

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

**Complaint no.** : 6594 of 2022  
**Date of first hearing:** 02.02.2023  
**Date of decision** : 15.03.2024

Poonam Negi Address – H. no. WB-109, Gali no. 5, WB Block, Shakarpur, East Delhi, Delhi-110092	<b>Complainant</b>
Versus	
M/s Signature Global India Private Limited. Office: - 1302, 13 <sup>th</sup> floor, Tower A, Signature Towers, South City 1, Gurugram, Haryana	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Shri S.S Hooda	Complainant
Shri Niraj Kumar	Respondent

**ORDER**

1. The present complaint dated 11.10.2022 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 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. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	The Millennia, 37-D Gurugram, Haryana.
2.	Nature of the project	Affordable Group Housing
3.	Project area	9.7015625 acres
4.	RERA Registered/ not registered	Registered 03 of 2017 dated 20.06.2017
5.	DTCP License No.	04 of 2017 dated 02.02.2017 valid upto 01.02.2022
6.	Unit no.	11-1805, 18 <sup>th</sup> Floor, Tower 11 (Page no. 23 of reply)
7.	Unit admeasuring	Carpet Area- 552.360 sq. ft. Balcony area-79.653 sq. ft (Page no. 23 of reply)
8.	Agreement to sell	20.11.2017 (Page no. 19 of reply)
9.	Date of building plan	08.06.2017 (as per project details)
10.	Date of environment clearance	21.08.2017 (as per project details)

11.	Possession clause	5. Possession of the plot 5.1 Within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later.
12.	Due date of delivery of possession	21.08.2021 + 6 months =21.02.2022  (Calculated from the date of environment clearance + 6 months of grace period of COVID)
13.	Total sale consideration	Rs. 22,49,266/- (as per agreement to sell on page no. 30 of reply)
14.	Total amount paid by the complainant	Rs. 24,51,694/- (as per receipts of payment)
15.	Occupation certificate	25.01.2023 (As per DTCP website)
16.	Offer of possession	28.03.2023

**B. Facts of the complaint**

3. That the complainant filed an application dated 21.07.2017 and pursuant to the application, the draw was held on 27.10.2017 and the complainant was allotted a unit/flat at the respondent company project i.e. 'The Millennia' in Sector-37D, Gurgaon and on payment of Rs.1,12,463/- the complainant was allotted a unit bearing no. flat no. 05 in tower -11 on 18<sup>th</sup>

floor, having a carpet area measuring 552.360 sq. ft. and balcony area 79.653 sq. ft. in the above said project.

4. That the respondent company also issued an allotment letter dated 01.11.2017 carrying the details of unit allotted and also the details of amount to be deposited by the complainant time to time as per payment plan opted by the complainant.
5. That the complainant deposited the required amount as per the agreement to sell, which was executed between the complainant and the respondent company on 20.11.2017.
6. That as per one of the terms and conditions of the said agreement dated 20.11.2017, it was agreed and settled that the possession of the said unit/flat shall be handed over to the complainant within a 60 (sixty) days from the date of issuance of occupancy certificate.
7. That the complainant without making any kind of delay always deposited the amount required as per the payment plan/schedule opted by the complainant immediately on receipt of letters from the respondent company and in total the complainant paid an amount of Rs.24,51,694/-.
8. That on account of not constructing the above said unit within a stipulated period of 48 months / 4 years. The complainant contacted the respondent several times regarding the construction of the said unit and handover the peaceful physical possession of the said unit to the complainant but to no purpose at all and the complainant had to live in rental accommodation by paying huge amount of Rs.20,000/- of rent per month to the owner/landlord being not at fault at all on the part of the complainant and despite being invested huge amount of Rs.24,51,694/- in the respondent company.
9. That on account of not completing the construction of the above said unit allotted to the complainant within the stipulated period of 48 months, the

complainant had suffered a huge monetary loss besides having sleepless night for the past more than 2 years 6 months.

10. That, till date the complainant is running from pillar to post to get physical possession of his unit but the respondent had failed to complete the said project on the assured time.
11. That the respondent has failed to discharge his liabilities to complete the project and handover the peaceful physical possession of the allotted unit to the complainant within the stipulated time and thus the respondent has cheated the complainant to invest their hard earned money on believing upon their false assurances.

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

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

- a) Direct the respondent to pay delay possession charges along with interest @ 24% p.a. to the complainant.

