

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

Complaint no.:	4700 of 2022 & 6 others
Date of decision:	01.12.2023

Name of the Builder		Signature Global Homes Private Limited	
Project Name		Signature Global Park-II	
S.n	Complaint No.	Complaint title	Attendance
1.	CR/4700/2022	Sonali Kapoor Pruthi V/S Signature Global Homes Private Limited	Mr. Sunil Kumar Mr. Niraj Kumar
2.	CR/4715/2022	Shubham Tandon and Sachin Agarwal V/S Signature Global Homes Private Limited	Mr. Sunil Kumar Mr. Niraj Kumar
3.	CR/4716/2022	Sachin Chandra V/S Signature Global Homes Private Limited	Mr. Sunil Kumar Mr. Niraj Kumar
4.	CR/4699/2022	Akshit Lamba V/S Signature Global Homes Private Limited	Mr. Sunil Kumar Mr. Niraj Kumar
5.	CR/4694/2022	Kamal Kishore V/S Signature Global Homes Private Limited	Mr. Sunil Kumar Mr. Niraj Kumar
6.	CR/4692/2022	Indu and Shivender Nageen V/S Signature Global Homes Private Limited	Mr. Sunil Kumar Mr. Niraj Kumar
7.	CR/4696/2022	Nupur V/s Signature Global Homes Private Limited	Mr. Sunil Kumar Mr. Niraj Kumar

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Sh. Sunil Kumar(Advocate)	Complainants
Sh. Mintu Kumar(A.R.)	Respondent

ORDER

1. This order shall dispose of all the 7 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with

rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Signature Global Park-II being developed by the same respondent/promoter i.e., Signature Global Homes Private Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges and other reliefs.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: Signature Global Park-II, Village Dhunela, Sector-36, Gurugram
Possession clause: Clause 4.1 The developer shall offer possession of the said independent floor to the allottee within a period within 24 months with an additional grace period of 3 months (24+3) from the date of allotment.
Note: 1. Grace period- 6 months of grace period on account of COVID-19, in terms of HARERA notification dated 26.05.2020 allowing grace period from 01.03.2020 to 30.09.2020. 2. Due date of handing over of possession- As per clause 4.1 of buyer's agreement, the due date of handing over of possession to be calculated within a period within 24 months with an additional grace period of 3 months (24+3) from the date of

allotment. Therefore, due date of handing over of possession is to be calculated while including 6 months of grace period (COVID)

3. License no. - 39 of 2019 dated 01.03.2019 valid up to 29.02.2024

4. Occupation certificate- It has been obtained from competent authority i.e., DTCP on 22.11.2022

Sr. no	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasurir (Carpet area)	Date of allotment	Due date of possession and offer of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/4700/2022 titled as Sonali Kapoor Pruthi V/S Signature Global Private Limited DOF-18.07.2022	Reply received on 11.11.2022	P-22, Fourth floor admeasurir g Carpet Area- 756.60 sq.ft. Super area- 1210.735 sq.ft. (Page 28 of complaint)	25.10.2019 (As per page no. 20 of complaint) (There were two allotment letters on record and through court proceeding 17.11.2023, the complainant stated that above mentioned date is to be considered a valid one as the same is with respect to subject unit)	25.07.2022 28.02.2023 (page 1 of written submission on behalf of respondent)	TSC: Rs.66,05,724/- AP: Rs.58,70,818 (As per page no. 65 and 66 of the complaint)	1. Possession 2. DPC 3. Cost u/s 12,13 of the Act

2.	CR/4715/2022 titled as Shubham Tandon and Sachin Agarwal V/S Signature Global Homes Private Limited DOF-18.07.2022	Reply received on 11.11.2022	P-18- third floor admeasuring Carpet Area- 756.60 sq.ft. Super area- 1210.735 sq.ft (Page no. 32 of complaint and page 4 of BBA)	27.02.2020 (As per page no. 14 of complaint)	27.11.2022 28.02.2023 (page 1 of written submission on behalf of respondent)	TSC: Rs 62,29,790/- AP: Rs. 50,41,871/- (As per page no. 22 of complaint - customer ledger dated 17.09.2021)	1. Possession 2. DPC 3. Cost u/s 12,13 of the Act
3.	CR/4716/2022 titled as Sachin Chandra V/s Signature Global Homes Private Limited DOF-19.07.2022	Reply received on 11.11.2022	P-22- third floor, admeasuring Carpet Area- 756.60 sq.ft. Super area- 1210.735 sq.ft (Page no. 25 of complaint)	15.11.2019 (As per page no. 60 of complaint)	15.08.2022 28.02.2023 (page 1 of written submission on behalf of respondent)	TSC - Rs 62,87,905/- AP: Rs.53,05,242/- (As per page no. 58 of complaint - customer ledger dated 19.05.2022)	1.Possession 2. DPC 3. Cost u/s 12,13 of the Act
4.	CR/4699/2022 titled as Akshit Lamba V/S Signature Global Homes Private Limited DOF-19.07.2022	Reply received on 11.11.2022	P-20, Fourth floor admeasuring Carpet Area- 756.60 sq.ft. Super area- 1210.735 sq.ft (As per page no. 30 of complaint)	29.01.2020 (As per page no. 19 of complaint)	29.10.2022 28.02.2023 (page 1 of written submission on behalf of respondent)	TSC: Rs.65,47,609/- AP: Rs.58,12,315/- (As per page 23 and 24 of complaint-customer ledger dated 16.06.2022)	1.Possession 2. DPC 3. Cost u/s 12,13 of the Act

5.	CR/4694/2022 titled as Kamal Kishore V/S Signature Global Homes Private Limited DOF-19.07.2022	Reply received on 11.11.2022	P-23-4 th floor admeasuring Carpet Area-756.60 sq.ft. Super area-1210.735 sq.ft. (As per page no. 33 of complaint)	27.08.2019 (As per page no. 23 of complaint)	27.05.2022 28.02.2023 (page 1 of written submission on behalf of respondent)	TSC: Rs.66,05,724/- AP: Rs.62,75,440/- (Page 24 of Complaint-customer ledger dated 19.05.2022)	1.Possession 2. DPC 3. Cost u/s 12,13 of the Act
6.	CR/4692/2022 titled as Indu and Shivender Nageen V/S Signature Global Homes Private Limited DOF-19.07.2022	Reply received on 11.11.2022	P-23 admeasuring Carpet Area-756.60 sq.ft. Super area-1210.735 sq.ft. (As per page no. 29 of complaint)	30.08.2019 (As per page no. 67 of complaint)	30.05.2022	TSC: Rs.62,87,905/- AP: Rs.57,09,242/- (As per page no. 63 and 64 of the Complaint-customer ledger dated 18.05.2022)	1.Possession 2. DPC 3. Cost u/s 12,13 of the Act
7.	CR/4696/2022 titled as Nupur V/s Signature Global Homes Private Limited DOF-20.07.2022	Reply received on 11.11.2022	P8, 4 th floor admeasuring Carpet Area-756.60 sq.ft. Super area-1210.735 sq.ft. (Page 22 of complaint)	02.11.2019 (As per page no. 14 of complaint)	02.08.2022 28.02.2023 (page 1 of written submission on behalf of respondent)	TSC: Rs.66,05,724/- AP: Rs.56,94,687/- (As per page no. 14 and 15 of the complaint)	1.Possession 2. DPC 3. Cost u/s 12,13 of the Act

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

- Abbreviations Full form**
 DOF- Date of filing of complaint
 TSC- Total Sale consideration
 AP- Amount paid by the allottee(s)
 DPC- Delayed possession charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit/floor for seeking award of possession, delayed possession charges and cost u/s 12,13 of the Act.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR /4700/2022 titled as Sonali Kapoor Pruthi V/S Signature Global Homes Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua possession, delay possession charges and cost u/s 12,13 of the Act.
- A. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/4700/2022 titled as Sonali Kapoor Pruthi V/S Signature Global Homes Private Limited

