

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

Complaint no.: 7514 of 2022
Date of filing complaint: 13.12.2022
Date of decision: 21.12.2023

1. Poonam Rawat
2. Bharat Singh Rawat

Both RR/o: 137, Nihal Colony, Gurugram, Haryana

Complainants

Versus

M/s Signature Builders Pvt. Ltd.

Regd. Office at: - 1301, A, B 13 floor, tower-A,
Signature Tower, South City 1, Gurugram.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Pushpinder (Advocate)

Complainants

Sh. Neeraj Kumar (Advocate)

Respondent

ORDER

1. The present complaint 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 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, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Signature Solera 2, Sector - 107, Gurugram, Haryana"
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	4 of 2017 dated 20.06.2017 (Page 16 of complaint)
4.	DTPC License no.	25 of 2016 dated 29.11.2016
	Validity status	30.06.2024
5	Unit no.	A6-007 (Page no. 10 of complaint)
6	Unit measuring	Carpet Area- 577.946 sq.ft. Balcony Area- 82.570 sq. ft.
7	Date of execution of builder buyer's agreement	29.11.2018 (Page no. 17 of complaint)
10	Possession clause	5. Possession <i>5.1 The developer shall offer possession of the said flat to the allottee(s) within a period of 4(four) years from the date of approval of building plan or grant of environment clearances, whichever is later..... (Emphasis supplied).</i>
11	Building plan	07.06.2017(taken from another case CR/6412/2022 decided on 26.10.2023 of similar project)

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12	Environment clearance	20.09.2017 (taken from another case CR/6412/2022 decided on 26.10.2023 of similar project) Note: Inadvertently mentioned 07.06.2017 in proceeding dated 26.10.2023
11	Due date of possession	20.03.2022 (Note: - Calculated from date of approval of environment clearance being later i.e., 20.09.2017 as per policy, of 2013, which comes out to be 20.09.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
12	Total sale consideration	Rs.23,53,069/- (as per BBA page 27 of complaint)
13	Total amount paid by the complainant	Rs.25,41,311/- (as per customer ledger page 59 of complaint)
14	Cancellation notice	03.07.2021 (page 60 of complaint)
15	Offer of possession	14.05.2022 (confirmed by the counsel of respondent during proceeding dated 21.12.2023)
16	Occupation certificate	06.05.2022 (taken from another case CR/6412/2022 decided on 26.10.2023 of similar tower and project)

B. Facts of the complaint

3. The complainants have submitted as under: -

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- I. That the respondent approached the complainants in 2018 with an offer to buy a flat in their project, which was going to launch by the name of "Solera 2", Sector 107, village Dharampur, District Gurugram. The complainants relying on the representations of the respondent and believing them to be true agreed to book the residential flat in the project and booked a residential flat bearing unit no. A6-007 Type 2 BHK T1, ground Floor, admeasuring 577.946 sq. ft. carpet area along with balcony area of 82.570 sq. ft. for a basic sale consideration of Rs.23,53,069/-. The complainants paid Rs.1,17,653/- on 22.08.2018 as booking amount and filed an application for allotment.
- II. That the said flat was allotted to the complainants and a flat buyer's agreement was executed on 29.11.2018 between the parties for the subject unit for a sale consideration of Rs.23,53,069/- and has paid Rs.25,41,311/- as per the demands raised by respondent.
- III. That on the date agreed for the delivery of possession of said flat, the complainants approached the respondent and its offices inquiring the status of delivery of possession. However, the respondent failed to deliver the physical possession of the said flat.
- IV. Thereafter, in the month of July 2021 complainants approached the officials of the respondent inquiring the status and the date of delivery of the flat. However, the respondent unreasonably demanded additional payment exceeding the amount mentioned in the flat buyer's agreement. Furthermore, the respondent sent a cancellation notice via email dated 03.07.2021, despite the complainants having already paid more than the total sale consideration of the flat.
- V. That the complainants took a home-loan for the smooth payment of the demands raised by the respondent which was subjected to the timely

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construction of the project, whereas the respondent made delay in the construction and in response the bank made several delays in dispersing the amount but the respondent has levied delayed payment penalty for its own deficiency.

- VI. That the present project is bound by the affordable housing policy, 2013 which obligates the respondent to deliver the flat within 4 years from the date of receiving the environmental clearance or the consent to establish whichever is later. However, the respondent failed to complete and deliver the flat within stipulated period of time.
- VII. That the cause of action accrued in favour of complainants and against the respondent in 2018 when the complainants booked the said flat and it further arose when respondent failed to deliver the said flat on the agreed date.

C. Relief sought by the complainants:

- (i) Direct the respondent to deliver the actual possession of the said unit.
 - (ii) Direct the respondent to pay delay possession charges along with interest and handover the possession of the unit.
 - (iii) Direct the respondent to withdraw the unreasonable demands
 - (iv) To set aside the cancellation notice dated 03.07.2021
4. 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 respondent.

5. The respondent has contested the complaint on the following grounds: -
- I. That the complainants were allotted a flat bearing no. A6-007 in block/tower A6 admeasuring 577.946 sq. ft. carpet area on ground

floor with the two-wheeler open parking site and pro rata share in the common areas through draw held on 15.10.2018 under the affordable group housing policy, 2013.

- II. That subsequent to the allotment of the said flat the complainants entered into buyers' agreement for the delivery of possession of the said flat on the terms and conditions as contained therein.
- III. That the total sale consideration of the allotted flat was Rs.23,53,069/- excluding 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.
- IV. That the total cost of the said flat was escalation free, save and except increase on account of development charges payable to the governmental authority or any other charges which may be levied or imposed by the governmental authority from time to time, which the complainants agreed to pay on demand.
- V. That the delivery of the possession of the said flat was agreed to be delivered within 4 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. So, the agreed possession period would have been applicable provided when no disturbance/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory authorities etc.
- VI. That prior to the completion of the project, various force majeure circumstances (such as construction bans, Covid-19 pandemic, various

lockdowns etc) affected the regular development of the real estate project which was beyond the power and control of the respondent.

VII. That after receipt of occupancy certificate from the Town & Country Planning Department Haryana, the respondent issued offer of possession vide letter dated 14.05.2022 to the complainants to accept the possession and execute the necessary documents for the execution of the conveyance deed of the said flat. However, the complainants did not turn up for execution of the various documents to enable the peaceful possession of the flat. Furthermore, a reminder letter dated 12.10.2022 and 12.06.2023 was sent to the complainants requesting to accept the possession of the flat and pay the outstanding amount towards the delay interest of Rs.92,948/- and holding charges amounting to Rs.21,567/- but the complainant refused to take the physical possession of the flat.

6. All other averments made in the complaint were denied in toto.
7. 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

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate

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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

10. 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.

11. 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 objection raised by the respondent.

F.I Objection regarding force majeure conditions:

12. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due

to outbreak of Covid-19 pandemic which further led to shortage of labour and other court orders. 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 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 07.06.2017 and date of environment clearance is 20.09.2017. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 20.09.2021. *As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/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 complainants is 20.09.2021 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 **20.03.2022.**

G. Findings on the relief sought by the complainants.

G.I To set aside cancellation notice.

13. In present case the complainants were allotted a unit bearing no. A6-007, block/tower A6 admeasuring carpet area of 577.946 sq. ft. and balcony area 82.570 sq. ft. and the buyer's agreement was executed between the parties on 29.11.2018 for a basic sale consideration of Rs.23,53,069/- against which the complainants paid a sum of Rs.25,41,311/- to the respondent. A cancelation notice dated 03.07.2021 was sent by the respondent to pay the

outstanding dues for the allotted unit. On consideration of documents on record and submissions made by both the parties, the authority is of the view that the respondent has not made any publication in the newspaper with regard to cancellation of the subject unit as per the section 5(iii)(i) of affordable housing policy, 2013. The respondent failed to comply with the provisions of the affordable housing policy, 2013 and has sent an offer of possession dated 14.05.2022 to the complainants to take the possession of the said unit after obtaining occupation certificate dated 06.05.2022 from the competent authority. Accordingly, cancellation notice dated 03.07.2021 is set aside by the own act of the respondent which clearly means that a new correspondence was started between the parties. Therefore, the said cancellation notice dated 03.07.2021 is hereby not valid and the authority set aside the same.

G.II Delay Possession Charges.

14. In the present complainant the complainants intend 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."

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

"5.1 within 60 days from the date of issuance of occupancy certificate, the Developer shall offer the possession of the said flat to the Allottee(s). Subject to force majeure

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circumstances, receipt of occupancy certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by developer in terms of the agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the payment plan, stamp duty and registration charges, the developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later."

16. 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 complainants 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 allottees that even a single default by the allottees 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 date for handing over possession loses its meaning.
17. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottees are protected candidly. The buyer's 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/allottees in case of delay in possession of the unit.

18. **Admissibility of grace period:** As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession 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. The authority calculated due date of possession from the date of environment clearance being later i.e., 20.09.2017 being later which comes out to be 20.09.2021 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 and the due date comes out to be 20.03.2022
19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottees 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.

20. 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.
21. 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., 21.12.2023 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
22. 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;"*

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/ promoters

which is the same as is being granted to them in case of delayed possession charges.

24. 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 on 29.11.2018, the possession of the subject unit was to be delivered within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later. The due date of possession is calculated from the date of environment clearance i.e., 20.09.2017 being later. 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 due date of possession of the aforesaid project in which the subject unit is being allotted to the complainants was 20.09.2021 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 be 20.03.2022. Further, a relief of 6 months will be given to the allottees that no interest shall be charged from the complainant-allottees for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
25. The respondent has obtained the occupation certificate on 06.05.2022. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement

dated 29.11.2018 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 29.11.2018 to hand over the possession within the stipulated period.

26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 06.05.2022. The respondent offered the possession of the unit in question to the complainants only on 14.05.2022. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainants 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. 20.03.2022 till the date of offer of possession (14.05.2022) plus two months i.e., 14.07.2022. The complainants are further directed to take possession of the allotted unit after clearing all the dues.
27. 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 charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 20.03.2022 till

the date of offer of possession (14.05.2022) plus two months i.e., 14.07.2022; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

H. Directions of the authority

28. 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 to the complainants against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 20.03.2022 till 14.07.2022 i.e., expiry of 2 months from the date of offer of possession (14.05.2022) as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within a period of 15 days. The complainant(s) are also directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, and the respondent is directed to handover physical possession of the unit to the complainants within a period of 30 days from the date of this order.
- 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., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the

delayed possession charges as per section 2(za) of the Act. The benefit of grace period on account of Covid-19, shall be applicable to both the parties in the manner detailed herein above.


- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. Also, the holding charges shall not be charged by the promoter at any point of time as per Law settled by Hon'ble Supreme Court in Civil Appeal no. 3864-3889/2020 dated 14.12.2020

29. The complaints stand disposed of.

30. File be consigned to Registry.

Dated:21.12.2023




(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM