

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

Complaint no. : 2535 of 2024
Date of filing : 26.06.2024
Date of decision : 18.04.2025

Deepa Binoriya

R/o: H.NO-452, Gali No-1, Hathi Khana Road,
Bhanvar Pura, M.P.-474006

Complainant

Versus

M/s Signature Global (India) Pvt. Ltd.

Address: Unit no. 1304, 13th Floor,
Dr Gopaldas Bhawan, 28 Barakhamba Road,
New Delhi-110001.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPERANCE:

Shri Arun Yadav
Shri Venket Rao

Counsel for the complainant
Counsel for the 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 under the provisions of the Act or the

Rules and regulations made thereunder or to the allottees 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	"The Millennia", Sectors 37D, Gurugram, Haryana
2.	Project area	9.701 acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP license no. and validity status	4 of 2017 dated 02.02.2017 Valid up to 01.02.2022
5.	RERA Registered/ not registered	Registered vide no. 3 of 2017 dated 20.06.2017 Validity- The registration shall be valid for a period of 4 years commencing from 20 June 2017 and ending on 4 years from the date of environment clearance. Extension granted vide no. 27 of 2023 dated 20.11.2023 Extension valid up to 31.01.2023
6.	Building plan approved on	08.06.2017
7.	Environmental clearance granted on	21.08.2017



8.	Allotment Letter issued in favour of complainant	01.11.2017 [Page 25 of complaint]
9.	Builder buyer agreement executed between the complainant and the respondent on	23.11.2017 [Page 26 of complaint]
10.	Unit no.	6-205 on 2 nd floor Tower 6 [Page 28 of complaint]
11.	Unit admeasuring	552.360 sq. ft. (Carpet area) with balcony area of 79.653 sq. ft. [Page 28 of the complaint]
12.	Possession clause	5. POSSESSION 5.1 Within 60 (sixty) days from the date of issuance of Occupation Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to force majeure circumstances, receipt of Occupation 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 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.



		[Page 37 of complainant]
13.	Due date of possession	21.02.2022 [Note: 4 years are calculated from the date of approval of environmental clearance i.e., 21.08.2017 being later, which comes out to be 21.08.2021 + 6 months (as per HRERA 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)]
14.	Total sale price	Rs.22,49,266.5/- [As per cluse 4.1 of BBA at page 34 of complaint]
15.	Amount paid by the complainant	Rs.25,61,499/- [As alleged by the complainant at page 22 of complaint]
16.	Occupation certificate /Completion certificate	25.01.2023 [As per DTCP web site]
17.	Offer of possession	28.03.2023 [As clarified by the respondent during proceedings on 18.04.2025]
18.	Possession certificate and possession acknowledgement letter dated	13.12.2023 [Page 65 of complaint]
19.	Legal notice by the complainant seeking delay possession charges etc.	19.03.2024 [Page 66 of complaint]

B. Facts of the complaint

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

- i. That relying on the representations, warranties and assurances of the respondent about the timely delivery of possession, the complainant, booked a flat in the affordable housing project of the respondent under the name and style of "The Millenia" situated at Sector 37D Gurugram, Haryana having License no. 04 of 2017 dated 02-02-2017 granted by DGTCP Chandigarh, Haryana. That since the booking of the unit of the complainant till date, the complainant(s) had been continuously harassed by the defaulting conduct of the respondent. After the allotment of the unit, a builder buyer agreement was executed. The complainant was made to sign the one-sided arbitrary agreement the terms and conditions of which were fixed and could not have been altered.
- ii. That the complainant regularly visited the corporate office as well as the construction site of the project but was surprised to see that construction work was not in progress and only few labors were present at the site but when enquired about slow progress, the respondent kept assuring of timely completion of construction work and timely possession as well. But the same is delivered after a delay of around 2 years 3 months and 21 days by the respondent. It appears that the respondent developer has played fraud upon the complainant.
- iii. That the respondent developer miserably failed to complete the project within the agreed time limit mentioned in the agreement for sale and due to this omission of the respondent, the complainant have suffered from mental torture, agony and also

continues to incur severe financial losses. Moreover, in case of delay in offer of possession, the complainant has a right under proviso of section 18 of the act to seek delay possession charges from the due date of possession i.e., August 2021 till actual handover of the physical possession after the receipt of occupancy Certificate.

- iv. That it is matter of the fact that the GST was implemented on 01.07.2017. Thereafter, w.e.f. 01.04.2019, the rates of imposition of GST were revised. The promoter was given an option to either charge GST as per the new rates or continue charging the same at the old rates. That the promoter has been charging GST @ 8% from the complainant, as is also evident from the statement of accounts, however, no input tax credit/ ITC was given to the complainant. That the complainant has made total payment as per the demand letter, however no input tax credit was given to the complainant.
- v. That in affordable housing projects, the builder is bound to maintain the project for a span of 5 years from the date of occupancy certificate. Accordingly, the respondent should be restrained from demanding maintenance charges from the complainant in future till 5 years from the date of the occupancy certificate and to refund the amount so collected.
- vi. That the respondent builder had malafidely and unlawfully collected monies over and above the agreed prices and without completed due construction in the project on time. The respondent, had unlawfully charged money vide SOA cum letter of possession with illegal demand of Rs 1,09,801/- of outstanding balance under numerous heads like water connection charges,

admin charges, advanced consumption deposit, IFSD Charges, Electrification charges and meter connection charges and 1 year advance maintenance & user charge for operational cost of utility services which was unlawful, illegal and not in accordance to the Affordable Housing Policy, 2013.

- vii. Moreover, the 24-meter road is not connected to the main 75-meter-wide sector road which was assured by the respondent developer as shown in layout plan given at the time of booking, therefore the respondent must be directed to connect this 24-meter road to main 75-meter sector road.
- viii. That the act and conduct of the respondent amounts to grave deficiency in service and unfair trade practice of the highest degree. The respondent has caused great mental agony and physical harassment to the complainant. The complainant has paid such a huge amount after taking loan which cause extra burden of interest.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay the delay possession charges along with interest@15% per annum on the total payment from the due date to the actual handover of the flat, as the respondent had charged the same ROI on late payments as per clause 4.6 of the BBA.
 - ii. Direct the respondent to refund the excess GST paid by my client or ITC with interest which is illegally and unlawfully charged.
 - iii. Direct the respondent to refund the amount of Rs 1,09,801/- water connection charges, admin charges, advanced consumption deposit, IFSD Charges, Electrification charges and meter connection charges

and 1-year advance maintenance & user charge for operational cost of utility services that you have charged was unlawful, illegal and not in accordance to the affordable housing policy 2013.

- iv. Direct the respondent to provide connectivity of 24-meter road in 75-meter sector road which is shown in layout plan and the brochure as well as assured my client at the time of booking.
 - v. Direct the respondent to pay Rs. 5,00,000/- for mental agony and torturing my client and financial losses due to the delay possession.
 - vi. Cost of Litigation of Rs. 2,00,000/-.
 - vii. Any other relief which this hon'ble court deem fit and proper may also be given in favour of the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 the following grounds:
- i. That the complainant 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 complainant and other allottees proceed to submit their applications for obtaining allotment of apartments in the Affordable Group Housing Project. This has also been recorded in BBA dated 23.11.2017 at recital "L".

- ii. That the complainant had executed the BBA with her free consent and the complainant was always free to refuse to execute the BBA and she always had the option to surrender the unit and took the refund, however she did contradictory to it because she knew at the time of executing the BBA that the terms and conditions of the BBA are as per the Affordable Housing policy, therefore, she never raised any concern at the time of execution of BBA, however now the intension of the complainant became malafide as she want to extort the money from the respondent under the aegis of the litigation.
- iii. 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.
- iv. That it is specifically mentioned in clause 19.3 that if possession of the unit 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. The complainant cannot be made to rely on selected clauses of the buyer's agreement. The covenants incorporated in the agreement are to be cumulatively considered in their entirety to determine the rights and obligations of the parties. Moreover, the delay, if any, caused was neither intentional nor deliberate, therefore in the light of the above-mentioned facts & circumstance, the respondent is not liable for any payment for the delay.
- v. 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.

- vi. That as per the complainant, 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/hindrane had been caused either due to force majeure circumstances or on account of intervention by statutory Authorities etc.
- vii. 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.
- viii. 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. On 14.03.2020 the Central Government had declared the pandemic as a "notified disaster" under the Disaster Management Act, 2005. The same had been recognized as a disaster threatening the country, leading to the invocation of The Disaster Management Act, 2005 for the first time on a national level. The 21-day national lockdown imposed by the Central Government to combat the spread of first wave of Covid-19.

- ix. That 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.
- x. 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'.
- xi. 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).
- xii. 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".

- xiii. 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 had decided to grant extension of 3 months from 01.04.2021 to 30.06.2021 considering the same as a force majeure event.
- xiv. That it was further specifically observed in the direction/order dated 02.08.2021 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.
- xv. 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.

- xvi. That 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 Complainant as permitted under the Rules, 2017.
- xvii. 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.
- xviii. 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.
- xix. That as per office order dated 31.01.2024 bearing no. PF-27A/2024/3676, issued by the Directorate of Town and Country Planning, Haryana a detailed table of clarification of maintenance charges/utility charges chargeable from the allottees as per consumption levied on Affordable Group Housing Projects, has been provided:

"Category- II

"Maintenance/ Use/utility charges which can be charged from the allottees as per consumptions:

- i. Electricity bill (as per consumption)
- ii. Water bill (proportionate to the net consumption)
- iii. Property tax (in case the colony is within MC limits)
- iv. Door to door waste collection charges, garbage collection and upkeep of each floor (other than common areas) .
- v. Any repair inside the individual flat for which services i.e. repair/ replacement of tap, sanitary works, plumbing any damage of flooring, electrical installation etc. can either be got done through the builder or from any other person/ public agency chosen by allottees after taking possession of the flat.
- vi. Diesel cost for power back-up facilities.
- vii. Electricity bill of lifts (as part of common area facilities)
- viii. Running / fuel cost on DG sets/ generator sets for power back-up.
- ix. Any defect liability on part of allottee, but excluding any damage caused on account of lapse on part of developer.
- x. Any other State or Central taxes, any other utility charges. which can be governed through individual bills, telephone, internet etc."

In view of the said office order, the complainant is liable to pay the maintenance charges.

- xx. That the respondent did not contravene the Affordable Group Housing Policy 2013. It is submitted that the charges charged by the respondent are as per the BBA, RERA Act and RERA rules hence nothing is baseless and unlawful etc. It is submitted that, the charges charged by the respondent are of the basic amenities such as electricity charges and water charges which the complainant is liable to pay as per the BBA, RERA Act and RERA rules hence nothing is baseless and unlawful etc. Further, as per office order dated 31.01.2024 bearing no. PF-27A/2024/3676, issued by the Directorate of Town and Country Planning, Haryana a detailed table of clarification of maintenance charges/utility charges chargeable from the allottees as per consumption levied on Affordable Group Housing Projects, has been provided, hence the complainant is liable to pay the same.



- xxi. That the complainant is the person who failed to adhere the terms and conditions of the agreement and failed to make the payment on time due to which late payment charges has been imposed upon them, however the respondent waived off sum of Rs.5,838/- but the complainant has deliberately and with malafide intension did not whisper about the same which itself shows the conduct of the complainant.
- xxii. That project has been completed by the respondent on time, as the completion of the project as well as delivery of the possession of the unit is subject to force majeure clause and other statutory orders and there is no doubt that project of the respondent effect by the force majeure and same has been explained in detail in above. It is further submitted that the certificate has been issued by the concerned authority by inspecting the project site.
- xxiii. That as per Affordable Housing Policy, 2013, the Maintenance of colony after completion of project is the respondent responsibility and for the same a commercial component of 4% is being allowed in the project to enable the respondent to maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, hence it is false and frivolous that the cost of maintenance has been included in the total price of the unit.
7. 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

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8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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

10. 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 maybe;

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.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-

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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.1 Objection regarding delay due to force majeure circumstances

12. 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 labour, orders passed by National Green Tribunal and other statutory Authorities.
13. 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."

14. 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. 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. Hence, all the pleas advanced in this regard are devoid of merits.

15. 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 Delay possession charges

16. 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 them 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."

17. Clause 5.1 of the buyer's agreement (in short, the agreement) dated 23.11.2017, provides for handing over possession and the same is reproduced below:

"Within 60 (sixty) days from the date of issuance of Occupation Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to force majeure circumstances, receipt of Occupation 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 including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later."

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

19. **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]

(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.

20. 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.

21. 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., 18.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
22. 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. 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 complainant in case of delayed possession charges.
23. 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 by 21.02.2022 including grace period of 6 months on account of COVID-19. However, no interest shall be charged from the



complainant in case of delayed payment during this 6 months COVID-19 period from 25.03.2020 to 25.09.2020.

24. 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 complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to the fact 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 or actual handing over of possession, whichever is earlier.
25. 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 complainant-allottee shall be paid, by the promoter, interest for every month of delay from due date



of possession i.e., 21.02.2022 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II Direct the respondent to refund the excess GST paid by my client or ITC with interest which is illegally and unlawfully charged.

26. The respondent is directed to charge the GST as per rules and regulations and for the input tax credit, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

27. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in prices. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter



shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.

28. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

G.III Direct the respondent to refund the amount of Rs 1,09,801/- water connection charges, admin charges, advanced consumption deposit, IFSD Charges, Electrification charges and meter connection charges and 1-year advance maintenance & user charge for operational cost of utility services that you have charged was unlawful, illegal and not in accordance to the affordable housing policy 2013.

29. The complainant has contended that the respondent has issued offer of possession 28.03.2023 along with statement of account and containing several illegal charges such as water connection charges, admin charges, advanced consumption deposit, IFSD Charges, Electrification charges and meter connection charges and 1-year advance maintenance & user charge for operational cost of utility services.
30. The Authority observes that the respondent has raised following demands at the time of offer of possession:

S. No.	Particulars	Basic Amt.	Tax Amount	Due Amount	Received/ adjustment	Balance
1.	Water connection charges	1381	249	1630	0	1630
2.	Meter connection charges	3850	693	4543	0	4543
3.	External Electrification charges	29358	5284	34642	0	34642



4.	Administration Charges	15000	2700	17700	0	17700
5.	Advance consumption charges	6000	0	6000	0	6000
6.	IFSD charges	15000	0	15000	0	15000
Sub Total (B)		70589	8926	79515	0	79515

31. The authority has already dealt with the above charges in the compliant bearing no. **4147 of 2021 titled as Vineet Choubey Vs. Pareena Infrastructure Private Limited** and also the complaint bearing no. **4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited**, wherein the authority has held:

- **Administration charges**

32. That a nominal amount of Rs. 15000/- can be charged by the promoter/developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard.

- **Meter connection charges/water connection charges**

33. The authority held that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. However, the complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. The model of the digital meters installed in the complex be shared with complainant-allottee so that the allottee could verify the rates in the market.

- **External electrification charges**

34. The authority has already dealt with the above charges in the compliant bearing no. **CR/4147/2021** titled as ***Vineet Choubey V/S Pareena Infrastructure Private Limited*** wherein the authority has held that the colonizer would provide the detail of expenditure to the complainant(s) and they can verify the same from DHBVN, if required. Thus, when the claimant(s) agreed to pay charges under this head on the condition of the promoter providing the details of expenditure to them and the same to be verified by them, then promoter can legally charge the same from them.

- **Advanced consumption deposit**

35. The authority has already dealt with the above charges in the compliant bearing no. **CR/4147/2021** titled as ***Vineet Choubey V/S Pareena Infrastructure Private Limited*** wherein the authority has held that the charges under this head are being demanded so that the allottee(s) should have power connection in his/ her unit at the time of possession and that amount should be adjusted in the electricity bill as per the consumption of power.

- **Interest free security deposit (IFSD)**

36. The authority has already dealt with the above charges in the compliant bearing no. **CR/4031/2019** titled as ***Varun Gupta V/s Emaar MGF Land Limited*** wherein the authority has held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFSD". However, the authority directs and passes an order that the promoter must keep the amount collected under that head in a separate bank account and shall maintain the account regularly in a



very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFSD amount and the interest accrued thereon, it must provide details to them. It is further clarified that out of this IFMS/IFSD account, no amount can be spent by the promoter for the expenditure for which he is liable to incur/discharge the liability under section 14 of the Act.

- **Maintenance charges**

37. 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 complainant 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:
38. 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.
39. 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

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individual flat etc.) can be charged from the allottees as per consumptions.

40. Accordingly, the respondent is obligated to charge the maintenance/use/utility charges from the complainant-allottee 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 complainant, same may be adjusted towards future maintenance.
41. According to the above findings, the respondent is correct in charging the said amount under the following heads and the said offer was not accompanied with any illegal demands. Therefore, the complainant is liable to pay the aforesaid demands as raised by the respondent vide letter of offer of possession dated 28.03.2023.

G.IV Direct the respondent to provide connectivity of 24-meter road in 75-meter sector road which is shown in layout plan and the brochure as well as assured my client at the time of booking.

42. The above-mentioned relief sought by the complainant was not pressed by the counsel for the complainant during the pendency of the complaint or during the arguments. The authority is of the view that the complainant's counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any findings w.r.t to the above-mentioned relief.

G.V Direct the respondent to pay Rs. 5,00,000/- for mental agony and torturing my client and financial losses due to the delay possession.

G.VI Cost of Litigation of Rs. 2,00,000/-.

43. The complainant is also seeking relief w.r.t compensation and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints for compensation

under sections 12,14,18 and section 19 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

H. Directions of the authority

44. 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 i.e., 28.03.2023 plus two months or actual handing over of possession, whichever is earlier, as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
 - ii. 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, *ibid*.
 - iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent is directed to charge the maintenance/use/utility charges from the complainant-allottee as per consumptions basis as has been clarified by the Directorate of town and Country Planning, Haryana vide clarification order dated 31.01.2024. In



case any amount charged is extra from the complainant, same may be adjusted towards future maintenance.

- v. 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.
- vi. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement and the provisions of Affordable Group Housing Policy of 2013.
45. The complaint and application, if any, stands disposed of.
46. File be consigned to registry.

Dated: 18.04.2025

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM