

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

Complaint no.: 2462 of 2023
Date of filing: 13.06.2023
Date of decision: 14.03.2024

Ujjwal
R/o H No. 84B, Ferozpur Road, Rajguru Nagar, Ludhiana-
141012

Complainant

Versus

M/s Signature Global (India) Private Limited
Corporate Office: Unit No.1309, 13th floor, Dr. Gopal Das
Bhawan, 28 Barakhamba Road, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Sajal Dhawan (Advocate)
Sh. Niraj Kumar (Advocate)

Complainant
Respondent

ORDER

The present complaint dated 02.02.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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.

1. 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:

S.no.	Particulars	Details
1.	Name of the project	The Milleannia,37-D, Gurugram, Haryana
2.	DTCP License No	04 of.2017 dated 02.02.2017 Valid up to 01.02.2022
3.	Unit no.	7-205, 2 nd floor (as per BBA page 27 of complaint)
	Unit admeasuring	Carpet area -519.229 sq. ft. Balcony area - 79.653 sq. ft. (Page 21 of complaint)
4.	Date of execution of agreement for sale	25.11.2021 (page 17 of complaint)
5.	Date of building plan	08.06.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project)
6.	Date of environment clearance	21.08.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project)
7.	Possession clause	5. Possession <i>5.1 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 installments as per the</i>

		<i>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.	Due date of delivery of possession	21.02.2022 (Calculated from the date of grant of EC being later including grace period of 6 months in lieu of Covid-19)
9.	Total sale consideration	Rs.22,49,266/- (as per BBA page 24 of complaint)
10.	Total amount paid by the complainants	Rs.24,51,698/- (as per SOA dated 28.11.2022 page 57-58 of complaint) <i>(*Note: inadvertently mentioned Rs.21,48,044/- vide proceedings dated 08.02.2024)</i>
11.	Occupation certificate	25.01.2023 (as per DTCP website)
12.	Offer of Possession	28.03.2023 (page 67 of complaint)

B. Facts of the complaint.

2. The complainant has made the following submissions in the complaint:-

- a. That the complainant, along with his family visited the site and was impressed by its excellent location and consulted the local representative of the developer. The representative allured the complainant with project specifications. Subsequently, on 24.07.2017, the complainant paid Rs.1,12,464/- as the booking amount for a draw lot. Thereafter, on 01.11.2017, the respondent issued an allotment letter to the complainant, assigning unit no. 7-205, 2nd floor, tower 7 admeasuring carpet area 552.360 sq. ft., balcony area 79.653 sq. ft. with two-wheeler parking space.

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- b. Further, four years after the issuance of the allotment letter dated 01.11.2017, on 25.11.2021, a one-sided, arbitrary, and unilateral flat buyer agreement was executed between the parties for the allotted unit. As per clause 5.1 of the agreement, the respondent was obligated to complete the construction of the unit and hand over possession within 4 years from the date of sanction of building plan or from the date of receiving environmental clearance for the project whichever is later. Based on public information, the environmental clearance was obtained on 21.08.2017, making the due date of possession 21.08.2021.
- c. That the subject unit was allocated with a total cost of Rs.22,49,267/- as per clause 4.1 of buyer's agreement. The complainant had already paid Rs.24,51,698/-, which is 109% of the total cost, in response to the respondent's demand. Upon reviewing the ledger statement, the complainant discovered that the respondent had charged a hefty interest of Rs.3,86,824/- without proper justification, along with an interest rate of 15%, significantly exceeding the current prescribed rate. Thereafter, on 12.12.2022 a legal notice was sent to the respondent stating the grievances and also asking for the justification for the same but no response to the legal notice was given by the respondent.
- d. Thereafter, the respondent issued an offer of possession on 28.03.2023, delayed by over a year from the due date of possession as per the buyer's agreement. The main grievances of the complainant in the present complaint include the respondent charging an interest of Rs.3,86,824/- without proper justification or disclosure of the interest rate and deductions, and the failure of the respondent to provide possession of the unit as per Clause 5.1 of the

buyer's agreement by 21.08.2021. The facts indicate a deficiency of service by the respondent.

C. Relief sought by the complainants: -

3. The complainant has sought following relief(s):
 - a. Direct the respondents to pay delay possession charge along with prescribed rate of interest.
 - b. Direct the respondent to not charge the interest amounting to Rs.3,86,824/-.
4. On the date of hearing the authority explained 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:

5. The respondent has contested the complaint on following grounds:
 - a. That the complainant was allotted a unit no. 7-205, 2nd floor admeasuring carpet area 552.36 sq. ft. balcony area 79.653 sq. ft with two-wheeler open parking space and pro rata share in 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.
 - b. That subsequent to the allotment of the said unit the complainant entered into builder buyer agreement with the respondent for the possession of the subject unit on the terms and conditions as contained therein.
 - c. That the total cost of the allotted unit was Rs.22,49.266/- excluding the other charges of stamp duty, registration and applicable GST, the payment plan was time linked as stipulated in the policy.
 - d. That the total cost of the subject unit was escalation free, save and except increase on account of development charges payable to the governmental

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authority and/ or any other charges which may be levied or imposed by the governmental authority from time to time, which the complainant had agreed to pay on demand by the respondent.

- e. That the delivery of the possession of the subject unit 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, intervention of statutory authorities, receipt of occupancy certificate, allottee(s) having timely completed with all its 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.
- f. 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 unit. Covid-19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent.
- g. That the outbreak of Covid-19 had been declared as a pandemic by the World Health Organization. Advisories/ directions including lockdown/ restrictions were issued by the Govt. of India and also by the State Govt. The said pandemic had serious consequences and was so deadly and contagious that complete lockdown was imposed several times not only in Haryana but in
- h. India and rest of the world also. That even lockdown was withdrawn but various restrictions continued to be imposed. That Gurugram falls within the area of NCR and different competent authorities such as the Hon'ble

Supreme Court, National Green Tribunal (NGT), Municipal Corporation Gurugram (MCG) etc. had directed ban on construction activities in Delhi NCR due to rise in pollution level mainly in festive season/ winter season for various periods thereby severely affecting the regular development of the real estate projects.

- i. That the respondent has already made the offer of possession to the complainant vide letter dated 28.03.2023 after receipt of occupation certificate from the concerned department.
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 these undisputed documents and submission made by the complainant.

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

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.

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9. 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.

10. 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.I Objections regarding force majeure.

11. 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

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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 21.08.2021. ***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 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 pay delay possession charge along with prescribed rate of interest.**
G.II. Direct the respondents to not to charge the interest amounting to Rs.3,86,824/-

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

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13. In the present complainant, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

14. 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 (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 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.

15. 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 favor 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

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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.

Admissibility of delay possession charges at prescribed rate of interest:

16. The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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.

17. 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.
18. 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., 14.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

19. 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;"

20. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.

21. 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 25.11.2021, 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 concerned authority on 25.01.2023 and thereafter, the possession of the subject unit was offered to the

complainant on 28.03.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer 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 25.11.2021 to hand over the possession within the stipulated period.

22. 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 complainant only on 28.03.2023, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (28.03.2023) which comes out to be 28.05.2023.

23. 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 complainant is entitled to delayed possession at prescribed rate of

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interest i.e., 10.85 % p.a. w.e.f. 21.02.2022 till the expiry of 2 months from the date of offer of possession (28.03.2023) which comes out to be 28.05.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

H. Directions of the authority

24. 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 complainant 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 complainant from due date of possession i.e., 21.02.2022 till 28.05.2023 i.e., expiry of 2 months from the date of offer of possession (28.03.2023) or till actual handing over of possession whichever is earlier. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- II. 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.
- III. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the

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outstanding dues, if any, the respondent shall handover the possession of the allotted unit.

IV. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement and the provisions of Affordable Group Housing Policy of 2013.

25. Complaint stands disposed of.

26. File be consigned to registry.

Dated: 14.03.2024



V.1 - [Signature]
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM