

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

Complaint no. : 3716of 2021
Date of filing complaint : 28.09.2021
First date of hearing : 26.10.2021
Date of decision : 12.08.2022

1. Mrs. Ravisha Agarwal 2. Mr. Saurabh Agarwal Both R/O: - Flat no. 108, 2 nd floor, M.M. Residency, Near Taneja Hospital, Krishna Colony, Gurugram.	Complainants
Versus	
M/s Signature Global Homes Pvt. Ltd. Regd. Office at: - 1309, 13 th floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-110001.	Respondent

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Complainant in person with Shri Gaurav Madan	Advocate for the complainants
None	Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act)



read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under 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:

Sr. No.	Particulars	Details
1.	Name of the project	Signature Global ParK - II, Sector - 36, Gurugram
2.	Unit No.	Old - C-9, Top floor (With roof rights) New - L-12, Second Floor, 1439.79 sq. ft.
3.	RERA Registration	45/2020 dated 09.11.2020 and 43/2019 dated 01.08.2019
4.	DTCP License no.	39 of 2019 dated 01.03.2019
5.	Date of Booking	09.08.2019 (Page 66 of complaint)



6.	Date of builder buyer agreement	10.02.2020 (As per page 73 of complaint)
7.	Possession clause – 4.1	The developer shall offer possession of the said independent floor to the allottee(s) <u>within a period of 24 months with a grace period of additional 3 months (24+3 months) from the date of allotment</u> applicable taxes would be paid extra at each stage.
8.	Date of allotment	28.12.2019 (Page 69 of complaint)
9.	Due date of possession	28.03.2022 (Calculated from the date of allotment i.e., 28.12.2019)
10.	Total Sale Consideration	Rs. 74,25,891/- (As per statement of accounts provided on page 121 of complaint)
11.	Amount Paid	Rs. 16,23,272/- (As alleged by complainants on page 26 of complaint) (<u>Around 22.96% of the total amount due</u>)
12.	Occupation certificate	N.A.

13.	Offer of possession	Not offered
14.	Grace period utilization	Allowed

B. Facts of the complaint

3. That the complainants believing the representations of the respondent of timely completion and standardized construction of the project earlier booked an unit no. C-9, TF and later changed from C-9, TF to L-12/SF measuring super area of 1439.79 square feet for a basic sale of consideration of Rs. 70,88,937/- in project "Signature Global Park-II", Sector - 36, Gurugram, Haryana.
4. That the respondent had issued an allotment letter dated 26.11.2019, in favour of the complainants, whereby allotted the said floor and later executed the builder buyer agreement on 10.02.2020.
5. That, for buying the said unit, they also availed the facility of loan from HDFC Bank Ltd., entered /endorsed in the record of respondent.
6. The respondent raised various demands for payments from time to time, which were duly paid by the complainants as per the schedule as they have opted for the payment linked plan.
7. That, thereafter, the complainants wrote many emails to the respondent, whereby they sought ledger regarding the payment made by them and the banker. According to the ledger shared by the respondent, the complainants have paid an amount of Rs.16,23,272/- to the respondent.



8. That, there is no possibility that the respondent may complete the construction of the project soon in future, meaning to say that it had no intention to construct the project and even after this fact has been extorting money from the complainants luring them that their dream home would be delivered to them within the timeline as agreed.
9. That the respondent further issued a notice dated 27.07.2021, through emails to the complainants with subject cancel their booking within 15 days, in case, they did not make the payment to the respondent.
10. That the complainants have suffered immense mental, physical, and financial agony at the hands of the respondent company. It is further submitted that the complainants requested the respondent company several times for the redressal of their grievances, but it has never responded to their requests to deliver the possession of the unit and hence, this complaint.

C. Relief sought by the complainants.

11. The complainants have sought following relief:
 - (i) Pass an order to direct the respondent to handover the possession of the said flat to the complainants.
 - (ii) Pass an order to direct the respondent to pay the interest at the prescribed rate of 18% per annum on the amount of Rs.16,23,272/- which has been paid by the complainants to the respondent against the sale consideration.

- (iii) Direct the respondent to pay legal expenses of Rs. 55,000/- incurred by the complainants for filing and pursuing the instant case.

D. Reply by the respondent.

The respondent builder by way of written reply submitted as under:

12. It is submitted that on the basis of independent enquires the complainant booked a unit in its project detailed above on 09.08.2019 for a sum of Rs. 7425891/- and the allottee started making various payments after execution of buyer's agreement.
13. Thereafter on 10.02.2020 the complainants executed buyer's agreement for the unit. Both the parties being signatory to a duly documented buyer's agreement executed by the complainants out of their own free will and without any undue influence or coercion are bound by the terms and conditions so agreed between them.
14. That complainants were requested several times to pay outstanding amount which they intentionally failed to pay. They paid only a sum of Rs. 16,23,727/- and did not pay the remaining amount.
15. It is submitted that the complainants agreed under the payment plan signed by them, to pay the instalments on time. They failed to make payment of the respective instalments as per agreed payment plan despite repeated reminders.



16. That the complainants themselves are defaulters under section 19 (6), 19 (7) and 19 (10) of the Real Estate (Regulation and Development) Act, 2016 and not in compliance of these sections. The complainants cannot seek any relief under the provision of the Act of 2016 or rules frame thereunder.
17. That as per the buyer's agreement entered between the parties the due date for possession for the allotted unit comes to 28.03.2022. However, without waiting for that time, the complainants filed the complaint on 09.09.2021. so, the same is premature and is liable to be dismissed without any further enquiry.
18. That the complainants have no cause of action against the respondent and so the complaint is liable to be dismissed.
19. 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 submissions made by the parties.

E. Jurisdiction of the authority

The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. 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



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

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

Section 11(4)(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.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the

adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant.

Reliefs sought by the complainants: The complainants have sought following relief(s):

- (i) Pass an order to direct the respondent to handover the possession of the said flat to the complainants.
- (ii) Pass an order to direct the respondent to pay the interest at the prescribed rate of 18% per annum on the amount of Rs.16,23,272/- which has been paid by the complainants to the respondent against the sale consideration.
- (iii) Direct the respondent to pay legal expenses of Rs. 55,000/- incurred by the complainant for filing and pursuing the instant case.

Note:- The aforesaid reliefs no. 1 to 2 are being taken together.

F-I Delay Possession Charges

20. In the present complaint, the complainants intend to continue with the project and are 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. Clause 4.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

" The developer shall offer possession of the said independent floor to the allottee(s) within a period of 24 months with a grace period of additional 3 months (24+3 months) from the date of allotment applicable taxes would be paid extra at each stage".

22. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to innumerable terms and conditions, force majeure circumstances and innumerable terms and conditions. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoters is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.



23. **Admissibility of grace period:** In the present case, the promoter is seeking a grace period of 3 months after the expiry of the said committed period for making offer of possession of the said unit. The respondent is claiming this grace period of 3 months for making offer of possession of the said unit. Though there is no material evidence on record that the respondent-promoter had completed the said project within this span of 24 months and had started even the process obtaining the occupation certificate. But, in the present case, grace period is allowed being unqualified.
24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on amount already paid by them. 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. 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.

25. 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.

26. 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., 12.08.2022 is 7.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.80%.

27. 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—
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 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;"

28. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.80%

by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

29. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 4.1 of the buyer's agreement executed between the parties on 10.02.2020, the possession of the subject unit was to be delivered within 24 months from the date of execution of agreement plus 3 months from the date of allotment i.e., 28.12.2019. Therefore, the due date of handing over possession is 28.03.2022. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 28.03.2022. There is no material evidence on record that the respondents-builder had started the process of obtaining occupation certificate. 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 complainants as per the terms and conditions of the flat buyer's agreement dated 10.02.2020 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement to hand over the possession within the stipulated period.
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 delay possession at prescribed rate of interest i.e., 9.80% p.a. w.e.f. 28.03.2022 till the physical offer of possession plus 2 months as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

Note: The rate of interest has been inadvertently mentioned as 9.50% instead of 9.80% due to typographical error in the proceeding dated 12.08.2022.

F.II Litigation Cost.

31. The complainants are claiming compensation in the above-mentioned relief. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules

G. 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 at the prescribed rate of 9.80% p.a. for every month of delay from the due date of possession i.e., 28.03.2022 till the offer of possession of the subject unit after obtaining occupation certificate from the competent authority + 2 months to the complainants as per section 19(10) of the Act.
- ii. The arrears of such interest accrued from 28.03.2022 till offer of possession shall be paid by the promoter to the



allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.

- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z a) of the Act.
- v. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

33. Complaint stands disposed of.

34. File be consigned to registry.

V.L-3
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.08.2022

