

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

<b>Complaint no. : 1155 of 2023</b>	
<b>Date of decision : 29.03.2024</b>	
Niraj Kumar Lath R/o - Dr. Rajendra Prasad Road, Near Subhash Chowk, Deoghar, Jharkhand - 814112	<b>Complainant</b>
Versus	
Signature Global Homes Pvt. Ltd., R/o: - 12 <sup>th</sup> Floor, Dr. Gopal Das Bhawan, 28- Barakhamba Road, New Delhi - 110001	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Jaswant Singh Kataria	Complainant
None	Respondent

**ORDER**

1. The present complaint dated 03.04.2023 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 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:

S.N.	Particulars	Details
1.	Name and location of the project	"Signature Global Park 4" Sector 36, Sohna, Gurugram
2.	Nature of the project	Residential (Affordable housing) Independent Floors
3.	DTCP license no. and validity status	117 of 2019 dated 12.09.2019
4.	Name of the Licensee	Signature Global India Pvt. Ltd.
5.	RERA registered/ not registered and validity status	Registered vide no. 29 of 2020, dated 08.10.2020 valid up to 29.07.2023 Registration expired
6.	Unit no.	A123, 4 <sup>th</sup> Floor (Independent floor) Block A (Page 53 of complaint)
7.	Booking Letter	20.08.2020 (Page no.21 of Complaint)
8.	Unit admeasuring	1081.67 sq. ft. (Page no. 53 of complaint)
9.	Welcome/Provisional Allotment Letter	13.10.2020 (Page no. 42 of complaint)



10.	Date of agreement for sale	12.01.2021 (Page no. 44 of complaint)
11.	Payment plan	Page no. 92 of complaint
12.	Total Price	Rs. 55,60,724/- (Page no. 54 of complaint)
13.	Total amount paid by the complainant	Rs. 59,27,765/- (as per SOA provided by the counsel for the respondent during proceedings)
14.	Possession clause	7.1 <i>Promoter assures to hand over the possession of the residential independent floor along with parking (applicable only if parking fee/charge has been paid) as per agreed terms and conditions by 30th July 2022 unless there is delay due to "force majeure".</i>
15.	Due date of delivery of possession	<b>30.01.2023</b> 30.07.2022 +6 months of COVID (Page 63 of complaint/BBA)
16.	Occupation certificate	06.05.2022 (As per DTCP Website)
17.	Offer of possession	08.02.2023 (As per 93 of Complaint)

## B. Facts of the complaint

3. That the complainant applied on dated 18<sup>th</sup> August 2020 by paying a booking amount of Rs. 1,00,000/- for 3 BHK independent floor No 4<sup>th</sup> in Block A upon plot No. A 123 admeasuring 117.24 mtr. along with basement parking. The unit in question was offered for a total sale consideration to the tune of Rs. 55,60,724/-
4. The complainant received welcome-cum-provisional allotment letter of unit 4-A123-4F in project "Signature Global Park IV", Sector 36, Sohna, Gurugram, Haryana on dated 13.10.2020 from the respondent.
5. That the agreement for sale inter-se the parties qua the unit in question was duly executed on 12.01.2021. As per the agreement (Para No. 7.1), the possession of the unit in question was to be handed over to the complainant by 30.07.2022. That the payment plan opted was time linked payment plan. That thus, as per the assurances and even as per agreement to sale, the possession of the unit in question in project "Signature Global Park IV" of the respondent was to be handed over by 30.07.2022. As per clause 7.1 of the agreement, *"The promoter assures to hand over the possession of the residential independent floor along with parking as per agreed terms and conditions by 30<sup>th</sup> July 2022."*
6. That the respondent has thus failed to deliver possession of the unit on or before the due date of possession. There was delay in the construction as per assurance and plan of the respondent; hence the bank delayed payments to the respondent.



7. That the complainant greatly felt hurt, astonished and harassed when they received offer of possession along with statement of accounts of the unit in question on dated 08.02.2023 from the respondent informing the complainant to pay late payment fee to the tune of Rs. 4,45,376/-. That the complainant had paid a sum of Rs. 59,27,765/- excluding taxes which has been duly received and acknowledged by the respondent.
8. That after receiving the possession letter along with statement of accounts mentioning late payment charges, the complainant requested a lot not to charge late payment charges because the respondent has already delayed the possession by 6 months and requested to the respondent to get registered conveyance deed in his favour but the respondent is insisting on payment of late payment charges.

### **C. Relief Sought**

9. This Authority may be pleased to direct the respondent as follows:
- Direct the respondent to give physical possession of the respective plot along with prescribed rate of interest.
  - Litigation cost

### **D. Reply by the respondent**

10. That the complainant was allotted a floor bearing no. 4-A123-4F in having carpet area of 1081.67 sq.ft. and balcony area 643.04 sq. ft under the Affordable Plotted Housing Policy 2016 notified by Government of Haryana as applicable at relevant point of time. That subsequent to the

allotment of the said floor he entered into agreement for sale dated 12.01.2021 with the respondent for the delivery of possession of the said floor on the terms and conditions as contained therein. That the total cost of the allotted floor was Rs.55,60,724/- excluding the other charges as stipulated by the Policy.

11. That the delivery of the possession of the said floor was agreed to be offered by 30<sup>th</sup> July 2022. 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.
12. 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 as also 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 though lockdown was withdrawn various restrictions continued to be imposed.
13. That it is also matter of record 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.



14. That the Hon'ble Supreme Court banned all construction and demolition in Delhi-National Capital Region (NCR) in the leading Writ Petition(s)(Civil) No(s). 13029/1985 on November 04, 2019 and the same was lifted completely in February 2020
15. That it is respectfully submitted the Hon'ble Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM (Admn) dated 26.05.20 public 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.
16. That the Commissioner of Municipal Corporation Gurugram. Vide order dated 11.10.2019 issued direction to issue challan for construction activities & lodging of FIR from 11th October to 31 December 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.
17. That the pandemic and bans on construction activity by competent authorities are force majeure events which are beyond the control of the parties to prevent the same or its consequences and as such in view of clause 19.1(f) of the BBA, the respondent is entitled to exclusion of period where the constructions of the project was affected due to

orders/directions of Statutory Authority/Court Orders/Government Orders etc.

18. That in the light of aforesaid facts and legal provisions/ notifications/ judicial pronouncements, it is submitted that the respondent is entitled for grant of exclusion of the period of delay caused due to 2nd wave of Covid-19 Pandemic and construction ban imposed by competent authorities being decisions affecting the regular development of the real estate project for a period of at least Nine (9) months in addition to six months extension of Covid-19.
19. It is further submitted that the occupancy certificate of the project has been received and the respondent issued offer of possession vide letter dated 08.02.2023 requesting him to accept the possession and execute the necessary documents for execution of the conveyance deed of the floor. However, he failed to take possession of the floor and has failed to clear the dues against the said floor.
20. 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**

**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**

21. 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**

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.*

22. 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 objections raised by the respondent**

### **F. I I Objection regarding delay due to force majeure circumstances.**

23. 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 by 30<sup>th</sup> July 2022. So, the due date of subject unit comes out to be 30.07.2022. *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 unit is being allotted to the complainant is 30.07.2022 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 **30.01.2023**.



**G. Findings on the relief sought by the complainant:**

(i) Direct the respondent to give physical possession of the respective unit along with prescribed rate of interest.

**G.I Direct the respondent to give physical possession of the respective unit along with prescribed rate of interest.**

24. 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."*

25. The agreement for sale was executed between the parties. As per clause 7.1 of the agreement, the possession was to be handed over by 30.07.2022 with a grace period of 6 months (COVID-19). The clause 7.1 of the agreement is reproduced below:

***7.1 Possession***

***Promoter assures to hand over the possession of the residential independent floor along with parking (applicable only if parking fee/charge has been paid) as per agreed terms and conditions by 30<sup>th</sup> July 2022 unless there is delay due to "force majeure". (Emphasis supplied)***

26. 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 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.

27. **Admissibility of grace period:** As per clause 7.1 of agreement for sale, the respondent promoter has proposed to handover the possession by 30.07.2022 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.
28. **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]**

- (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.

29. 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., 29.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
30. 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;"*

31. 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 7.1 of the agreement executed between the parties, the possession of the subject floor was to be handed over by 30.07.2022 with a grace period of 6 months (COVID-19). As such the due date of handing over of possession comes out to be 30.01.2023.
32. Subsequently the unit was allegedly cancelled vide letter dated 07.08.2021 by respondent. The respondent-builder raised a plea that despite a number of reminders sent to the complainant, he failed to make payment of the amount due. But all the pleas advanced in this regard are devoid of merit. The complainant was allotted the unit under a time linked payment plan. Though it was mentioned that the respondent has received occupation certificate on 06.05.2022 and even the unit was offered vide letter dated 08.02.2023. Thus, the cancelation of allotment was only a paper transaction. Thus, the facts detailed above show that the respondent has no intention to cancel the allotment of the allotted unit of the complainant and letter dated 07.08.2021 issued by it was never acted



upon. So, for all practical purposes, the respondent treated the alleged cancelation only as a formality, not to be acted from and replied to the issues raised by the complainant from time to time. If the cancelation of the allotment had actually been done as alleged, then there was no occasion for the respondent to send offer of possession and receiving the outstanding payment.

33. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 06.05.2022. The respondent has offered the possession of the subject floor(s) to the respective complainant after obtaining occupation certificate from competent authority on 08.02.2023. However, he failed to take possession of the floor and has failed to clear the dues against the said floor as contended by respondent. Therefore, delay possession charges shall be payable from the due date of possession i.e., 30.01.2023 till the expiry of 2 months from the date of offer of possession (08.02.2023) plus two months (i.e., 08.04.2023). It is further clarified that 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.

34. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the 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., 30.01.2023 till offer of possession plus two months (i.e., 08.04.2023), 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.
35. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. ***Hon'ble Supreme Court of India in civil appeal 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. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the



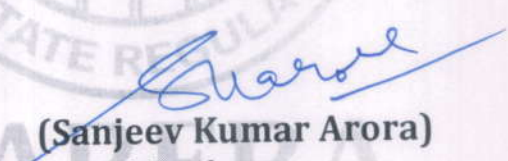
complainant may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

36. Separate proceeding to be initiated by the planning department of the Authority for taking an appropriate action against the builder as the registration of the project has been expired.

#### **H. Directions of the Authority**

37. 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 delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 30.01.2023 till offer of possession i.e., 08.02.2023 plus two months i.e., up to 08.04.2023 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
  - ii. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.

- iii. 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.
- iv. The respondent shall not charge anything from the complainant which is not the part of the agreement for sale.
- v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
38. Complaint stands disposed of.
39. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.03.2024