**D. Reply by the respondent**

13. That the complainant was allotted a flat bearing no.11-1805 in having carpet area of 552.36 sq. ft. 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.
14. That subsequent to the allotment of the said flat the complainant entered into builder buyer agreement dated 20.11.2017 with the respondent for the delivery of possession of the said flat on the terms and conditions as contained therein.
15. That the total cost of the allotted flat was Rs.22,49,266/- excluding the 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.

16. 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 complainant had agreed to pay on demand by the respondent.
17. That the delivery of the possession of the said flat was agreed to be offered within 4 (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 Allotee(s) having timely completed with all its obligations.
18. That the proposed period of delivery of physical possession was subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allotee 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.
19. 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.
20. That the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide Order/direction dated 26th

of May, 2020 on account of 1st wave of Covid-19 pandemic. The said lockdown was imposed in March 2020 and continued for around three months. However, the extension of six month was granted in contemplation of its effects against three months of lockdown.

21. That before the effect of 1st wave of COVID-19 could subside, it is matter of fact that 2nd and 3rd wave of Covid19 out broke. The 2nd wave of Covid-19 pandemic had hit the country badly 'like a tsunami' and Haryana was no exception thereof.
22. 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.
23. Copies of all the relevant documents have been duly 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 submissions made by the parties.

#### **E. Jurisdiction of the authority**

24. 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**

25. 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**

26. The Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

#### **Section 34-Functions of the Authority:**

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

27. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

### **F. Findings on the relief sought by the complainant.**

**Relief sought by the complainant:** The complainant had sought following relief(s):

- i. Direct the respondent to pay delay possession charges along with interest @ 24% p.a. to the complainant.



28. 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."*

29. Clause 5.1 of the apartment buyer's agreement (in short, the agreement) dated 20.11.2017, provides for handing over possession and the same is reproduced below:

*5.1 "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 in terms of 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 proposes to offer possession of the Said Flat to the Allottee 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."*

30. 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 unit 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.

31. **Admissibility of grace period:** As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession was to be handed over 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 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.
32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

*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.*

33. The legislature in its wisdom in the subordinate legislation under the 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.
34. 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., 15.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
35. 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—  
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;"*

36. 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, the possession of the subject apartment was to be delivered 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 with a grace period of 6 months (COVID-19). As such the due date of handing over of possession comes out to be 21.02.2022. 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.
37. 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 has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from

the due date of possession i.e., 21.02.2022 till the expiry of 2 months from the date of offer of possession (28.03.2023) plus two months (i.e., 28.05.2023).

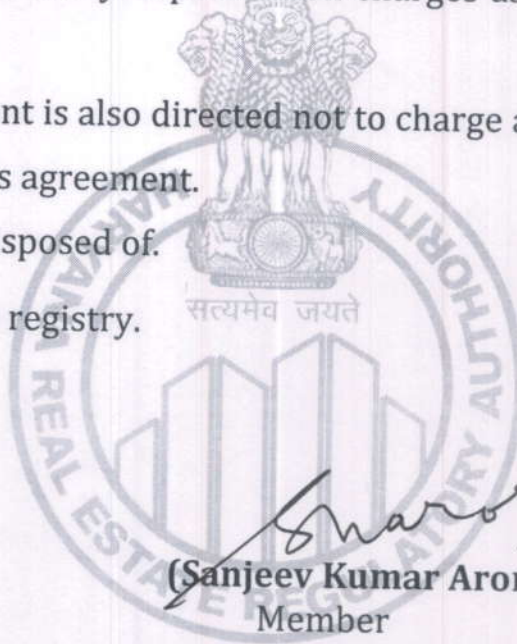
38. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 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., 21.02.2022 till offer of possession plus two months (i.e., 28.05.2023), at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.


**G. Directions of the Authority**

39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 21.02.2022 till offer of possession i.e., 28.03.2023 plus two months i.e., 28.05.2023 to the complainant(s) as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The amount on account of waiver shall be adjusted, if any.
- iii. The arrears of such interest accrued from due date of possession shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.

- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondent.
  - v. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - vi. The respondent is also directed not to charge anything which is not part of buyer's agreement.
40. Complaint stands disposed of.
41. File be consigned to registry.



  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.03.2024

**HARERA**  
GURUGRAM