

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

Date of decision: 20.05.2025

NAME OF THE BUILDER		M/S Forever Buildtech Private Limited	
PROJECT NAME		"The Roselia"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1860/2023	Kamlesh Yadav V/S M/s Forever Buildtech Private Limited	Sh. Sukhbir Yadav Advocate and Sh. Niraj Kumar Advocate
2.	CR/1957/2023	Anju and Yogesh Kumar V/S M/s Forever Buildtech Private Limited	Sh. Sukhbir Yadav Advocate and Sh. Dheeraj Kumar Advocate

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, "**The Roselia**" (Affordable Group Housing Colony) being developed by the same respondent/promoter i.e., M/s Forever Buildtech Private Limited. The terms and conditions of the booking application form, agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges along with interest and others.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	M/s Forever Buildtech Private Limited at "The Roselia", at Sectors 95-A, Gurugram.		
Project registered vide no. 05 of 2017 dated 20.06.2017 valid up to 17.05.2021			
Date of approval of Building Plans: - 09.01.2017 (Revised on 06.07.2018)		Date of Environment clearance: - 18.05.2017	
Occupation Certificate: - 14.05.2022			
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>			
<i>(Emphasis supplied).</i>			
<i>[Page no. 41 of complaint].</i>			

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Allotment letter And Date of execution of agreement to sell	Due date of possession	Total Consideration/Total Amount paid by the complainants in Rs.	Offer of possession and execution of conveyance deed
1.	CR/1860/2023 Kamlesh Yadav V/S M/s Forever Buildtech Private Limited DOF: 25.04.2023 RR 13.09.2023	E-907, Tower-E 9 th floor Area admeasuring 514.272 sq. ft. (super area) (Page no. 29 of the complaint)	AL:- 27.07.2018 [Page no. 27 of complaint] BBA 14.08.2018 [Page no. 27 of complaint]	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]	BSP:- 20,97,050/- (As per BBA at page no. 35 of the complaint) TSC: - 22,64,810/- AP: - 22,64,810/- (As per customer ledger dated 14.05.2022 at page no. 85 of the complaint)	OOP:- 14.05.2022 (Page 83 of the complaint) CD:- 29.09.2022 (Page 92 of the complaint)
2.	CR/1957/2023 Anju and Yogesh Kumar V/S M/s Forever Buildtech Private Limited. DOF: 25.04.2023 RR: 13.09.2023	B 203, Tower-B 2 nd floor Area admeasuring 514.272 sq. ft. (super area) (Page no. 23 of the complaint)	BBA: 19.04.2018 [Page no. 22 of complaint]	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]	20,97,050/- (As per BBA at page no. 29 of the complaint) AP: - 22,63,552/- (As alleged by the complainants at page 13 of complaint)	OOP:- 14.05.2022 (Page no. 74 of the complaint) Physical Possession letter 26.10.2022 (Page no. 76 of complaint)

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s
ATS	Agreement to sell
AL	Allotment Letter
OOP	Offer of possession
UHL	Unit Handover Letter
CD	Conveyance deed

Relief sought by the complainant:-

1. Direct the respondent to pay delayed possession interest from the due date of possession i.e., 09.01.2021 till 29.09.2022.
2. Direct the respondent to refund Rs.1,15,980/- charged illegally.
3. Direct the respondent to refrain the respondent to refrain from charging maintenance charge for 5 years from the date of handing over the possession as per affordable housing policy.

4. The aforesaid complaints were filed against the promoter on account of violation of the booking application form, agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of delayed possession charges along with interest and others.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1860/2023 titled as Kamlesh Yadav V/s M/s Forever Buildtech Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua seeking award of delayed possession charges along with interest and others.

A. Project and unit related details

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

CR/1860/2023 titled as Kamlesh Yadav V/s M/s Forever Buildtech Private Limited.

S. No.	Particulars	Details
1.	Name of the project	The Roselia, Sector 95-A, Gurugram, Haryana.
2.	Project area	8.034 Acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP License no. & validity status	13 of 2016 dated 26.09.2016 upto 30.10.2023
5.	Name of Licensee	Forever Buildtech Pvt. Ltd.
6.	RERA Registered / not registered	Registered 05 of 2017 dated 20.06.2017 Valid upto 17.05.2021
7.	Date of approval of building plans	09.01.2017 No document has been placed on record. Hence taken from the DTCP website.
8.	Date of Environment clearance	18.05.2017
9.	Unit no.	E-907, Tower-E 9 th floor (Page 29 of the complaint)
10.	Unit admeasuring	514.272 sq. ft. (Carpet area) 79.923 sq. Ft. (Balcony Area)
11.	Allotment Letter	27.07.2018 (Page no. 22 of the complaint)
12.	Date of execution of agreement to sell	14.08.2018 (Page no. 27 of the complaint)
13.	Possession clause	5. Possession 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

		<p>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."</p> <p>(Emphasis supplied). (Page no. 41 of the complaint)</p>
14.	Due date of possession	18.11.2021 [Note: - Calculated from date of approval of environment clearance being later i.e., 18.05.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]
15.	Basic sale consideration	Rs.20,97,050/- (Page 35 of the complaint)
	Total sale consideration	Rs.22,64,810/- (Payment plan on page no. 85 of complaint)
16.	Total amount paid by the complainants	Rs.22,64,810/- (As per customer ledger dated 14.05.2022 at page no. 85 of the complaint)
17.	Occupation certificate	06.05.2022 No document has been placed on record. Hence taken from the DTCP website.
18.	Offer of possession	14.05.2022 (Page no. 83 of the complaint)
19.	Conveyance deed	29.09.2022 (Page no. 92 of the complaint)

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
 - a. That in March 2018, the complainants being relied on the representation and assurances of the respondent, booked an apartment bearing no. 907, on 9th floor, type – B in Tower-E, in the project namely 'The Roselia', situated

- in Sector -95A, Gurugram, and submitted a pre-printed application no. 50499 dated 20.03.2018 and issued a cheque of Rs.1,04,852/-. The project was marketed & developed by the respondent, under the Affordable Group Housing Policy 2013 and they booked the flat under the installment linked payment plan for a total sale consideration of Rs20,97,050/- (payment plan is annexed on page 37 of the agreement to sell).
- b. That on 27.07.2018, respondent issued a demand cum allotment letter of the allotted unit of the complainant, and raised a demand of Rs.10,27,552/- That on 01.08.2018, the complainants paid Rs.3,00,000/- as part payment through part cheque no. 188952 dated 01.08.2018 and requested the respondent to execute the BBA/FBA. The respondent issued a payment receipt in favour of the complainants against the paid amount on 09.08.2018.
- c. That on 14.08.2018, a pre-printed, arbitrary, unilateral flat buyer's agreement/agreement to sell was executed between the parties. As per section 4.1 of the buyer's agreement, the total cost of the unit was Rs.20,97,050/- and as per clause no. 5 of the buyer's agreement, the respondent has to give the possession of the unit within 4 years from the date of approval of building plans or grant of environment clearance(commencement date) whichever is later. The building plans of the project were approved on 09.01.2017, therefore, the due date of possession was 09.01.2021. The payment schedule of the cost of the unit was divided into six equal installments over an interval of six months.
- d. That on 13.08.2018, complainant made a payment of Rs.7,27,552/- against the demand raised by the respondent partly in its allotment letter through RTGS transfer in the bank account of the respondent. On 19.11.2018, 03.05.2019 and 04.11.2019 the respondent raised the demand of

- Rs.2,85,111/-, Rs.2,85,038/- and Rs.2,83,101/- respectively as per buyer's agreement, the complainant has paid the same accordingly.
- e. That on 14.05.2022, respondent issued a letter of offer of possession to the complainants and stating that "It gives us immense pleasure to inform you that the occupation certificate for your unit bearing No. E-907, situated at tower-E, of floor-9, along with two wheeler parking the unit is ready for possession". The said offer of possession contains several illegal /unreasonable demands under different heads i.e., administration charges, meter connection, water connection, advance consumption charges, IFSD charges, and external electrification charges of Rs.91,294/-.
- f. That on 20.05.2022, the respondent through a maintenance agency "Skyfull Maintenance Services Pvt. Ltd." raised an invoice for maintenance of Rs.24,686/-. The respondent refused to hand over possession, with payment of these demands. Therefore, under the compelling circumstance, the complainant paid Rs.91,294/- and Rs.24,686/-.
- g. That as per the statement of account issued by the respondent dated 14.05.2022, the complainant has paid Rs.22,64,810/- i.e., more than 100% of the total sale consideration. The final cost of the flat is Rs.20,97,050/-. On 29.09.2022, the respondent executed conveyance deed in favour of the allottees/complainants and also the possession certificate w.r.t. the complainant unit was issued by the respondent company and the respondent has acknowledged in the said possession certificate that the respondent has received the entire sale consideration amount pursuant to full and final statement of accounts. As per above mentioned conveyance deed the total sale consideration for the unit is Rs.20,97,050/- and the respondent company has called more than 100% of the total sale consideration..

- h. That due to the acts of the above and the terms and conditions of the buyer's agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.
- i. That the cause of action for the present complaint arose in January 2021 when the respondent failed to handover the possession of the unit as per the buyer's agreement. The cause of action again arose on various occasions, including on: a) August 2021; b) September 2021; c) December 2021; d) January 2022; e) March 2022, and on many times till date, when the protests were lodged with the respondent party about its failure to deliver the fully developed project and the assurances were given by it that the delayed possession interest will be given. The cause of action is alive and continuing and will continue to subsist till this authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
- Direct the respondent party to pay delayed possession interest from the due date of possession i.e. 09.01.2021 till 29.09.2022.
 - Direct the respondent to refund Rs.1,15,980/- along with interest (Justification demand of Rs.91,294/- and 24,686/- are illegal).
 - To get an order in their favour by refraining the respondent party from charging maintenance charges for 5 years from the date of handing over the possession as per affordable housing policy.

D. Reply by the respondent

10. The respondent contested the complaint on the following grounds: -
- That pursuant to the application no. 50499 dated 20.03.2018 by the complainant for booking of flat under the Affordable Group Housing Policy

2013 notified by Government of Haryana vide Town and Country Planning Department notification dated 19.08.2013 as applicable at relevant point of time, the complainant was allotted a flat bearing no. E-907 having Carpet Area of 514.272 sq. ft. and balcony area 79.923 sq. ft. together with the two wheeler open parking site and the pro rata share in the common areas through draw of lots held on 24.07.2018.

- ii. That the instant case was of subsequent allottee given that the initial approval of building plan was obtained on 09.01.2017 while the Environment Clearance was obtained vide approval dated 18.05.2017. That subsequently the said building plan was revised and approved by the Chief Town Planner, Haryana-cum-Chairman & Building Plan Approval Committee on 06.07.2018. Further, the said revision was made in accordance with the direction of competent authority issued vide Memo No.Misc.-2157/7/16/2006-TCP dated 28.01.2013.
- iii. That subsequent to the allotment of the said flat the complainant entered into builder buyer agreement dated 14.08.2018, with the respondent for the delivery of possession of the said flat on the terms and conditions as contained therein. The total cost of the allotted flat was Rs.20,97,050/- excluding other charges such as stamp duty, registration charges, other expenses etc. and applicable GST and the payment towards the cost of the said flat was time link payment as stipulated under the Policy. Total cost of the said flat was escalation free, save and except increase on account of development charges payable to the Governmental Authority and/or any other charges which may be levied or imposed by the Governmental Authority from time to time, which the complainant had agreed to pay on demand by the respondent.

- iv. That the delivery of the possession of the said flat was agreed to be offered within 4 (four) years, from the approval of building plans or grant of environmental clearance, whichever is later. However the delivery of possession was subject to Force Majeure circumstances, receipt of occupancy certificate and Allotee(s) having timely completed with all its obligations.
- v. That the agreed possession period would have been applicable provided no disturbance/hindrance had been caused either due to Force Majeure circumstances or on account of intervention by statutory Authorities etc. That prior to the completion of the project, various force majeure circumstances (such as construction bans, Covid-19 pandemic, various lockdowns etc.) affected the regular development of the real estate project. The deadly and contagious Covid-19 pandemic had struck which have resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 Pandemic was an admitted force majeure event which was beyond the power and control of the respondent. In fact, almost the entire world had struggled to cope with the coronavirus menace. The Novel Coronavirus had been declared as a pandemic by World Health Organization. Following the declaration of the World Health Organization, the Ministry of Home Affairs, Government of India vide notification 40-3/2020-DM-I(A) dated 24.03.2020 under the Disaster Management Act, 2005, had imposed lockdown for whole of India for 21 days with effect from 25.03.2020 wherein all the commercial and private establishments was directed to be closed down including transport services besides others. Further, the lockdown was extended vide direction dated 17.05.2020 upto 31.05.2020.

- vi. That further Ministry of Finance vide Office Memorandum No.F-18/4/2020-PPD dated 13.05.2020 recognized that given the restriction placed on the goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 and the respective State and UT Government, it may not be possible for the parties to the contract to fulfil contractual obligations and permitted the parties to the contracting with the Government for all construction/works contracts, goods and services contracts and PPP contract to invoke Force Majeure Clause and thereby extended the contract by six months.
- vii. That this Authority vide order no.9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 extended the date of completion for all Real Estate Projects registered under the Act, 2016 where completion date, revised completion date or extended completion date was to expire on or after 25th of March, 2020 automatically by 6 months, due to outbreak of the COVID -19 (Corona Virus), which is calamity caused by nature and is adversely affecting regular development of real estate projects by invoking "force majeure" clause.
- viii. That even before the expiry of said extended period, it is very much in public domain and had also been widely reported that second wave of Covid-19 had also hit the country badly 'like a tsunami' and Haryana was no exception thereof. Thereafter, during the second wave of Covid-19 the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula by way of resolution in the meeting held on 2nd of August 2021 ordered for extension of three months from 01.04.2021 to 30.06.2021 due to second wave of Covid-19 as a force majeure event. This Authority was also pleased to treat the aforesaid period as zero period and compliance of various provisions of the Act, 2016 and Rules and Regulations framed thereunder would stand extended

without even there being a requirement of filing of formal application. It is submitted that particular circumstances in a state considered as Force Majeure by the similar authority under the same statute should also be considered as Force Majeure by another authority under same statute. That it would also be of relevance to mention that Haryana Government had imposed various lockdown for different periods even after January 2021 terming it as "Mahamari Alert/Surkshit Haryana (Epidemic Alert/Safe Haryana) resulting in virtual stoppage of all activity within the state of Haryana.

- ix. That disturbance due to lockdown in different phases of covid19 has been considered as Force Majeure even by the Ministry of Ministry of Environment, Forest And Climate Change, and issued a notification dated 18.01.2021. The Ministry of Environment, Forest And Climate Change examining the number of requests, as a result of lockdowns (total or partial), for extension of the validity of prior environmental clearances beyond the maximum period found that the concern is genuine keeping in view the fact that due to lockdowns (total or partial), continuation of activities in the field has been difficult. The Ministry has categorically admitted in the said notification dated 18.01.2021 that in view of the outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control, implementation of projects or activities in the field has been affected. This makes it clear that the Ministry too stated that the period from 01.04.2020 to 31.03.2021 was excluded, for the purpose of calculation of the period of validity of prior environmental clearances, granted under the provisions of this notification in view of the Covid-19 lockdown. In this manner, similar relaxation ought to be granted for the construction of the project too. That the agreement of sale notified

under the Rules, 2017 categorically excludes any delay due to "force majeure", Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project. That in addition to the aforesaid period, the following period also deserves to be excluded for the purpose of computation of period available to the respondent to deliver physical possession of the apartment to the complainant as permitted under the Rules, 2017.

- x. That the development of project of the respondent was also adversely affected due to various directions of Haryana State Pollution Control Board, Orders passed by Municipal Commissioner of Gurgaon, Environment Pollution (Prevention & Control) Authority for National Capital Region for varying period during the year 2017, 2018, 2019, 2020 and 2021.
- xi. National Green Tribunal vide order dated 09.11.2017, Haryana State Pollution Control Board, Panchkula had passed order dated 29.10.2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27.10.2018, Commissioner, Municipal Corporation, Gurugram vide order dated 11.10.2019 prohibited construction activity from 11.10.2019 to 31.12.2019, Again Environment Pollution (Prevention & Control) Authority, for the National Capital Region vide direction dated 01.11.2019 imposed complete ban on the construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida until morning of 05.11.2019, Hon'ble Supreme Court vide order dated 04.11.2019 in the W.P.(Civil) No.13029/1985 **M.C. Mehta vs Union of India & ors**; directed for stoppage of all the constructions work till further order. The Hon'ble Supreme Court recalled the ban on construction work only vide order dated 14.02.2020. Further, Commission for Air Quality Management (NCR and Adjoining Areas) vide order dated 16.11.2021

directed to stop the construction and demolition activities in NCR until 21.11.2021.

- xii. That in the above period of 151 days in addition to the period affected by Covid-19 (6+3= 9 months) mentioned hereinabove 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.
- xiii. That in a recent publication in mint dated 07.10.2022 wherein it has been published that a one-month ban on the construction activities would delay the project by 3-4 months on account of mobilization of the labour, machinery, resumption of supplies of various materials etc. Accordingly, the Authority may consider grant of benefit of extension to the respondent on account of time consumed in re-mobilization of the various construction activities.
- xiv. That the respondent after receipt of Occupancy Certificate from the Town & Country Planning Department Haryana, issued Offer of Possession vide letter dated 14.05.2022 requesting the Complainant to accept the possession and the conveyance Deed was executed on 29.09.2022. The revised building approval was received on 06.07.2018 and the offer of possession of the said flat was offered on 14.05.2022 which is within 4 years of the commencement date as per clause 5.1 of the BBA dated 14.08.2018 and as such there is no delay in possession of the said flat. In view of the above, the complaint deserves to be dismissed.

11. 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 made by the parties and written submissions filed by the complainant.

E. Jurisdiction of the authority

12. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

14. 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.

15. 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 agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.**
16. The agreement to sell entered into between the two sides on 14.08.2018 contains a clause 31 relating to dispute resolution between the parties. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.
17. Further, in *Aftab Singh and ors. vs. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause

in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. Further, while considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Objection regarding force majeure conditions:

18. The respondent-promoter pleaded that though the due date for completion of the project and offer of possession of the allotted unit was fixed as 18.05.2021 as per buyer's agreement dated 14.08.2018 but due to outbreak of Covid 19, there was complete lockdown during the period March 2020 to different periods. Even the Government of Haryana termed that as Mahamari alert/Surakshit Haryana resulting in slowdown of all the activities within the state even though the authority granted six months general extension with effect from 25.03.2020 to 24.09.2020 considering it as a force majeure event. That decision was taken pursuant to the advisory issued by the State Government as

well as The Government of India. Due to Covid 19, it took some time to mobilize the labour as well as the construction material. Despite all that the construction of the project was completed and its occupation certificate was received on 06.05.2022. So, the respondent-builder be allowed extension in offer of possession of the project. Though the request made in this regard is being opposed on behalf of the complainant, but a judicial notice of the fact can be taken that due to Covid 19, there was complete lockdown for a number of days resulting in the labour moving to their native places and the construction activities coming to a standstill. Even that fact was taken into consideration and the authority allowed extension of the ongoing projects for a period of six months.

19. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, the due date of handing over of possession comes out to be 18.05.2021 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders. Also, a relief of 6 months will be given to the complainant/allottee and no interest shall be charged from him for the delayed payments if any, during the Covid period i.e., from 01.03.2020 to 01.09.2020.

G. Findings on the relief sought by the complainant

G.1 Direct the respondent party to pay delayed possession interest from the due date of possession i.e. 09.01.2021 till 29.09.2022.

20. 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."

21. As per clause 5.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

5. POSSESSION

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."**

22. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat as per clause 5.1 of the buyer's agreement within a period of 4 years from the date of approval of building plans (09.01.2017) or grant of environment clearance, (18.05.2017), whichever is later. Therefore, the due date of possession comes out to be 18.05.2021.
23. **Admissibility of delay possession charges at prescribed rate of interest:** However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.
24. 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.

25. 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., 20.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
26. 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.
27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
28. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 agreement executed between the parties on 14.08.2018, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan (09.01.2017) or grant of environment clearance i.e. (18.05.2017) whichever is later. Therefore, the due date of handing over possession is calculated by the receipt of environment clearance dated 18.05.2017 which comes out to be 18.05.2021. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is

18.05.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date 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 far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 18.11.2021. Occupation certificate was granted by the concerned authority on 06.05.2022 and thereafter, the possession of the subject flat was offered to the complainant on 14.05.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 14.08.2018 to hand over the possession within the stipulated period.

29. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 06.05.2022. The respondent offered the possession of the unit in question to the complainant only on 14.05.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically 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 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.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e., 11.10 % p.a. w.e.f. 18.11.2021 till the expiry of 2 months from the date of offer of possession (14.05.2022) which comes out to be 14.07.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G.II Direct the respondent to refund Rs.1,15,980/- along with interest (Justification demand of Rs.91,294/- and 24,686/- are illegal).

31. The complainant submitted that the respondent company has offered the possession of the allotted unit on 14.05.2022 along with statement of account the said letter contains several illegal/unreasonable demands under different heads i.e., administration charges, meter connection, water connection, advance consumption charges, IFSD charges, and electrification charges of Rs.91,294/-, and on 20.05.2022, a maintenance agency i.e., "Skyfull Maintenance Services Private Limited" raised an invoice for maintenance of Rs.24,687/-. The respondent has demanded certain amount on account of charges i.e., administrative charges, advance electricity consumption charges, IFSD charges, external electrification charges and the interest on delayed payment were cover under the head of "other charges and the same is mentioned below: -

S. No.	Particulars	Basic Amt.	Tax Amount	Due Amount	Received/ adjustment	Balance
1.	Administration Charges	15000	2700	17700	0	17700
2.	Meter connection charges	3700	666	4366	0	4365
3.	Water connection charges	549	99	648	0	648
4.	Advance consumption charges	4500	0	4500	0	4500
5.	IFSD charges	15000	0	15000	0	15000

6.	External Electrification charges	41593	7487	49080	0	49080
	Sub Total	80342	10952	91294	0	91294

32. The Authority vide order dated 09.12.2022, passed in case bearing no. **4147 of 2021 titled as Vineet Choubey V/s Pareena Infrastructure Private Limited and also the complaint bearing no. 4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Limited**, has already decided the above said issues. The respondent is directed to charge the same relying on the above said orders.

G.III To get an order in their favour by refraining the respondent party from charging maintenance charges for 5 years from the date of handing over the possession as per affordable housing policy.

33. 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.
34. Accordingly, the respondent is directed to charge the maintenance/use /utility charges from the complainants-allottees as per consumptions basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

H. Directions of the authority

35. 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):
- The respondent is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 18.11.2021 till 14.07.2022 i.e., expiry of 2 months from the date of offer of possession (14.05.2022). 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 rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. The benefit of grace period on account of Covid-19, shall be applicable to both the parties in the manner detailed herein above.

- iii. The respondent 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.

36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein date of allotment letter, date of execution of buyer's agreement and details of paid-up amount is mentioned in each of the complaints.

37. Complaint as well as applications, if any, stand disposed off accordingly.

38. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025