Sr. No.	Particulars	Details
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1.	Name of the project	Signature Global Park-II Village Dhunela, Gurugram, Haryana.
2.	RERA Registered	Registered 43 of 2019 dated 01.08.2019
3.	DTCP License No.	39 of 2019 dated 01.03.2019
4.	Allotment letter	25.10.2019 (Page 20 of complaint)
5.	Unit/floor no.	P-22- fourth floor (Page no. 28 of complaint)
6.	Unit/floor admeasuring	Carpet Area- 756.60 sq.ft. Super area-1210.735 sq.ft (Page no. 28 of complaint)
7.	Date of execution of agreement for sale	03.01.2020 (On page no. 24 of complaint)
7.	Possession clause	4. Possession 4.1 24 months with a grace period of additional 3 months from the date of allotment
8.	Due date of delivery of possession	25.07.2022 (Calculated from the date of allotment letter + 3 months of grace period + 6 months COVID grace period)
9.	Total sale consideration	Rs 66,05,724/- (As per page no. 65 of complaint)

10.	Total amount paid by the complainant	Rs. 58,70,818/- (As per page 65 of complaint)
11.	occupation certificate	22.11.2022
12.	Offer of possession	28.02.2023 (page 1 of written submission on behalf of respondent)

B. Facts of the complaint

- a) That the complainant had applied for allotment of an independent residential floor having a super build up area of 1210.73 sq. ft. containing carpet area of 756.60 Sq. Ft., On fourth floor, block p, built upon a plot No. P22 admeasuring 130 sq. mtr. vide an application for booking dated 14.08.2019 in the project of the respondent M/s Signature global Homes Private Limited. That as per the application the total consideration to be paid for the independent floor/unit was Rs. 66,05,724/-. That the floor/unit buyer agreement was executed between the parties on 03.01.2020 for the above said allotted unit/floor. As per this agreement the respondent was under obligation to hand over the possession of the property by 24 months from the date of allotment i.e. 25.10.2019, i.e. 2 years from the date of allotment as the same is as per the clause no. 4.1 of independent floor buyers agreement on page No. 14 of that agreement. The possession was required to be given till August 2021.

- b) That the complainant were surprised to know about the decrease in carpet area of the apartment approximately by 20 Sq. Ft. to 28 Sq. Ft. To find out the actual variance decrease in size of carpet area and proposed/ allotted carped area shall be outcome by the Commission's report which shall be requested to the Hon'ble Authority Gurugram to kindly depute/appoint and Instruct the local commission or Which the Hon'ble Authority deem fit to protect the right of the home seekers as the Act, Real Estate Regulatory Authority (Rules and Regulations), 2016 is enacted for the purpose to meet and keep the interest of home buyers safe and secure. As almost 80% amount was already collected by the respondent. The total consideration of the floor was **66,05,724/- including tax** and the complainant has paid **58,70,818/-** as and when demanded by the respondent.
- c) Therefore, the complainant has filed the present complaint before this Hon'ble Authority for compensate the loss by way of decrease in carpet Area after making such inquiry by depute or Appoint the Commission along with professional who admeasuring the carpet area and possession of floor along with delay possession interest. As there is grave deficiency of service on the respondent's part so the complainant also wants compensation from the respondent so after the judgment of this Hon'ble authority the complaint must be transferred before Hon'ble Adjudicating officer for compensation.

C. Relief sought by the complainants:

8. The complainant has sought following relief(s):

- i. Direct the respondent to provide legal and valid possession (including all the amenities as committed in the brochure.) of unit/floor.
- ii. Direct the respondent to pay monthly interest on deposited principal amount for delayed period.
- iii. Direct the respondent to compensate and impose a reasonable cost for default in Section 13, Section 12, layout plan and sanctioned plan change without taking intimation / permission from the innocent buyers, as the kitchen itself decrease in size on an approx. 11 sq. ft.
- iv. Seeking appoint / depute the commission along with professional's who admeasuring the actual deficiency in carpet area, which has been reduced by the respondent, and demand the compensation of the loss in favour of complainant.
- v. Direct the respondent to pay litigation cost of Rs.1,00,000/- (rupees one lakh) each to the respective complainant.

9. 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

10. The respondent has contested the complaint on the following grounds.

- a. That in terms of clause 16 of the agreement, the respondent shall confirm the final carpet area after the construction of the allotted building is

complete and the occupancy certificate is granted. The said clause stipulates that the total cost payable for the carpet area shall be recalculated upon confirmation by the respondent. Hence, the apprehension of the complainant that carpet area has been reduced up to 28 Sq. Ft. is premature. Besides the agreement envisages such a situation and provides for the suitable mechanism for dealing with the same and as such the complaint is premature and deserves to be dismissed on this ground alone.

- b. Further, it is admitted by the complainant that only 90% of the consideration amount has been paid and an amount of Rs.7,34,906/- is retained by the complainant. It is respectfully submitted that the Hon'ble Authority does not have jurisdiction to adjudicate the compensation payable on account of alleged reduced carpet area in view of the provisions of Section 71 of the Real Estate (Regulations and Development) Act, 2016 which empower the adjudicating officer duly appointed under the provisions for adjudicating such compensation. In view of the same the complaint deserves dismissal out rightly.
- c. Possession was agreed to offer within 24 months with a grace period of additional 3 months {24+3} months) from the date of allotment subject to force majeure vide Para 5.1 of the agreement. The delivery of possession of the flat was subject to the various conditions and stipulations as contained in the agreement and as such it is wrong and denied that flat was to be handed over till November 2021 (inclusive of grace period as projected/represented.

- d. The proposed period of delivery of physical possession 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 agreement.
- e. That further Ministry of Finance vide Office Memorandum No.F-18/4/2020-PPD dated 13.05.2020 recognized that given the restriction placed on the goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 and the respective State and UT Government, it may not be possible for the parties to the contract to fulfil contractual obligations and permitted the parties to the contracting with the Government for all construction/works contracts, goods and services contracts and PPP contract to invoke force majeure clause and thereby extended the contract by six months.
- f. That it is respectfully submitted the Hon'ble Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 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 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.

- g. That the respondent had also suffered devastatingly because of blanket ban on raising of construction, advisories etc. 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 are done and further to ensure that 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. In fact, 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 to the complainant.
- h. That 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. It is pertinent to mention here that

every phase of lockdown is not confined to the declared period only rather it also brings another 3-4 months (minimum period) delay in mobilization of construction activity at site once suspended because of certain reasons such as lack of human resources, availability of material etc. It is pertinent to mention here that every phase of lockdown is not confined to the declared period only rather it also brings another 2 months (minimum period) delay in mobilization of construction activity at site once suspended because of certain reasons such as lack of human resources, availability of material etc.

- i. That it is precisely to provide for occurrence of such unforeseen eventualities that it had been provided in clause of the agreement that the period provided for delivery of physical possession would be subject to occurrence of force majeure events. Moreover, the occurrence of force majeure was contemplated at length in clause 17 of agreement. The allottee(s) shall not be entitled to any compensation for the period of such delay. The allottee agrees and confirms that, in the vent it becomes impossible for the developer to implement the project due to force majeure conditions, then this agreement and the allotment of the said independent floor hereunder shall sand terminated and the developer shall refund to the allottee (s) the entire amount received by the developer from the allotment within 45 (forty-five) days from that date on which developer confirms that it has become impossible for the developer to implement the project. The developer shall intimate the allottee(s) about such termination at least

30(thirty) days prior to such termination of the agreement. After refund of the money paid by the allottee(s), the allottee(s) agrees that it shall not have any rights, claims etc against the developer and that the developer shall be released and discharged from all its obligations and liabilities under this agreement." All these facts were and are in the notice and knowledge of the complainant and the complainant has pleaded deliberate ignorance about the same. The complainant has intentionally omitted any reference to the aforesaid clauses of agreement. In view of the above, the complaint deserves to be dismissed.

- j. In this respect it is submitted that the construction is still going on and offer for possession of the flat is, admittedly, yet to be made to the complainant and hence it is not possible at this stage to ascertain the facts of the reduced area. In view of that appointment of local commission for a report on this account is misconceived and neither warranted. Same emerges to be nothing but a pressure tactics by getting misled this Hon'ble Authority. Law does not permit to adjudicate anything that is based upon assumption and presumption. Even otherwise so called increased/decreased carpet area is well within limit permitted by applicable law. The contents of the rest of the para is matter of record.

11. 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

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

E. I Territorial jurisdiction

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

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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and

functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 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.

13. 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 floor within a period of 24 months with a grace period of additional 3 months from the date of allotment. In the present case, the date of allotment is 25.10.2019. The due date is calculated from the date of allotment so, the due date of subject floor comes out to be 25.01.2022. **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 floor is being allotted to the complainant is 25.01.2022 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 25.07.2022.

