department Haryana, issued offer of possession vide letter dated 01.06.2022 requesting the complainant to accept the possession and

execute the necessary documents for the execution of the conveyance deed of the subject unit. The conveyance Deed was executed on 17.08.2022 and subsequently the physical possession was delivered to the respondent on 01.10.2022.

- u. That in respect of the maintenance charges under Sec.4(iv) of the Affordable Housing Policy, 2013 is concerned, the issue being the policy matter has been referred to the Haryana Town & Development Department for policy direction and as per the directions of the Government, the Respondent shall comply. This position has also been held by this Hon'ble Authority vide judgment dated 09.12.2022 in para 63(xi) in the matter of Pareena Infrastructure Private Limited.
- v. Further, in respect of refund of GST, the allegations are completely baseless and false and without supporting documents. In this respect it is submitted that GST department of the Haryana Government has made necessary investigations on the complaint of some allottees and the Hon'ble National Anti-Profiteering Authority under the Central Goods & Services Tax Act, 2017 vide order dated 09.12.2020 has dismissed their complaint and held that there was no violation of GST and hence the issue has been finally settled and accordingly needs no order in this respect.
- w. Again, the respondent is no body to register the associations of the Allottees, the respondent has the obligation only to enable the formation of such association under the relevant laws and it is not the allegations of the complainant that the respondent is anyway hindering the formation of associations of the allottees and hence the allegations are baseless and devoid of merit.



x. In view of the facts and circumstances as mentioned above, the complainant is misconceived, devoid of merit and has been filed as an afterthought to put undue pressure on the Respondent and hence liable to be dismissed.

7. All other averments made in the complaint were denied in toto.

8. Copies of all the relevant documents have been filed and placed on 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 complainant.

E. Jurisdiction of the authority.

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

E.I. Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II. Subject matter jurisdiction.

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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.

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

F. Finding on objections raised by the respondent:**F.1 Objections regarding force majeure.**

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as construction ban, orders passed by various Authorities including orders passed by National Green Tribunal (hereinafter, referred as NGT), lockdown due to outbreak of Covid-19 pandemic.
14. The Authority, after careful consideration, finds that in the present case, the project falls under the Affordable Housing Policy, 2013, which contains specific stipulations regarding the completion of the project. As per Clause 1(iv) of the said Policy:

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

15. The respondent/promoter, having applied for the license under the Affordable Housing Policy, was fully aware of these terms and is bound by them. The Authority notes that the construction ban cited by the respondent, was of a short duration and is a recurring annual event, usually implemented by the National Green Tribunal (NGT) in November. These are known occurring events, and the respondent being a promoter, should have accounted for it during project planning. Hence, all the pleas advanced in this regard are devoid of merits.

16. In accordance with the said policy the respondent was obligated to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 09.01.2017 and date of environment clearance is 18.05.2017. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 18.05.2021. Further ***as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.05.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date 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 case the due date for handing over of possession comes out to 18.11.2021.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondent to pay delay period interest charges @15% per annum from the given date of possession i.e. 18.05.2021 the date of actual possession i.e. 01.10.2022.

17. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.

18. The Authority is of view that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said

unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

19. The authority has already taken a view in in **Cr no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others** has observed as under:

"47. ...the authority observes that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed."

20. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

21. In the present complaint, the complainants intend to continue with the project and are 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."

22. Clause 5.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

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

being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.

23. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favor of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. 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 allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by them. 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]

A

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

25. 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.
26. 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., **24.04.2025** is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
27. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"



28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
29. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties on 07.08.2019, the possession of the booked unit was to be delivered within 4 years from the date of environment clearance (18.05.2017) being later, which comes out to be 18.05.2021. The grace period of 6 months is allowed in the present complaint for the reasons mentioned above. Therefore, the due date of handing over possession comes out to be 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 complainants on 01.06.2022. 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 possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 07.08.2019 to hand over the possession within the stipulated period.
30. 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 01.06.2022, 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 he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (01.06.2022) which comes out to be 01.08.2022.

31. 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 complainants are entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 18.11.2021 till the expiry of 2 months from the date of offer of possession (01.06.2022) which comes out to be 01.08.2022 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 collected additional cost of Rs.91,924/- with applicable interest.

G.III Direct the respondent to refund the collected utility services charges Rs.24,686/- with interest and provide free maintenance for 5 years.

G.IV Direct the respondent to refund the excess amount collected on the name of good and services or pass the full benefit of input tax credit to the complainant.

G.V Direct the respondent to register the association of allottees as per Act and provide membership to the complainants.

32. 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.

33. It is important to note that the conveyance deed was executed between the parties on 26.07.2022. The conveyance deed is a legal document that transfers

the title of property from one party to another, signifying the completion of the property transaction especially regarding payments related to the purchase price, taxes, registration fees, and any other contractual financial commitments outlined in the agreement. However, despite the conclusion of the financial obligations, the statutory rights of the allottee persist if any provided under the relevant Act/Rules framed thereunder. Execution of conveyance deed is a sort of entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. The said clause reproduced below as:

4.

That vacant and physical possession of the said Apartment has scheduled to be handed over by the Vendor to the Vendee herein at the time of execution of the present deed pursuant to the possession letter, and the Vendee hereby confirms having taken over the possession of the same from the Vendor after satisfying himself/herself/themselves that the workmanship used in construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. provided, as shown in accordance with the drawings, designs and specifications as per the Agreement and terms and conditions of booking and the same are in good order and condition and that the Vendee has satisfied himself in respect of the location and final Carpet Area calculations and measurements of the said Apartment.

34. It is pertinent to mention here that complainant took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainant has neither raised any grievance at the time of taking over the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any refund of preferential location charges or any other charges. Also, it is a matter of record that no allegation has



been levelled by the complainant that conveyance deed has been got executed under coercion or by any unfair means.

35. The Authority is of view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act, 2016. In view of the above, the complainant cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016.

36. However, the respondent is directed to transfer common area to the association of allottees in terms of Section 17 of the Act, 2016.

H. Directions of the authority.

37. 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 complainants 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 complainants from due date of possession i.e., 18.11.2021 till 01.08.2022 i.e., expiry of 2 months from the date of offer of possession (01.06.2022). The arrears of interest accrued so far shall be paid to the complainants 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. The benefit of grace period on account of Covid-19, shall be applicable to both the parties in the manner detailed herein above.

III. The respondent is directed to transfer the common area to the association of allottees in terms of Section 17 of the Act, 2016 after five year period of maintenance by the respondent as provided under Affordable Housing Policy, 2013.

38. Complaint stands disposed of.

39. File be consigned to registry.

Dated: 24.04.2025



V.I. 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM