

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

Complaint no. : 1506 of 2022
Date of filing complaint : 11.04.2022
Date of decision : 30.05.2023

Ameena Bano R/O: - House No. 10, Type-3, BSNL Colony, Near Lions Public School. Sector-10A, Gurugram, Haryana 122002.	Complainant
Versus	
1. M/s Sternal Buildcon Private Limited Regd. Office at: - 12 th Floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi- 110001. 2. M/s Signature Global Private Limited Regd. Office at: - Ground Floor, Tower A, Signature Towers, South City-I, Sector-30, Gurugram, Haryana 122001..	Respondents

CORAM:

Shri Vijay Kumar Goyal	Member
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Shri Ashok Sangwan	Member
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APPEARANCE:

Sh. Ashish Budhiraja	Advocate for the complainant
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Sh. Mintu Kumar	AR of the Company
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ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"The Serenas", Sector- 36, Sohna, Gurugram
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	14 of 2016 dated 26.09.2016
	Validity status	25.09.2021
	Name of licensee	Pardeep and Sandeep
	Licensed area	9.78 acre

5	Unit no.	10-104, Tower-10 [As per page no. 32 of complaint]
6	Unit measuring	Carpet Area- 644.92 sq. ft. Balcony Area- 104.29 sq.ft. [As per page no. 32 of complaint]
7	Date of execution of Floor buyer's agreement	20.09.2017 (Page no. 30 of complaint)
8	Building plan	09.01.2017 (As per DTCP)
9	Environment clearance	18.05.2017
10	Possession clause	5. Possession 5.1 4 years from the date of approval of building plan or grant of environment clearances, whichever is later.
11	Due date of possession	18.11.2021 (grace period is allowed) (Calculated from the date of environment clearance being later)
12	Total sale consideration	Rs. 23,71,712/- (As per page no. 38 of reply)
13	Total amount paid by the complainant	Rs. 26,02,433/- (As alleged by the complainant)
14	Occupation certificate dated	25.03.2022

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Offer of possession

27.03.2022

B. Facts of the complaint

The complainant has submitted as under: -

3. That the complainant submitted an application bearing memo No. 001088 dated 15.03.2017 to the respondents for allotment of a residential flat in Affordable Group Housing Colony in Sector 36, Sohna Road, Sohna, Gurugram and paid a sum of Rs. 1,19,000/- to the respondents.
4. That pursuant to the application submitted by the complainant, the complainant was allotted a flat bearing No. 10-104, First Floor, Block/Tower 10, having carpet area of 644.92 Sq. Ft. and balcony area 104.29 Sq. Ft. together with the two-wheeler open parking site and the pro rata share in common area.
5. That the complainant has paid all the demands raised by the respondents on time and has been an ideal allottee to the respondents. In total an amount of Rs. 26,02,433/- has been paid by the complainant to the respondents. It is pertinent to mention here that the status of the construction of the said unit is still under process and no update is being provided by the respondents despite several requests. There has already been a delay by the respondents. It is imperative to submit herein that the respondents do not allow the complainant to visit the said unit and keep the unit locked. However, when the complainant made several requests to the respondents to allow her to inspect the said unit, the

complainant was shocked to see the state of affairs at the said unit. The said unit is nowhere near completion. The unit is not habitable. The floor is cracked, all the wiring is lost and hanging in the open, the woodwork is incomplete, the paint and POP is fading/falling. Latest photographs of the said unit.

6. That on 20.09.2017 the respondents and the complainant executed and entered into an agreement to sell with respect to the said unit. The respondents on their own accord changed the pricing of the said unit from Rs. 23,21,712/- to Rs. 25,97,030 and have extracted Rs. 26,02,433/- from the innocent complainant. The respondents have wrongly taken more than Rs. 3,00,000/- from the complainant and are further demanding illegal and arbitrary sums from the complainant.
7. That the respondents have taken Rs. 26,02,433/- from the complainant and have not reflected the same in their final statement of account. A demand pre-intimation letter dated 12.06.2020 was issued by the respondents to the complainant detailing the amounts paid by the complainant and the total dues of the complainant. Copy of letter dated 12.06.2020 is Annexure - D. to receiving the letter dated 12.06.2020, the complainant paid an amount of Rs. 2,20,182 through cheque bearing No. 123158 dated 27.07.2020 drawn on State Bank of India, Gurgaon Mini Sect. and Rs. 1,05,060/- through a cheque bearing No. 123159 dated 18.11.2020 drawn on State Bank of India, Gurgaon Mini Sect.
8. That the complainant has paid more than 100% cost of the said unit but the respondents had stopped all communication and intimations regarding the construction of the said unit. It is only after the

complainant told the respondents that she will approach RERA to get possession of her unit, the respondents issued an offer of possession alongwith final statement of account. The complainant was shocked and in dismay to see the illegal demands raised by the respondents. The respondents have further demand more than Rs. 1,00,000/- from the complainant under false heads.

C. Relief sought by the complainant:

- (i) Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the handing over the possession, on the paid amount.

9. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents.

The respondents have contested the complaint on the following grounds:

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10. The covenants incorporated in the flat buyer agreement are cumulatively considered in their entirety to determine the rights and obligations of the parties. The proposed period of delivery of physical possession as specified in flat buyer agreement was subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having complied with all obligations of allotment in a timely manner and further subject to completion of

formalities/documentation as prescribed by the respondent and not being in default of any clause of the flat buyer's agreement. complainant has intentionally mentioned the possession period in a distorted manner. It is wrong and denied that flat was to be handed over on or before 18.05.21 as projected/represented. Possession was offered within said period provided no disturbance/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory Authorities etc.

11. That prior to the expiry of said period the deadly and contagious Covid-19 pandemic had struck. The same had resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent.
12. That in order to prevent the outbreak and spread of the novel coronavirus the Haryana Epidemic Disease, COVID-19 Regulations, 2020, had been brought into operation. The Department of Expenditure, Procurement Policy Division, Ministry of Finance had issued an Office Memorandum on 19th of February 2020, in relation to the Government's Manual for Procurement of Goods, 2017', which serves as a guideline for procurement by the Government. The Office Memorandum effectively stated that the covid-19 outbreak could be covered by a force majeure clause on the basis that it was a 'natural calamity'.
13. That thereafter, during the second wave of Covid also the Honourable Haryana Real Estate Regulatory Authority, Panchkula had issued order/direction dated 2nd of August 2021 (Annexure R4) wherein it was

specifically observed that taking into reckoning the second wave of covid 19, it was evident that the same had adversely hit all sections of the society and the same had been a case of natural calamity. It had been mentioned in direction/order dated 2nd of August 2021 that in accordance with provisions of Section 37 of the Real Estate Regulation and Development Act, 2016, the Honourable Haryana Real Estate Regulatory Authority, Panchkula had decided to grant extension of 3 months from 1st of April 2021 to 30th of June 2021 considering the same as a force majeure event.

14. That the respondent had also suffered devastatingly because of outbreak and spread of Covid-19. The concerned statutory authorities had earlier imposed a blanket ban on raising of construction. Advisories had been issued by the statutory authorities to the developers to ensure that no retrenchment of staff/labour was done and further the staff/labour were adequately fed and provided for. Subsequently, the said embargo had been lifted to a limited extent. However, in the interregnum, large scale migration of labour had occurred which had also been extensively reported in printed and electronic media. Availability of raw material remained a major cause of concern. Infact, the aforesaid Force Majeure events had completely affected the ability of the respondent to continue with the construction. Despite diligent efforts, the respondent had been unable to carry on construction/ development/implementation of its projects including the project in question during the aforesaid period which in any case should not be considered for determining the period for delivery of physical possession of the apartment of the complainant.

Moreover, it is pertinent to mention that the agreement of sale notified under the Haryana Real Estate (Regulation and Development) Rules, 2017 categorically excludes any delay due to "force majeure", Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. That in addition to the aforesaid period of 9 months, the following period also deserves to be excluded for the purpose of computation of period.

15. All other averments made in the complaint were denied in toto.
16. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

17. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

18. 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.

F. II Subject matter jurisdiction

19. 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 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.

20. 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.

G. Findings on the relief sought by the complainants.

21. Relief sought by the complainant: The complainant sought following relief(s):
- Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the handing over the possession, on the paid amount.

G.I Delay Possession Charges

22. The complainant booked a unit bearing No. 10-104, Tower-10 admeasuring carpet area 644.92 sq.ft and balcony area 104.29 sq.ft. the complainant paid till date Rs. 26,02,433/- against the basic sale consideration of Rs. 23,71,712/--. A flat buyer agreement w.r.t the allotted unit was executed between the parties on 20.09.2017. As per clause 5 of the buyers agreement, the due date for the completion of the project and offer of possession of the allotted unit was fixed as 18.05.2021 which is calculated from the date of environment clearances being later.
23. 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."

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

"5.1 4 years from the date of approval of building plan or grant of environment clearances, whichever is later. .

25. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause

of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

26. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

27. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the due date of approval of building plan is 09.01.2017 and environment clearance is 18.05.2017. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 18.05.2021. 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 complainants 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 such the due date for handing over of possession comes out to 18.11.2021.
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 does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

29. 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.
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., 30.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
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. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.

H. Directions of the authority

33. 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 respondents are directed to pay interest on the paid-up amount at the prescribed rate of 10.70 % p.a. for every month of delay from the due date of possession i.e., 18.11.2021 till the date of offer of possession i.e., 27.03.2022 plus two months i.e., 27.05.2022 to the complainant.
- ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.

- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondents/promoters which is the same rate of interest which the promoters 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 6 months grace period due to Covid-19 shall also apply to the allottee in case of any default in making payment.
- iv. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.

34. The complaint stand disposed off.

35. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.05.2023