

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

Complaint no. 503 of 2024
Date of complaint: 12.02.2024
Order pronounced on: 22.05.2025

Parvesh Kumar
R/o:- H.No. 204, Sec-16, Dwarka,
Kakrola Village, Delhi-110078

Complainant

Versus

M/s Signature Global (India) Pvt. Ltd.
Regd. Office at: 1302, 13th floor,
Tower-A, Signature Tower, South
City 1, Gurugram Haryana

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Sh. Akash Godhvani (Advocate)
Sh. Harshit Batra (Advocate)

Complainant
Respondent**ORDER**

1. This complaint has been filed by the complainant/allottee 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 provision 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 complainants, 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, Sector 37 D Gurugram
2.	Nature of project	Affordable group housing
3.	Rera Registered/Not registered	Registered 03 of 2017 dated 20.06.2017
4.	Unit no.	10-001 (page 27 of complaint)
	Area admeasuring	519-229 Sq. ft. (carpet area) 79.653 Sq. ft. (balcony area) (Page no. 27 of complaint)
5.	Date of flat buyer agreement	29.12.2017 (Page no. 29 of complaint)
6.	Possession clause	5. Possession <i>5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i>
7.	Date of building plan approval	08.06.2017 (as per page no. 39 of reply)
8.	Date of environmental clearance	21.08.2017 (as per page no. 43 of reply)
9.	Due date of possession	21.02.2022 (Calculated from the date of grant of EC being later including grace period of 6 months in lieu of Covid-19)

10.	Basic sale consideration	Rs.21,16,743/- (Page no. 39 of complaint)
11.	Total amount paid by the complainant	Rs.21,16,743/- (confirmed by both the counsels during proceedings dated 22.05.2025)
12.	Occupation certificate	25.01.2023 (as per page no. 54 of complaint)
13.	Offer of possession	23.03.2023 (page no. 58 of reply)
14.	Possession certificate	07.11.2023 (Page 63 of reply)
15.	Conveyance deed	04.09.2023 (as per page no. 64 of reply)

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That in 2017, the respondent issued an advertisement announcing a Residential Group Housing Project called 'The Millenia' Sector 37D, Gurugram, Haryana in terms of the provisions of Affordable Group Housing Policy 2013 and thereby invited applications from prospective buyers for the purchase of allotments in the said project. Respondent confirmed that the project had got building plan approval from the Authority.
- II. That the complainants were caught in the web of false promises of the agents of the respondent. The complainants paid an initial amount of Rs.1,05,837/- to respondent. The payment was acknowledged by the respondent and complainant was allotted subject unit in the said project.
- III. That the complainant received an allotment letter for the unit bearing No. T10-001. Further, the builder buyer agreement was executed on 29.12.2017 between the parties. The complainant against the demand notices raised by the respondent have paid a total sum of Rs.21,16,743/- in favor of the respondent. In terms of Scheduled "D" of builder buyer agreement the complainant has made the payments as per the payment plan.

- IV. That the complainant had sent multiple e-mails communications and made calls during the time intimating the respondent for the possession of the subject unit. With great regret the complainant did not receive any revert from the respondent and kept excusing the complainant that the same shall be dealt and settled at the time possession on individual basis.
- V. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent individually chasing the respondent for construction on very regular basis. The respondent was never able to give any satisfactory response to the complainants for delay in construction of the unit and was never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent as to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of delay on account of the Novel Corona Virus and on the account of paucity of funds.
- VI. That after losing all hope from the respondent company and having shattered and scattered dreams of owning a home and also losing considerable amount of money (as per the Buyer's Agreement dated 29.12.2017).
- VII. As per clause 6.1(i) of the builder buyer's agreements executed between the parties the possession of the subject unit was supposed to be delivered by 20.08.2021. The actual habitable possession was given to complainant on 07.11.2023. That under Clause 4.6 of the builder buyer's agreement, upon delay of payment by the allottees, the respondent can charge 15% simple interest per annum. On the other hand, as per clause 6.2(ii), the respondent is equally liable to pay to complainant, interest at the rate of 15% per annum for every month of delay till the handing over of the possession of the subject unit within 45 days of becoming due. Whereas respondent has deliberately indulged in mis-statement, prevarications and innuendos and has not paid a

single penny on account of delayed compensation. Accordingly, the complainants are entitled to get interest on the paid amount at the rate as prescribed per annum from due date of possession as per builder buyer agreement till the date of handing over of actual possession.

VIII. That the respondent has issued final demand notice wherein the respondent has made various unnecessary demands which are not as per the builder buyer agreement and hence are baseless, unfounded, unlawful, untenable, unsustainable, grossly misconceived, illegal and unwarranted including the advance maintenance charges. Hence, there is a delay of more than 2 years from the date of actual possession.

C. Relief sought by the complainant:

4. The complainant has sought following relief:

- I. Direct the respondent to pay delay possession charges.
- II. Direct the respondent to refund the maintenance charges of Rs. 28,956/- and not to charge the amount in lieu of maintenance charges for a period of 5 years.
- III. Direct the respondent to refund the charges which is not as per the buyer agreement.

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

6. The respondent has contested the complaint on the following grounds: -

- I. That the complainant applied for allotment of the unit and was allotted a unit bearing no. 10 - 001 in Tower 10 admeasuring carpet area of 519.229 sq. ft. and balcony area 79.653 sq. ft. vide allotment letter dated 06.02.2019.
- II. That a buyer's agreement dated 15.02.2019 was executed between the parties and the agreement was registered on the same day. The agreement

was voluntarily and consciously executed between the parties and the terms and conditions of the same are binding upon the parties.

- III. That as per clause 5.1 of the agreement, the respondent endeavored to offer possession within a period of 4 years, from the approval of building plans or grant of environmental clearance, whichever is later. The possession clause of the agreement is at par with clause 1(iv) of the Affordable Housing Policy, 2013. The building plan was approved on 08.06.2017 and the environmental clearance of the project was received on 21.08.2017. Thus, the proposed due date of possession, as calculated from the date of environmental clearance, comes out to be 21.08.2021. The Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the due of which expired on or after 25.03.2020 on account of unprecedented conditions due to outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 21.02.2022.
- IV. That the offer of possession was also subject to the incidence of force majeure circumstances under clause 19 of the agreement. The construction and development of the project was affected by the circumstances which are beyond the control of the respondent.
- V. That the respondent faced certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab and Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by judicial authorities in NCR on account of environmental conditions, usage of water, etc. The development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, which have been delineated as under:

Sr. No	Date of Order	Directions	Period Of Restriction	Days Affected	Comments
1.	07.11.2017	Environment Pollution (Prevention and Control Authority) had directed the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 07.11.2017 till further notice.		90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21.12.2019 and 30.01.2020.
2.	Notification HSPC B/MS/2018 /2939-52 dated 29.10.2018	Haryana State Pollution Control Board	01.11.2018 to 10.11.2018	11 days	All construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR Districts from November 01.10.2018
3.	Notification DPCC/PA to MS/2018/7 919-7954 dated 24-12-2018	DELHI POLLUTION CONTROL COMMITTEE	24-12-2018 to 26-12-2018	3 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December 26 2018
4.	Direction dated 01.11.2019 bearing no. EPCAR/201 9/L-53	Environment Pollution (Prevention and Control) Authority for National Capital Region	01.11.2019 to 05.11.2019	6 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on construction was only 6 PM to 6 AM and this is new extended to be

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					complete banned till Monday, November 5, 2019, morning)
5.	01.11.2019	Environmental Pollution (Prevention and Control) Authority, NCR vide its notification bearing no. R/2019/L-53 dated 01.11.2019 converted the partial ban of 12 hours to a complete ban	01.11.2019 to 05.11.2019	4 days	This was in addition to the partial ban on construction by the EPCA vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to by
6.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	103 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court
7.	11.10.2019	Commissioner of Municipal Corporation Gurugram issued direction to issue Challan for Construction Activities and lodging of FIR from 11 th October to 31 st December, 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.	11.10.2019 to 31.12.2019	81 days	
			Total days	298 days	

- VI. That the world was hit by covid-19 pandemic which resulted in serious challenges to the project with no available labourers, contractors, etc. for the construction of the project. That during the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. The Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing Projects vide order/direction dated 26.05.2020 on account of first wave of COVID-19 pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.
- VII. That as per license condition developer are required to complete these projects within a span of 4 years from the date of issuance of environmental clearance since they fall in the category of special time bound project under section 7B of the Haryana Development and Regulation of Urban Area Act 1975, it is needless to mention that for a normal group housing project there is no such condition applied hence it is required that 4 years prescribed period for completion of construction of project shall be hindrance free and if any prohibitory order is passed by competent authority like National Green Tribunal Or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also. Section 7B(2)(i) of the Haryana Development and Regulation of Urban Area Act 1975 of the act itself recognizes the relaxation for renewal of license in case the delay in execution of development work was the reason beyond control of the colonizer, here also colonizers were estopped because of force majeure.
- VIII. That the said delay of 422 days in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing delay. In complaint case no. 3890 of 2021

titled "*Shuchi Sur and Anr. Vs M/s Venetian LDF Projects LLP*" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence the benefit of above affected 166 days needs to be rightly given to the respondent.

- IX. That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR.
- X. That the Hon'ble UP REAT at Lucknow while deciding appeal no. 541 of 2011 in the matter of Arun Chauhan Versus Gaur sons Hi- Tech Infrastructure Pvt Ltd vide order dated 02.11.2021 has also granted the extension of 116 days to the Developer/Promoter on account of delay in completion of construction on account of restriction/ban imposed by the Environment Pollution (Prevention & Control) Authority as well vide order of Hon'ble Supreme Court Dated 14.11.2019.
- XI. That the respondent applied for Occupation Certificate in respect of the said unit and the same was thereafter issued vide memo bearing no. ZP-1140/JD(RA)/2023/2462 dated 25.01.2023. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the Respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the Respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the Respondent is

necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- XII. Thereafter, the complainant was offered possession of the unit in question through letter of offer of possession dated 23.03.2023 and the same was communicated to the complainant vide email dated 23.03.2023. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant.
- XIII. That multiple possession reminders were sent to the complainant in regard to handing over the possession of the said unit but all requests, reminders fell on deaf ears of the complainant. The complainant delayed the procedure of taking the possession of the said unit on their own account. That the respondent, through its offer of possession letter earnestly requested the complainant to obtain possession of the unit in question. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.
- XIV. That by signing the possession certificate dated 07.11.2023, the complainant stood satisfied with respect to all the liabilities and obligations of the respondent. Further, the conveyance deed was executed on 04.09.2023. It was specifically and expressly agreed that the liabilities and obligations of the respondent as enumerated in the allotment letter or the agreement stand satisfied. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainants to institute or prosecute the instant complaint. The



complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.

XV. That after the execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the agreement or any obligation of the parties including delay compensation, as was agreed under Clause 4 of the Conveyance Deed. The same is reiterated hereunder:

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.

XVI. 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. The contents of the same are reiterated hereinbelow:

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."*

XVII. That the aforesaid office order further holds that "any charges decided through bilateral agreements i.e. facility for security services etc., may be charged as per bilateral agreements.". Therefore, the complainant is liable to pay the maintenance charges as agreed by him while executing clause 8 of the agreement.

XVIII. That without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottee/complainant towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainant towards delayed payment charges (DPC) or any taxes/statutory payments, etc.

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 based on these undisputed documents and written submission made by the respondent.

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

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.

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

F. Findings on the objection raised by the respondent.

F.I Objection regarding force majeure conditions.

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 and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the

possession clause of the agreement and observed that the respondent-developer proposes 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 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 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. So, due date for handing over of possession comes out to 21.02.2022

G. Findings on the reliefs sought by the complainant.

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

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

Section 18: - Return of amount and compensation

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

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

14. Further, clause 5.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

5. POSSESSION

*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 instalments 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.***

15. 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 complainant not being in default 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.
16. 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.

17. Admissibility of grace period: As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession 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. The authority calculated due date of possession from the date of environment clearance being later i.e., 21.08.2017 being later which comes out to be 21.08.2021. 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 21.02.2022.

18. 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 allottees 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:

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.

19. 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.
20. 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., 22.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
21. 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;"
22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/ promoters which is the same as is being granted to them 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 on 29.12.2017, the possession of the subject unit was to be delivered within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later. The due date of possession is calculated from the date of environment clearance i.e., 21.08.2017 being later. As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The due date of possession of the aforesaid project in which the subject unit is being allotted to the complainant was 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 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. As such the due date for handing over of possession comes out to be 21.02.2022. Further, a relief of 6 months will be given to the allottee that no interest shall be charged from the complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

24. The respondent has obtained the occupation certificate on 25.01.2023 and has offered the possession of the allotted unit on 23.03.2023. 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 29.12.2017 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 29.12.2017 to hand over the possession within the stipulated period.

25. 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 offered the possession of the unit in question to the complainant only on 23.03.2023, 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 actual handing over of possession or offer of possession plus two months whichever is earlier.

26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 21.02.2022 till 23.05.2023 i.e., expiry of 2 months from the date of offer of possession (23.03.2023) 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 skyful maintenance charges of Rs.28,956/- and not to charge the amount in lieu of maintenance charges for a period of 5 years.

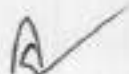
27. The respondent is seeking relief w.r.t to the refund of skyful maintenance charges of Rs.28,956/- and not to charge the amount in lieu of maintenance charges for a period of 5 years. The authority observes that clause 4(v) of the



policy, 2013 talks about maintenance of colony after completion of project which is reproduced as under:

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

28. 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.
29. As per the clarification regarding maintenance charges to be levied on affordable group housing projects being given by DTCP, Haryana vide clarification no. PF-27A/2024/3676 dated 31.01.2024, it is very clearly mentioned that the utility charges (which includes electricity bill, water bill, property tax waste collection charges or any repair inside the individual flat etc.) can be charged from the allottee as per consumptions.
30. Accordingly, 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 dated 31.01.2024. In case any amount charged extra from the complainant same shall be refunded.



G.III Direct the respondent to refund the charges which is not as per the buyer agreement.

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

H. Directions of the authority

32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest to the complainant against the paid-up amount i.e. Rs21,16,743/- at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 21.02.2022 till 23.05.2023 i.e., expiry of 2 months from the date of offer of possession (23.03.2023) as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the



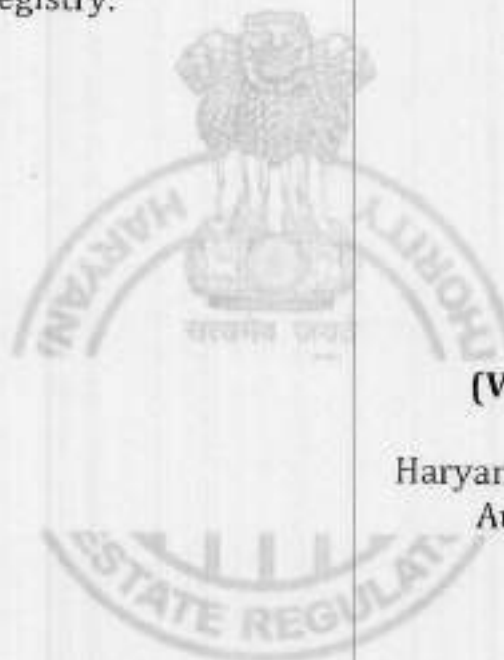
delayed possession charges as per section 2(za) of the Act. Further no interest shall be charged from complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

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

33. Complaint stands disposed of.

34. File be consigned to registry.

Date: 22.05.2025




(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM