

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

Complaint no.: 2419 of 2023
Date of filing: 25.05.2023
Date of decision: 13.03.2024

1. Susheela Sangwan
2. Mohit Sangwan

Both R/o. House No.1001, Ward No. 23, Jahawar Nagar,
Near Engineering College, Safidon Road, Jind, Haryana

Complainants

Versus

M/s Signature Global (India) Private Limited
Corporate Office: 1302, 13th Floor,
Tower-A Signature Towers, South City 1, Gurugram, Haryana-
122001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Jayant Sharma (Advocate)
Sh. Niraj Kumar (Advocate) and Sh. Mintu Kumar (AR of
the Company)

Complainants

Respondent

HARERA
ORDER

1. The present complaint dated 25.05.2023 has been filed by the complainants/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 as provided under the provision of the Act or the Rules and

regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over of the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"The Millennia" , Gadoli Khurd, Sector-37D, Gurugram, Haryana
2.	DTCP License No.	04 of 2017 dated 02.02.2017 Valid upto 01.02.2022
3.	RERA Registered/ Not Registered	03 of 2017 dated 20.06.2017
4.	Unit no.	507, Tower-9 (Page no. 21 of complaint)
5.	Unit admeasuring	596.126 sq. ft. (Carpet Area) & 79.653 sq. ft. (Balcony Area) (Page no. 21 of complaint)
6.	Date of execution of builder buyer agreement	06.03.2018 (Page no. 20 of complaint)
7.	Possession clause	5. Possession: Clause 5.1. <i>Within 60 (sixty) 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 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</i>

		<i>the timely payment of installments 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 (four) years from the date of approval of building plans or grant of environment clearance. (hereinafter referred to as the "Commencement Date"), whichever is later.</i>
8.	Date of Building plan approval	08.06.2017
9.	Date of Environment Clearance	21.08.2017
10.	Due date of delivery of possession	21.02.2022 (An additional extension of 6 months provided to the developer in view of HARERA Notification no. 9/3-2020.)
11.	Basic Sale Price	Rs.24,24,331/- (Page no. 27 of complaint)
12.	Total amount paid by the complainants	26,42,425/-
13.	Occupation Certificate	25.01.2023
14.	Offer for Possession	23.03.2023 (Page no. 138 of Reply)
15.	Handover of Possession	15.01.2024 (Submitted by Counsel for Respondent during proceedings of the day dated 24.01.2024)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- a. That the complainants booked a unit no. 507, tower no. 9 in the respondents project 'THE MILLENNIA', Sector-37D, Village Gadoli Khurd and Gadolikalan, Gurugram, Haryana.

- b. That a builder buyer agreement was executed between the parties on 06.02.2018.
- c. That as per clause 6(i) of the said builder buyer agreement, the possession of the unit was to be handed over to the complainant on or before 20.08.2021. However, possession had not been handed over to the complainants till date.
- d. That there is delay of 20 months and possession of the same is not expected soon as the project is not completed.
- e. That the complainants have already paid an amount of Rs.26,42,425/- as per the customer ledger dated 09.07.2022 maintained by the respondent promoter. However, the construction is still lagging far behind. That the complainants are unable to disburse any further amount raised by the company as the company had already delayed the project and crossed the date of final possession with all the amenities.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s)
 - a. Direct the respondents to handover the possession of the allotted unit and pay delay possession charge along with prescribed rate of interest.
 - b. Direct the respondent provide habitable possession of the said unit to the complainants with immediate effect.
 - c. Direct the respondent to pay Rs. 55,000/- as litigation expenses.
5. 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:

6. The respondent has contested the complaint on the following grounds: -

- a. That the complainants were allotted a unit bearing no. 507 in Tower 9, having carpet area of 596.126 sq. ft. on 5th floor and balcony area 79.653 sq. ft together with the two-wheeler open parking site and the pro rata share in the common areas through draw of lots held on 27.10.2017 under the Affordable Group Housing Policy 2013 notified by Government of Haryana vide Town and Country Planning Department notification dated 21.08.2017 as applicable at relevant point of time (hereinafter referred to as policy).
- b. That subsequent to the allotment of the said flat the complainants entered into an agreement with the respondent for the delivery of possession of the said flat on the terms and conditions as contained therein.
- c. That the total cost of the allotted flat was Rs.24,24,331/- excluding the other charges such as stamp duty, registration charges, other expenses, etc and the payment was time link payment as stipulated by the policy. The Goods and Services Tax was payable extra as applicable.
- d. 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 and/ or any other charges which may be levied or imposed by the Governmental Authority from time to time, which the complainants have agreed to pay on demand by the respondent.
- e. That the delivery of the possession of the said flat was agreed to be offered within four years, from the approval of building plans or grant of environmental clearance, whichever is later. However, the delivery of possession was subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely completed with all its obligations.
- f. That 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.

- g. 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. 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.
- h. That the outbreak of Covid-19 has been declared as a pandemic by the World Health Organization. Advisories/ directions including lockdown/ restrictions have been issued by the Govt. of India and also by the State Govt. The said pandemic has had serious consequences and was so deadly and contagious that complete lockdown was imposed several times not only in Haryana but in India and rest of the world also. That even lockdown was withdrawn various restrictions continued to be imposed.
- i. That the respondent after receipt of occupation certificate from the concerned department dated 25.01.2023, has already made the offer of possession to the complainants vide letter dated 23.03.2023 to accept the possession and execute the necessary documents for the execution of conveyance deed of the unit.
- j. That the complainant had refused to take the possession of the flat and also refused to pay late payment charges amounting to Rs. 75,856/- and another

sum towards maintenance charges amounting to Rs. 29,460/- is also outstanding.

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

E. Jurisdiction of the authority

9. 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

10. 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

11. 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) The promoter shall-

(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.

12. 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. Finding on objections raised by the respondent:

F.1 Objections regarding force majeure

13. 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 orders passed by National Green Tribunal (hereinafter, referred as NGT). But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. 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 08.06.2017 and date of environment clearance is 21.08.2017 as taken from the documents on record. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 21.02.2022. *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 21.08.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 21.02.2022.

G. Findings on the relief sought by the complainants.

- G.I. Direct the respondents to handover the possession of the allotted unit and pay delay possession charge along with the prescribed rate of interest.**
G.II Direct the respondent to provide habitable possession of the said unit to the complainants with immediate effect.

14. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
15. 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."

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

5.1 Possession

Within 60 (sixty) 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 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 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.

17. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, 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. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his 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 allottee is left with no option but to sign on the dotted lines.

G.II Admissibility of delay possession charges at prescribed rate of interest.

18. The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by them. However, proviso to section 18 provides 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 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.

19. 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.

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., 13.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—

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 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. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

23. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties on 06.03.2018, the possession of the booked unit was to be delivered within 4 years from the date of environment clearance (21.08.2017) being later, which comes out to be 21.08.2021. The grace period of 6 months is allowed in the present complaint for the reasons mentioned above. Therefore, the due date of handing over possession comes out to be 21.02.2022. Occupation certificate was granted by the competent authority on 25.01.2023 and thereafter, the possession of the subject unit was

offered to the complainants on 23.03.2023 and possession was handed over on 15.01.2024. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 06.02.2018 to hand over the possession within the stipulated period.

24. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 25.01.2023. The respondent offered the possession of the unit in question to the complainants only on 23.03.2023, 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. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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 till the expiry of 2 months from the date of offer of possession (23.03.2023) which comes out to 04 be 23.05.2023.

25. 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 delayed possession at prescribed rate

of interest i.e., 10.85 % p.a. w.e.f. 21.02.2022 till 23.05.2023 i.e., expiry of 2 months from the date of offer of possession (23.03.2023) or actual taking over of possession whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G.III. Direct the respondent to pay Rs, 55,000/- as litigation expenses.

26. The complainant is seeking above mentioned relief w.r.t. compensation. 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. (supra)*, 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.

H.Directions of the authority

27. 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 delay possession charges at the prescribed rate of interest 10.85% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e., 21.02.2022 till offer of possession i.e. 23.03.2023 plus two months i.e. 23.05.2023 or actual taking over of possession

whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.


- II. The respondent is directed to pay arrears of interest accrued within a period of 90 days from date of this order as per rule 16(2) of the rules.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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. Further, no interest shall be charged from complainants for delay in payment if any between 6 months COVID period from 01.03.2020 to 01.09.2020.
- V. The respondent shall not charge anything from the complainants which is not part of the flat buyer's agreement.

28. Complaint stands disposed of.

29. File be consigned to registry.

Dated: 13.03.2024

HARERA
GURUGRAM


Ashok Sangwan
Member
(Haryana Real Estate
Regulatory Authority,
Gurugram)