

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

Complaint no. : 5252 of 2022
Date of decision : 20.07.2023

Devroop Guha R/o - J-11, Top Floor, Street no. 3, Laxmi Nagar, Delhi - 110092	Complainant
Versus	
Signature Global India Pvt. Ltd., R/o: - Unit no. 1309, 13 th Floor, Dr. Gopal Das Bhawan, 28-Barakhamba Road, New Delhi - 110001	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Complainant in person	Complainant
Mr. Mintu Kumar A.R.	Respondent

ORDER

1. The present complaint dated 29.07.2022 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

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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 allottee 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:

Sr. No.	Particulars	Details
1.	Name of the project	The Millennia,37-D Gurugram, Haryana.
2.	DTCP License No.	04 of 2017 dated 02.02.2017 valid upto 01.02.2022
3.	Rera Registered/Not Registered	3 of 2017 dated 20.06.2017 (Page 14 of complaint)
4.	Unit no.	7-405, tower 7 (Page no. 14 of complaint)
5.	Unit admeasuring	Carpet Area- 552.360 sq.ft. Balcony area-79.653 sq. ft (Page no. 14 of complaint)
6.	Date of execution of agreement for sale	26.11.2017 (Page no. 13 of complaint)

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7.	Date of building plan	08.06.2017 (Page no. 14 of complaint)
8.	Date of environment clearance	21.08.2017 (Page no. 14 of complaint)
9.	Possession clause	5. Possession of the plot 5.1 Within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later
10.	Due date of delivery of possession	21.02.2022 (21.08.2021 + 6 months) (Calculated from the date of environment clearance, being later + 6 months of grace period of COVID)
11.	Total sale consideration	Rs 22,49,266/- (As per page no. 10 of complaint)
12.	Total amount paid by the complainant	Rs.19,68,106/- (As alleged by the complainant on page 10 of complaint)
13.	Occupation certificate	25.01.2023 (As per DTCP website)
14.	Offer of possession	28.03.2023 (Vide proceeding dated 20.07.2023)

B. Facts of the complaint

3. The respondent has launched the project "The Millennia". The complainant was interested in the project which led him to execute the agreement 26-Nov-2017. As per agreement the possession for the said flat was due on 20-Aug-2021. Till date he has paid an amount of Rs.19,68,106/- out of Rs 22,49,266/-.
4. The respondent was never tried to speed up the construction work for the said tower and took approximately 4 (four) years to do the minimal work
5. Till June 2021 only plinth / foundation level construction work happened for the tower (for the said unit). The respondent keeps changing the delivery timeline first from Mar'22 to July'22 and now Nov'22.
6. A notice to respondent has been sent as per clause 27 of builder buyer agreement (BBA), to honor the delay penalty clause 6.2(ii). To which respondent replied by stating the penalty would be settled at the time of possession on individual basis but the same has not been filed.
7. Hence, this complaint.

C. Relief Sought

8. This Authority may be pleased to direct the respondent as follows:
 - a) Direct the respondent to give physical possession of the respective plot along with prescribed rate of interest.

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D. Reply by the respondent

9. That the complainant was allotted a flat bearing no.7-405 in having carpet area of 552.36 sq.ft. and balcony area 79.653 sq. ft through draw of lots held on 27.10.2017 under the Affordable Group Housing Policy 2013 notified by Government of Haryana as applicable at relevant point of time. That subsequent to the allotment of the said flat he entered into builder buyer agreement dated 26.11.2017 with the respondent for the delivery of possession of the said flat on the terms and conditions as contained therein. That the total cost of the allotted flat was Rs.22,49,266.50/- excluding the other charges such as stamp duty, registration charges, other expenses etc and applicable GST, the payment was time link payment as stipulated by the Policy.
10. 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 Allottee(s) having timely completed with all its obligations.
11. That the outbreak of Covid-19 has been declared as a pandemic by the World Health Organization Advisories/ directions including lockdown/ restrictions have been issued by the Govt. of India as also State Govt. The said pandemic has had serious consequences and was so deadly and contagious that compete lockdown was imposed several times not only

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- in Haryana but in India and rest of the world also. That even though lockdown was withdrawn various restrictions continued to be imposed.
12. That it is also matter of record that Gurugram falls within the area of NCR and different competent authorities such as the Hon'ble Supreme Court, National Green Tribunal (NGT), Municipal Corporation Gurugram (MCG) etc. had directed ban on construction activities in Delhi NCR due to rise in pollution level mainly in festive season/ winter season for various periods thereby severely affecting the regular development of the real estate projects.
 13. That the Hon'ble Supreme Court banned all construction and demolition in Delhi-National Capital Region (NCR) in the leading Writ Petition(s)(Civil) No(s). 13029/1985 on November 04, 2019 and the same was lifted completely in February 2020
 14. That it is respectfully submitted the Hon'ble Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM (Admn) dated 26.05.20 public date of completion 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 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.

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15. That the Commissioner of Municipal Corporation Gurugram, Vide order dated 11.10.2019 issued direction to issue challan for construction activities & lodging of FIR from 11th October to 31 December 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.
16. That the pandemic and bans on construction activity by competent authorities are force majeure events which are beyond the control of the parties to prevent the same or its consequences and as such in view of clause 19.1(f) of the BBA, the respondent is entitled to exclusion of period where the constructions of the project was affected due to orders/directions of Statutory Authority/Court Orders/Government Orders etc.
17. That in the light of aforesaid facts and legal provisions/ notifications/ judicial pronouncements, it is submitted that the respondent is entitled for grant of exclusion of the period of delay caused due to 2nd wave of Covid-19 Pandemic and construction ban imposed by competent authorities being decisions affecting the regular development of the real estate project for a period of at least Nine (9) months in addition to six months extension of Covid-19.
18. It is further submitted that the occupancy certificate of the project has been received and the respondent is in process to issue offer of possession to the allottees including the complainant.

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19. Copies of all the relevant documents have been duly 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 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

20. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

The 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)(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

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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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

21. 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. I I Objection regarding delay due to force majeure circumstances.

22. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date

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of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 08.06.2017 and environment clearance is 21.08.2017 as taken from the complaint. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 21.08.2021. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 21.08.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **21.02.2022.**

23. Further in the judgement of the Hon'ble Supreme Court of India in the case of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Civil Appeal no. 6745-6749 of 2021), it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time

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*stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that **if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed***

G. Findings on the relief sought by the complainant:

(i) Direct the respondent to give physical possession of the respective plot along with prescribed rate of interest.

G.I Direct the respondent to give physical possession of the respective plot along with prescribed rate of interest.

24. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the provisions of 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, —

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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."

25. The apartment buyer's agreement was executed between the parties. As per clause 3.1 of the agreement, the possession was to be handed over within a period of four years from the date of approval of building plan or

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from the date of grant of environment clearance, whichever is later with a grace period of 6 months (COVID-19). The clause 5.1 of the buyer's agreement is reproduced below:

5.1 Possession

Subject to Force Majeure circumstances, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of agreement and not being in default under any part hereof, including but not limited to the timely payment of instalments as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee 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

(Emphasis supplied)

26. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the

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promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their 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 allottees is left with no option but to sign on the dotted lines.

27. **Admissibility of grace period:** As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession was to be handed over 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 with a grace period of 6 months (COVID-19). Accordingly, the authority in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic allows the grace period of 6 months to the promoter at this stage.

28. **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]

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(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.

The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

29. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that **if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed***

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30. 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., 20.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
31. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

32. 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 within a period of four years from the date of approval of building plan or from the date of grant of environment clearance,

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whichever is later with a grace period of 6 months (COVID-19). As such the due date of handing over of possession comes out to be 21.02.2022. However, no interest shall be charged from the complainant in case of delayed payment during this 6 months COVID period from 01.03.2020 to 01.09.2020.

33. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 25.01.2023. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 21.02.2022 till the expiry of 2 months from the date of offer of possession (28.03.2023) plus two months (i.e., 28.05.2023).

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34. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 21.02.2022 till offer of possession plus two months (i.e., 28.05.2023), at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the Authority

35. Hence, the authority hereby passes this order and issue 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., 10.75% 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 i.e., upto 28.05.2023 as per proviso to section 18(1) of the Act read with rule 15 of the rules.

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- ii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
 - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% 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(za) of the Act.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
36. Complaint stands disposed of.
37. File be consigned to registry.

HARERA
GURUGRAM

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(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.07.2023