

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

Complaint no. : 843 of 2024
Date of filing : 15.03.2024
Date of decision : 02.05.2025

Shweta Gupta

R/o: 580, Behind Moti Mandir, Orai,
Uttar Pradesh-285001

Complainant

Versus

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

Address: Unit no. 1309, 13th floor, Dr. Gopal Das
Bhawan, 28 Barakhamba Road, New Delhi-110001.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPERANCE:

Shri Akash Godhvani
Shri Venket Rao

Counsel for the complainant
Counsel for the respondent

ORDER

1. The present 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 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.	Name of licensee	Signature Global (India) Pvt. Ltd.
6.	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. Extesion granted vide no. 27 of 2023 dated 20.11.2023 Extension valid up to 31.01.2023
7.	Allotment letter	01.11.2017 [Page 28 of complaint]
8.	Unit no.	11-404, 4 th floor, Tower - 11 [Page 33 of the complaint]
9.	Unit admeasuring	Carpet area - 552.36 sq. ft. Balcony area - 79.65 sq. ft. [Page 33 of the complaint]



10.	Date of flat buyer's agreement	09.01.2018 [Page 31 of the complaint]
11.	Total basic cost	Rs. 22,49,267/- [Page 39 of complaint]
12.	Total amount paid by the complainants	Rs. 22,49,267/- [Page 6 of complaint and Page 203 of reply]
13.	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 42 of complaint]
14.	Date of approval of building plans	08.06.2017 [Page 33 of the complaint]
15.	Date of environment clearance	21.08.2017 [Page 33 of the complaint]

16.	Due date of delivery 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 + 6 months of grace period of Covid-19]
17.	Occupation certificate	25.01.2023 [Page 217 of reply]
18.	Offer of possession	28.03.2023 [Page 193 of reply]
19.	Possession certificate	29.10.2023 [Page 67 of complaint]
20.	Conveyance deed	26.06.2023 [Page 199 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - i. That in 2017, the respondent company 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. In pursuance of the representations made by the respondent, the complainant paid an initial amount of Rs. 1,12,463/- to the respondent. The respondent issued Allotment Letter for the unit bearing No. T11-404. Thereafter, the BBA was executed inter se parties on 09.01.2018. Against the demand notices raised by the respondent, the complainant has paid a total sum of Rs. 22,49,267/-.

- ii. 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 complainant for delay in construction of the unit and was never definite about the delivery of the possession. The complainant 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.
- iii. The respondent not only failed to adhere to the terms and conditions of Buyer's Agreement dated 09.01.2018 and Affordable Housing Policy 2013 but has also illegally extracted money from the complainant by stating false promises and statements.
- iv. That as per clause 6.1(i) of the Builder Buyer's Agreements, which was signed on 09.01.2018, the possession of the said unit was supposed to be delivered by 20.08.2021. It would be appreciated that the actual habitable possession was given to complainant on 29.10.2023.
- v. 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 said flat within 45 days of becoming

due. Whereas respondent has deliberately indulged in misstatement, prevarications and innuendos and has not paid a single penny on account of delayed compensation.

- vi. That the respondent has issued final demand notice wherein the respondent has made various unnecessary demands which are not as per the Agreement including the advance maintenance charges. Maintenance services are to be provided by the respondent as per section 3(3)(a)(iii) of the Act no. 8 of 1975 and Rule of 1976 and the facilities provided by the developer/respondent.
- vii. That as per section 11(4) of the Act, 2016, the promoter is liable to abide by the terms and agreement of the sale. As per section 18 of the Act, the respondent is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.
- viii. 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. Hence, the complainant is constrained to approach this hon'ble Authority for redressed of their grievance.

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 as per BBA on the entire amount paid by complainant with effect from the committed date of possession till the actual delivery of possession with proper habitable conditions.
 - ii. Direct the respondent to refund the Skyfull Charges.

- iii. Direct the respondent not to charge Skyfull maintenance charges for a period of 5 years.
 - iv. 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 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 09.01.2018 at recital "L".
 - ii. That in case performance of any of the obligation or undertaking mentioned in BBA is prevented due to force majeure conditions in that case respondent neither responsible nor liable for not performing any of the obligations or undertakings mentioned in BBA at clause 19.2.
 - iii. 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.

- 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 allotment in a timely manner and further subject to completion of formalities/documentation as prescribed by the respondent and not being in default of any clause of the agreement.
- v. That as per the 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/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory Authorities etc.
- vi. That prior to the expiry of said period the deadly and contagious Covid-19 pandemic had struck. The same had resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid-19 pandemic was an admitted force

majeure event which was beyond the power and control of the respondent.

- vii. That almost the entire world had struggled in its grapple with the Coronavirus menace. The Novel Coronavirus had been declared as a pandemic by World Health Organization. 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.
- viii. 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.
- ix. 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'.
- x. 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 26.05.2020 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).

- xi. 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".
- xii. 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.
- xiii. 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.

- xiv. 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.
- xv. 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.
- xvi. That the period of 293 days was consumed on account of circumstances beyond the power and control of the respondent owing to passing of orders by statutory authorities affecting the regular development of the real estate project. Since, the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of time already indicated hereinbefore, the said period ought to be excluded, while computing

the period availed by the Respondent for the purpose of raising construction and delivering possession.

- xvii. 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.
- xviii. 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.

- xix. 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 and as per the above mentioned clause the respondent is only liable maintain the common areas of the project free of cost for a period of five years from the date of grant of occupation certificate and not liable to provide the basic amenities free of cost for a period of five years from the date of grant of occupation certificate.

xx. That the respondent is not indulged in unfair trade practices rather the respondent remained committed to uploading the highest standards of professionalism and integrity in its business dealings as the respondent has provided the waiver to complainant, however the complainant did not whisper about the same which itself shows the conduct and malafide of the complainant. It is further submitted that the respondent always adheres to the provisions of the Act, 2016 and the Rules, 2017 and further the respondent never failed to adhere the terms and conditions of BBA dated 09.01.2018 and Affordable Housing Policy, 2013.

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

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.1 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-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 Possession and 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 09.01.2018, provides for handing over possession and the same is reproduced below:

"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."

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., 02.05.2025 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(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. 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 to the complainant on 28.03.2023 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. In the present case, the complainant had taken possession of the subject unit on 29.10.2023 as is evident from the Possession Certificate annexed on page 67 of the complaint. 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 skyful maintenance charges.

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

26. The above-mentioned reliefs sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
27. 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:

"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 allottees as per consumptions.
30. 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 is charged extra from the complainant, same may be adjusted towards future maintenance.
- G.IV Direct the respondent to refund the charges which are not as per the buyer's 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

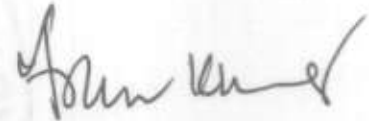
32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay 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.
33. The complaint and application, if any, stands disposed of.
34. File be consigned to registry.

Dated: 02.05.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM