

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

Complaint no. :	1063 of 2023
First date of hearing:	29.08.2023
Date of pronouncement:	26.10.2023

Shiv Dayal Arora Kiran Arora Both RR/o - 14/444, Near Pushpanjali X- Ray, Sikka Colony, Sonapat - 131001	<b>Complainants</b>
Versus	
Signature Global Homes Pvt. Ltd., R/o: - Unit no. 1309, 13 <sup>th</sup> Floor, Dr. Gopal Das Bhawan, 28-Barakhamba Road, Connaught Place, New Delhi - 110001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant in person	Complainants
Shri Neeraj Kumar	Respondent

**ORDER**

1. The present complaint dated 29.03.2023 has been filed by the complainant/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 allottee as per the agreement for sale executed inter se.

**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- IV, Village Hariyahara, Sector - 36, Gurugram, Haryana
2.	Nature of the project	Affordable Plotted Colony - Independent Floor
3.	DTCP License No.	117 of 2019 dated 12.09.2019 valid upto 11.09.2024
4.	Rera Registered/Not Registered	29 of 2020 dated 08.10.2020 (Page 28 of complaint)
5.	Unit no.	4 -A81- 1F (Page no. 22 of complaint)
6.	Unit admeasuring	Carpet Area- 643.04 sq.ft. Balcony area-147.04 sq. ft (Page no. 28 of complaint)
7.	Date of execution of agreement	28.09.2021 (Page no. 18 of complaint)

8.	Possession clause	<p><b>7. Possession of the plot</b></p> <p>7.1 The Promoter assures to handover possession of the Residential Independent Floor along with parking (applicable only if parking fee/charge has been paid) as per agreed terms and conditions by <b>30<sup>th</sup> July, 2022</b> unless there is delay due to "force majeure", Court orders, Government policy/guidelines, decisions, etc. affecting the regular development of the real estate project. If the completion of the project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Residential Independent Floor.</p>
9.	Due date of delivery of possession	<p><b>30.07.2022 (No grace period is allowed)</b></p> <p>(The inclusion of grace period of 6 months in lieu of covid 19 is inadvertently mentioned in proceeding dated 12.10.2023)</p>
10.	Total sale consideration	<p>Rs. 42,69,631/-</p> <p>(As per Builder Buyer Agreement dated 28.09.2021 at Page no. 29 of the complaint ; Also cleared during proceedings dated 21.09.2023)</p>
11.	Total amount paid by the complainants	<p>Rs. 43,62,524/-</p>

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12.	Occupation certificate	07.11.2022 (as per copy supplied by the counsel for the respondent during proceeding dated 12.10.2023)
13.	Offer of possession	01.12.2022 (Page no. 80 of the complaint)

**Facts of the complaint**

3. That the complainants purchased a unit no. 4-A81-1 admeasuring carpet area 643.04 sq.ft. & balcony area 147.04 sq.ft.in the project namely the Signature Global Park IV, Sector 36, Sohna, Distt. Gurugram, Haryana for a total sale consideration of Rs. 42,69,631/- against which they paid the Rs. 43,62,524/- .
4. That the buyers agreement was executed on 28.09.2021. As per clause no. 7.1 of the buyer's agreement, the respondent agreed to give possession of the residential independent floor along with parking by 30.07.2022.
5. That the complainants paid all the demands when raised by the respondent as it is evident from the statement of account. Further he submitted that the respondent has raised various illegal, arbitrary demands.
6. That the respondent has delayed in handing over the possession of the said unit because of which the complainant has faced a lot of hardships mentally, emotionally and financially. Hence, the complainants are approaching your lordship with great expectations.

**C. Relief sought by the complainants:**

7. The complainants have sought following relief(s):
  - a) Direct the respondent to pay delay possession charges along with prescribed rate of interest.

8. On the date of hearing, the authority explained to the respondent/promoter 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 respondent**

9. That in pursuance to the application dated 23.06.2021 for allotment of flat in the project Signature Global Park IV by the complainants, the allotment of the flat bearing no.4-A81-1F having carpet area of 643.04 sq.ft and balcony area of 147.04 sq.ft on 1st floor was allotted.
10. That subsequent to the allotment buyer's agreement was executed on 28.09.2021 by and between the parties wherein the delivery of possession of flat was subject to the terms and conditions as contained in the BBA. The aforesaid allotment was subject to payment schedule which was time linked and independent of status of the constructions.
11. That in terms of clause 1.2 the total price of the said unit based on carpet area was Rs.40,68,891/- and Taxes payable was for Rs.2,00,740/- and the allottee was required to make payment towards the cost of the said flat in 16 months time from the date of submission of application.
12. That the allottee defaulted in making timely payment and despite several reminders sent by the respondent the complainant failed to adhere to the time lines of payment and as such the interest for delayed payment has been levied. On account of delayed payment by the allottee a sum of Rs.42,603/- has accrued as interest out of which Rs.28,688/- has been waived by the respondent and as a result a sum of Rs.14,369/- is outstanding till date.
13. That the respondent has offered the possession of the flat vide offer of possession letter dated 01.12.2022, however, the allottee has failed to

take possession of the said unit and also failed to clear pending payment to the respondent.

14. That in terms of clause 7.1 of the buyer's agreement, the delivery of the possession of the said unit was agreed to be offered by 30<sup>th</sup> July, 2022. However, the delivery of possession was subject to force majeure circumstances, court orders, Government policy/guidelines, decisions etc affecting the regular development of the real estate project.
15. That it is respectfully submitted that the building plan was approved vide project license no.117 of 2019 dated 12.09.2019 and 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.
16. That 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. The Hon'ble Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM

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(Admn) dated 26.05.2020 extended the 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 25<sup>th</sup> 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. That 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 2<sup>nd</sup> 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. The Hon'ble Authority observed that the second wave of Covid-19 has adversely hit all sections of the society and it being a case of natural calamity, the Authority pursuant to Section-37 of the Real Estate Regulations & Development Act, 2016, decides to grant three months general extension from 01.04.2021 to 30.06.2021, considering it as a force majeure event. The Hon'ble Authority was also pleased to treat the aforesaid period as zero period and compliance of various provisions of Real Estate Regulation and Development Act and Rules and Regulations framed thereunder would stand extended without even there being a requirement of filing of formal application. The Hon'ble Authority was further pleased to direct that no fee/penalty shall be paid/payable by the developer on account of delay in filing/submission of requisite information/documents pertaining to the registered projects during the said three months period. It is submitted that particular circumstances in a state considered as

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force majeure by the similar authority under the same statute should also be considered as Force Majeure by another authority under same statute.

17. That it is respectfully submitted that the respondent after receipt of occupancy certificate from the Town & Country Planning Department Haryana, issued offer of possession vide letter dated 01.12.2022 requesting the complainant to accept the possession and execute the necessary documents for the execution of the conveyance deed of the given flat, however, the complainant has failed to take possession of the flat and has failed to clear the dues against the said unit. The complainant has failed to pay a sum of Rs.65,122/- towards other charges while another sum of Rs.49,778/- is payable towards the maintenance charges and another sum of Rs.14,369/- is payable towards the interest for late payment.
18. That the complainant has filed the complaint, after concealing material and true facts with sole aim to mislead the Authority and to harass the defendant, therefore the complainant is not entitled to get any relief from the Authority as the occupancy certificate had been issued by the concerned department and the delay in taking possession and registration process was done only by the complainant himself hence it 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 submission 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 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*

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*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 Objection regarding delay due to force majeure circumstances.**

22. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the 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) but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 28.09.2021 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.07.2022. The events such as various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time. Further, the grace period on account of Covid-19 is not allowed as the buyer's agreement was executed between the

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parties after the Covid-19. The Authority has allowed six month covid relaxation from 01.03.2020 to 01.09.2020 only but the above agreement is executed much after above covid relaxation period & hence no benefits of same can be extended to the respondent. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainant:**

- i. **Direct the respondent to pay delay possession charges along with prescribed rate of interest.**
23. 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, —*

*.....*  
*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. The apartment buyer's agreement was executed between the parties. As per clause 7.1 of the agreement, the possession was to be handed over possession of the residential independent floor along with parking

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(applicable only if parking fee/charges has been paid) as per agreed terms and conditions by 30.01.2023. The clause 7.1 of the buyer's agreement is reproduced below:

*"7.1 Schedule for possession of the said residential independent floor-The promoter agrees and understands that timely delivery of possession of the residential independent floor along with parking (applicable only if parking fee/charges has been paid) to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017 is the essence of the Agreement. The promoter assures to hand over possession of the residential independent floor along with parking (applicable only if parking fee/charges has been paid) as per agreed terms and conditions by 30<sup>th</sup> July 2022 unless there is delay due to "forcemajeure", court orders, government policy/guidelines, decisions etc affecting the regular development of the real estate project. If, the completion of the project is delayed due to the above conditions, then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the residential independent floor. (Emphasis supplied)"*

25. The Authority has gone through the possession clause and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of buyer's agreement, commencement of construction, approval of building plan etc. This is a welcome step, the Authority appreciates such firm commitment by the promoter regarding handing over of possession.
26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest

for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

27. 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., 26.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
28. 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. 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

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29. On consideration of the documents available on record and submissions made by both the parties 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 7.1 of the said agreement executed between the parties on 28.09.2021, the possession of the subject apartment was to be delivered by 30.07.2022. In the present complaint, the respondent has failed to handover possession of the subject unit within the stipulated time period. The occupation certificate was obtained on 07.11.2022 and the offer of possession was made on 01.12.2022. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
30. 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 07.11.2022. 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., 30.07.2022 till the expiry of 2 months from the date of offer of possession (01.12.2022) plus two months (i.e., 01.02.2023).

31. 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., 30.07.2022 till offer of possession plus two months (i.e., 01.02.2023), 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**

32. 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 complainants to the respondent from the due date of possession 30.07.2022 till offer of possession i.e., 01.12.2022 plus two months i.e., up to 01.02.2023.
- ii. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and thereafter the complainants are directed to pay

outstanding dues, if any, within next 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 30 days and if no dues remain outstanding, the possession shall be handed over within four weeks from date of this order.

- 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 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.
  - v. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
33. Complaint stands disposed of.
34. File be consigned to registry.

**HARERA**  
**GURUGRAM**

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 26.10.2023**