14. 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 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 provide legal and valid possession of the floor and pay interest towards the delay in giving the physical possession of the respective apartments @ 18% p.a., till handing over the physical possession of the respective apartment from the due date.
- (ii) The common relief of possession and delayed possession charges are involved in all these cases.

G.1 Direct the respondent to pay interest towards the delay in giving the physical possession of the respective apartments @ 18% p.a., till handing over the physical possession of the respective apartment from the due date.

15. 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."

16. The apartment buyer's agreement was executed between the parties. As per clause 4.1 of the agreement, the possession was to be handed over within a

period of 24 months with a grace period of 3 months from the date of allotment. The clause 4.1 of the buyer's agreement is reproduced below:

4.1 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 and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer shall offer the possession of the said independent floor to the allottee within a period of 24 months with a grace period of 3 months from the date of allotment.
(Emphasis supplied)*

17. 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 promoter is just to evade the liability towards timely delivery of subject floor 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.

18. **Admissibility of grace period:** As per clause 4.1 of buyer's agreement, the respondent promoter has proposed to handover the possession was to be handed over within a period of 24 months with a grace period of 3 months from the date of allotment along with it 6 months grace period w.r.t. (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.
19. **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, she 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.

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

20. 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., 01.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

21. 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;"

22. 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 4.1 of the buyer's agreement executed between the parties, the possession of the subject floor was to be delivered within a period of 24 months with a grace period of 3 months from the date of allotment along with it 6 months grace period w.r.t. (COVID-19). As such the due date of handing over of possession comes out to be 25.07.2022 in the lead case and for all other cases as detailed in para no. 03 of order. 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.
23. Section 19(10) of the Act obligates the allottee to take possession of the subject floor within 2 months from the date of receipt of occupation certificate. In these complaints, the occupation certificate was granted by the competent authority on 22.11.2022. The respondent has offered the possession of the subject floor(s) to the respective complainants after obtaining occupation certificate from competent authority, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. But it came to knowledge of the authority by the counsel of the complainant vide proceeding dated

08.09.2023, that the offer of possession was received by the complainant in February 2023 whereas the floor is still not in habitable condition to substantiate the same he has produced photographs of subject floor as well as email sent by the respondent at bar during proceedings. Also, complainant has submitted additional documents vide dated 15.09.2023, a mail dated 27.07.2023 has been attached in the documents in which respondent has particularly accepted the delay on its part in handing over the possession. This makes the obligation in handing over the possession on the part of respondent crystal clear that the delay has been caused and also the possession has still not been offered. In the *case bearing no. Cr/4700/2023 titled as Sonali Kapoor Pruthi V/s Signature Global Homes Private Limited*, the possession has been offered on but handover of the possession has still not been made to the complainant. It is further clarified after delving into the question in issue that the delayed possession charges shall be payable to the complainant from the due date of possession i.e., 25.07.2022 till the actual handover of possession.

24. 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., 25.07.2022 till the actual handover of possession 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.

G.II (i) Direct the respondent to compensate and impose a reasonable cost for default in Section 13, Section 12, Layout Plan and sanctioned plan change without taking intimation / permission from the innocent buyers, As the Kitchen itself decrease in size on an Approx. 11 Sq. Ft.

(ii) Seeking Appoint / depute the Commission along with professional's who admeasuring the actual deficiency in carpet area, which has been reduced by the respondent, and demand the compensation of the loss in favour of complainant..

27. The above-mentioned reliefs have not been pressed during proceedings by either of the parties. So, no directions in this regard can be effectuated at this stage.

G.III Direct the respondent to pay a sum of Rs. 1,00,000/- as cost of present litigation.

25. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the

complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

26. Vide proceeding dated 01.12.2023, the counsel for the complainant and complainant present in person agreed to reversal of the waiver of any type already given by respondent to complainant and the complainant has no objection to the same.


H. Directions of the Authority

27. 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 handover the possession of the allotted floor within 60 days of this order.
- ii. 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, 25.07.2022 till actual handover of possession, as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- iii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- iv. The respondent to charge equitable rate of interest on delayed payments and after adjusting DPC, interest due on late payment inter se and reversal of credit of waiver, if any, balance if any to be paid to the complainant in 60 days.
28. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
29. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
30. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.12.2023