

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

Complaint no.: 4193 of 2023
Date of complaint: 19.09.2023
Order pronounced on: 27.02.2025

1. Remzee William
R/o JB-16C Hari Enclave, Hari Nagar,
LIG Flats, MayaPuri, Delhi-110064
2. Amit Kumar
R/o: E-791, Dabua Colony, NIT Faridabad,
Haryana -121001

Complainants

Versus

1. M/s Signature Global Homes Pvt. Ltd.
Registered Office: 1309, 13th Floor, Dr
Gopal Das Bhawan, 28 Barahkambha
Road, New Delhi-110001.
2. HDFC LIMITED
Registered Office: Raman House 169,
Backbay Reclamation, Mumbai-400020

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Dr. Sham Taneja (Advocate)
Shri Venkat Rao (Advocate)
Shri Dharmender Sehrawat

Complainants
Respondent no.1
Respondent no.2

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 under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details.

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

S. No.	Particulars	Details
1.	Name of the project	"Signature Global Park II", Sector 36, Gurugram
2.	Nature of the project	Independent floors (Affordable plotted colony)
3.	DTCP license	39 of 2019 dated 01.03.2019
4.	RERA registration	43 of 2019 dated 01.08.2019
5.	Allotment letter	25.10.2019 (page 27 of complaint)
6.	Unit no.	P7-TF (page 27 of complaint)
7.	Unit admeasuring	1210.740 sq. ft. (super area) (page 27 of complaint)
8.	Date of execution of Buyers agreement	14.02.2020 (date as on the stamp paper of buyer's agreement page 28 of complaint)
9.	Possession clause	4.1 <i>Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Independent Floor 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</i>

A

		<i>installments as per the Payment Plan, stamp duty, registration charges and administrative charges and incidental charges etc., the Developer shall offer possession of the Said Independent Floor to the Allottee(s) within a period within 24 months with a grace period of additional 3 months (24+3 months) from the date of allotment. Applicable taxes would be payable extra at each stage. Aforesaid payment schedule may be preponed if the construction is completed before scheduled milestone or the occupation certificate (OC) is received before the scheduled possession period.</i>
10.	Due date of possession	25.07.2022 (calculated from the date of allotment including grace period of 6 months in lieu of Covid-19)
11.	Home loan agreement for Rs.53,00,000/-	02.06.2020 (page 67 of complaint)
12.	Tripartite agreement	20.03.2020 (page 77 of complaint)
13.	Total sale consideration	Rs.57,50,968/- plus additional charges (page 84 of complaint)
14.	Amount paid by the complainant	Rs.66,93,108/- (as confirmed by the counsels of complainants and respondent no.1 during proceedings dated 26.09.2024)
15.	Occupation certificate	22.11.2022 (page 85 of reply filed by respondent no.1)
16.	Offer of possession	28.02.2023 (page 98 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That representative of the respondent approached the complainants and represented that a residential colony as per HARYANA Affordable Plotted Housing Policy, 2016 (Deen Dayal Jan Awaas Yojna) is being developed in Village Dhunela, Sector-36, Sohna by the respondent no. 1 under the name of "SIGNATURE GLOBAL PARK II". Thereafter, the respondent no. 1 convinced the complainants with their marketing tactics to book an independent floor

in the said residential project. Respondent No 1 with their aggressive sale strategies and advertisement of the project compelled the complainants to book an independent floor No. P7-TF admeasuring 1210.74 sq. ft. super area and to make initial payment for the said independent floor.

- II. That the complainants booked the unit with respondent in the month of October 2019 and made a booking amount of Rs.25000/- The respondent sent an allotment letter dated 25.10.2019. Further, on 14.02.2020, the complainants entered into an 'Independent Floor Buyer's Agreement' with the respondent no. 1. wherein it was assured to complainants that possession of allotted floor will be handed over within 2 years with a grace period of 3 months from the date of allotment i.e. by 25.01.2022.
- III. That the total sale consideration for the subject unit admeasuring super built-up area of 1210.73 sq. ft. and carpet area of 756.60 sq. ft. along with stilt parking beneath the building and proportionate roof rights was Rs.63,05,225/- excluding applicable taxes with 'Time-Linked Payment Plan' as per 'Schedule-B'.
- IV. That the complainants availed a 'Housing Loan' from respondent no. 2 to finance the residential floor to the tune of Rs.53,00,000/- vide 'Home Loan Agreement' dated 02.06.2020 and a 'Tripartite Agreement' dated 20.03.2020. As per the demands made by the respondent no. 1 from time to time, the complainants paid a total sum of Rs.66,93,108/-. The complainants have paid full sale consideration as evident from the customer ledger dated 31.05.2023 maintained by the respondent no. 1.
- V. That the respondent failed to handover the possession of the unit but to cheat the complainants issued a purported 'Offer of Possession' dated 28.02.2023. Though respondent no. 1 has issued Offer of Possession dated 28.02.2023, the unit is not ready for possession and is far from habitation. The complainants visited the site on 31.05.2023 and were shocked to note

A

the depilated condition of under-constructed unit, P-7 4th floor wherein even the basic amenities like lift (elevator) and road were missing besides number of major defects, the same were communicated to respondent no. 1 vide email dated 31.05.2023.

- VI. That the complainants also realised that the respondent no. 1 had also levied illegal interest charges on them in lieu of non-payment of due instalments in time by the complainant's bank. However, this delay in releasing loan amount by respondent no. 2 has been caused mainly due to delay in execution of floor buyer's agreement and delay in construction work, solely by the respondent no. 1 with no deficiency on the part of complainants.
- VII. That the complainants time to time contacted the officials of the respondent no. 1 to know the status of the construction of the project and the representative of the respondent no. 1 always assured that the possession will be given on time without any delay and default i.e. within a period of 24 months, further if there is any default then respondent will compensate.
- VIII. That the complainants bonafidely for their needs and better future purchased the unit in question, however, the respondent no. 1 failed to give the possession of the unit in time causing monetary loss (repayment of EMI & Rent, concurrently) besides harassment and mental torture.
- IX. That almost a period of 20 months has lapsed from the due date of possession of the unit and the respondent no. 1 has deliberately failed to handover the possession of the said unit as promised to the complainants. The respondent has not bothered to act accordingly and did not comply with the terms and conditions of the floor buyer's agreement and did not handover the possession of the unit till date.

C. Relief sought by the complainants:

4. The complainants have sought following relief:

- I. Direct the respondent to pay delay possession charges.
- II. Direct the respondent to revoke illegal penalty of Rs.7,96,013/-.

A

III. Direct the respondent to pay litigation cost of Rs.1,00,000/-

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent no.1.

6. The respondent no.1 contested the complaint on the following grounds: -
- i. That the allotment was made to the complainant on 14.02.2020 i.e. date of execution and registration of agreement of sale in terms of Para 2 which says about "allotment". During the course of construction/development of the project, Covid-19 pandemic out broke not only in Haryana but in India and rest of the world also. Covid-19 pandemic was so deadly and contagious that compete lockdown was imposed several times in not only in Haryana but in India and rest of the world also.
 - ii. That 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.
 - iii. That the complainant has not paid the complete consideration amount and hence the complainant is not entitled for taking possession in agreed terms of agreement. Further, the Authority does not have jurisdiction to adjudicate the present complaint in the agreed terms of agreement which says "All or any disputes arising out or touching upon or in relation to the terms and conditions of this Agreement, including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties, shall be settled amicably by mutual discussion, failing which the same shall be settled through the adjudicating officer appointed under the Act".
 - iv. 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

A

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 during the course of construction/development of allotted unit and the project, none other than the Hon'ble Supreme Court banned all construction and demolition in Delhi-National Capital Region (NCR) on November 04, 2019 and the same was lifted completely in February 2020. Further, it is matter of admitted fact that Gurugram falls within the area of other NCR Districts and Hon'ble RERA, Gautam Budh Nagar vide order dated 16.12.2020 has given benefit/extension of 102 days to the Developer and Promoter on account of Hon'ble Supreme Court order dated 04.11.2019 and 14.02.2020.
- vi. That during the course of construction/development of the project, Covid-19 pandemic out broke not only in Haryana but in India and rest of the world also. Covid-19 pandemic was so deadly and contagious that compete lockdown was imposed several times in not only in Haryana but in India and rest of the world also. 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. 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 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.

- viii. That 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.
- ix. That the Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM (Admn.) dated 26.05.2020 extended the date of completion for all Real Estate Projects registered under Real Estate Regulation and Development Act, where completion date, revised completion date or extended completion date was to expire on or after 25th of March, 2020 automatically by 6 months, due to outbreak of the COVID -19 (Corona Virus), which is calamity caused by nature and is adversely affecting regular development of real estate projects by invoking "force majeure" clause.
- x. That even before the expiry of said extended period, it is very much in public domain and had also been widely reported that second wave of Covid-19 had also hit the country badly 'like a tsunami' and Haryana was no exception thereof. Copy of a news as published saying "Not A Wave, It's A Tsunami: Delhi High Court On Covid-19 Surge" in Outlook Web Bureau on 21.04.2021.

A

- xi. 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. Also, Haryana Government 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. In addition to the above Commission for Air Quality Management in National Capital and Adjoining Areas imposed complete ban on construction activities vide order dated 16.11.2011 until 21.11.2021.
- xii. 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

A

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.

- xiii. 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. Infact, 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.
- xiv. 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. Every phase of lockdown is not confined to the declared period only rather it also brings another 3-4 months (minimum period) delay in mobilization of construction activity at site once suspended because of certain reasons such as lack of human resources,

availability of material etc. That in the light of aforesaid, delay, if any in construction of allotted unit was neither intentional nor intended but due to force majeure i.e. circumstance beyond the control. Therefore, the respondent cannot be said to be at default and present complaint needs to be dismissed at this ground alone

E. Reply by the respondent no.2.

7. The respondent no.1 contested the complaint on the following grounds: -
- i. That the subject matter of the present complaint has arisen due to the alleged default on part of respondent no. 1 in timely construction and handover of the project. However, the complainants have decided to wrongly impleaded HDFC Ltd now as HDFC Bank Ltd. The complainants have chosen to ignore the fact that the relationship of HDFC Ltd. and the complainants have arisen out a loan agreement which has no correlation whatsoever with the builder. Further, this Authority lacks jurisdiction to issue any directions or orders to any other person or entity who is not a promoter, real estate agent or allottee and respondent no. 2 being the lender, does not fall under any of the aforementioned categories. The instant complaint is liable to be dismissed on account of mis-joinder of parties. The domain of services provided by the respondent no. 2 is completely separate and independent of respondent no. 1 and hence the complainants ought to be dismissed as against respondent no.2 on account of lack of jurisdiction.
 - ii. Also, the scope of functioning of the respondent no. 2 falls outside the domain of this Authority. In addition to this the complainants have failed to disclose any separate cause of action against the respondent no. 2. On the grounds as stated, the Authority may be pleased to delete the respondent no. 2 from array of parties and/or dismiss the instant complaint as against respondent No.2.
 - iii. That the present complaint suffers from the basic lacuna of mis-joinder or non-joinder of parties and HDFC LIMITED now as HDFC Bank Ltd has been



wrongly made the party to the complaint because it is neither a necessary nor a proper party in this case. The present complaint may thus be dismissed only on this point. The reply on all the issues raised in the present complaint has been given on behalf of HDFC Limited now as HDFC Bank Ltd as respondent no. 2.

- iv. That the respondent no. 2 is a law-abiding Limited Company registered under the Companies Act, 1956 and provides the housing finance services to its clients. The respondent no.2 provides housing finance services and helps the public to avail Housing Loan Facilities.
- v. The subject matter of the present complaint is a retail loan sanctioned and disbursed to the complainants, repayment of which is absolute and express liability of the complainants. Any dilution to the agreed terms of Home Loan Agreement and the Tripartite Agreement is unwarranted in law and any such assignment of loan as contended by the complainants is misconceived under law and hence may not be allowed.

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

9. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority.

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

E.I Territorial jurisdiction

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is



situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

Section 11.... (4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent.

FI Objection regarding force majeure conditions.

14. The respondent no.1/promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) and various court orders. But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent no.1 should have taken the

A

same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. Further, the authority has gone through the possession clause of the agreement and observed that the respondent no.1 -promoter proposes to handover the possession of the allotted unit by 25.01.2022. 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 25.01.2022 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 25.07.2022.

G. Findings on the relief sought by the complainants.

G.1 Direct the respondent to pay delay possession charges.

15. The complainant herein through present complaint argued that they booked an independent floor in the respondent no.1 project and made an initial payment and entered into an agreement wherein the respondent no.1 agreed to handover possession of the subject unit within 2 years with a grace period of 3 months from the date of allotment i.e. by 25.01.2022. The total sale consideration for the subject unit was Rs.63,05,225/-, and the complainants had paid the Rs.66,93,108/- against the sale consideration including a housing loan of Rs. 53,00,000/-. However, despite receiving an offer of possession on 28.02.2023, the unit was incomplete and in uninhabitable condition. Additionally, the complainants also faced unlawful interest charges for delayed payments, though the delay was caused by the respondent no.1 failure to execute the agreement and complete the construction on time. Despite

repeated assurances from the respondent, possession has not been handed over who have been waiting for over 20 months past the promised possession date.

16. Furthermore, the counsel for the complainants during proceedings dated 14.03.2024 submitted that the occupation certificate filed along with the reply does not pertain to the subject unit i.e. P-7, 4th floor and the occupation certificate filed is of B-32 and hence, the offer of possession stands invalid.
17. On contrary to the above submissions the AR for the respondent during proceedings dated 23.05.2024 stated that the occupation certificate for the subject unit has already been obtained from the competent authority. However, due to nomenclature numbering for the subject unit was changed.
18. The present question which arises before the Authority is whether the offer of possession dated 28.02.2023 is valid or not? Upon perusal of the documents and submissions made by both the parties the Authority considers the offer of possession dated 28.02.2023 as valid due to several reasons. During proceedings dated 27.02.2025, the respondent no.1 counsel and AR clarified that the unit no. P-7 and B-32 are the same unit, with only a change in the numbering due to a revision of plot numbers. The respondent no.1 assured the Authority that the complainants could inspect the unit to confirm that it is at the same location one mentioned in the agreement.
19. Additionally, the complainants in their complaint stated that the unit is not in a habitable condition as they inspected the unit on 31.05.2023, which shows they have inspected the subject unit location. However, they did not raise any objections regarding the change in the unit's location only stating that they were not informed about the renumbering. Since the complainants did not object to the change in the unit's location, and the only issue raised was the lack of prior notice about the renumbering, the Authority finds that the offer of possession is valid. The renumbering issue does not invalidate the offer.

20. However, the complainants are at liberty to seek compensation under Section 14(3) of the Act, 2016, for the change in numbering of the unit without their prior consent or intimation.

21. Herein, the complainant intends to continue with the project and are seeking delay possession interest 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 4.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"4.1

Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Independent Floor 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, registration charges and administrative charges and incidental charges etc., the Developer shall offer possession of the Said Independent Floor to the Allottee(s) within a period within 24 months with a grace period of additional 3 months (24+3 months) from the date of allotment. Applicable taxes would be payable extra at each stage. Aforesaid payment schedule may be preponed if the construction is completed before scheduled milestone or the occupation certificate (OC) is received before the scheduled possession period....."

(Emphasis Supplied)

23. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default

A

under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.

24. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottees are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit.
25. **Due date of possession and admissibility of grace period:** As per clause 4.1 of buyer's agreement, the respondent no.1/promoter has proposed to handover the possession within a period of twenty-seven months including grace period of three months from the date of allotment of the subject unit. The authority calculated due date of possession from the date of allotment letter i.e. 25.10.2019 which comes out to be 25.01.2022. Accordingly, the authority in view of notification *no. 9/3-2020 dated 26.05.2020*, on account of force majeure conditions due to outbreak of Covid-19 pandemic allows the

grace period of 6 months to the promoter at this stage and the due date comes out to be 25.07.2022.

26. Admissibility of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: 9

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

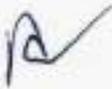
(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

(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.

27. 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.

28. 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., 27.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

29. 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. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

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

30. 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.

31. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement dated 14.02.2020. By virtue of clause 4.1 of the agreement, the possession of the subject apartment was to be delivered by 25.07.2022 including grace period of 6 months for the reasons mentioned above in lieu of Covid-19. In the present complaint the complainants were offered possession of the unit by the respondent on 28.02.2023 after receipt of the occupation certificate dated 22.11.2022 from the competent authority.

32. The respondent has obtained the occupation certificate on 22.11.2022. 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 allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 14.02.2020 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as

A

per the buyer's agreement dated 14.02.2020 to hand over the possession within the stipulated period.

33. 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 22.11.2022. The respondent no.1 offered the possession of the unit in question to the complainants only on 28.02.2023. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants 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 i.e. 25.07.2022 till the date of offer of possession (28.02.2023) plus two months i.e., 28.04.2023.

34. 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 no.1 is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 25.07.2022 till the date of offer of possession (28.02.2023) plus two months i.e., 28.04.2023 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II Direct the respondent to revoke illegal penalty of Rs.7,96,013/-.

35. The complainants herein have sought relief with regard to revocation of illegal penalty of Rs.7,96,013/-. However, no documentary evidence or supporting documents have been provided by the complainants to substantiate this claim.

Therefore, no specific direction can be given in this regard. The respondent is, however, directed to ensure that all charges and interests levied are in compliance with the agreed terms and at an equitable rate of interest. If any discrepancies are identified by the respondent, they are directed to correct the same. Nonetheless, if the respondent has indeed charged incorrectly, it is directed to adjust the same in accordance with the agreed terms in the builder buyer agreement.

G.III. Direct the respondent to pay litigation cost of Rs.1,00,000/-.

36. The complainants are seeking above mentioned relief w.r.t. litigation cost. *Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357* held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

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 no.1 is directed pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid i.e. Rs.66,93,108/- by the complainants from due date of possession i.e., 25.07.2022 till the date of offer of possession (28.02.2023) plus two

A

months i.e. up to 28.02.2023 as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- II. The rate of interest chargeable from the allottee by the respondent no.1/promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent no.1 /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 For six months covid period i.e. from 15.03.2020 to 15.09.2020 no interest shall be charged from either of the party.
- III. The respondent no.1 is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and thereafter the complainants are directed to pay outstanding dues, within next 30 days if any.
- IV. The respondent no.1 is directed to handover the physical possession of the allotted unit to the complainants complete in all aspects of buyer's agreement.
- V. The respondent no.1 shall not charge anything from the complainants which is not the part of the buyer's agreement.

38. Complaint stands disposed of.

39. File be consigned to registry.

Dated:27.02.2025


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