

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

**Complaint no.** 739 of 2022  
**Date of complaint:** 02.03.2022  
**Order pronounced on:** 04.01.2024

1. Ankush Ojha  
2. Neha Sharma  
Both RR/o: - 272, 1<sup>st</sup> floor, Sector-40, Gurugram, Haryana **Complainants**

**Versus**

M/s Signature Global India Private Limited  
**Regd. Office at:** 1302, 13<sup>th</sup> floor, Tower-A, Signature  
Tower, South City 1, Gurugram Haryana **Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Sanjeev Kumar Arora **Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Akash Godhwani(Advocate)  
Sh. Mintu Kumar (AR of the company) **Complainants**  
**Respondent**

**ORDER**

1. This complaint has been filed by the complainant/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 under the provision of the Act or the Rules and regulations made thereunder or to the allottees 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 complainants, 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 Colony
3.	DTCP License no. & validity status	04 of 2017 dated 02.02.2017 valid upto 01.02.2022
4.	RERA registered/not registered	Registered vide no. 03 of 2017
5.	Unit no.	6-1205, tower 6 (Page no.32 of complaint)
6.	Unit admeasuring	552.36 sq. ft. (Carpet area) 79.653 sq. ft. (balcony area) (Page no. 32 of the complaint)
7.	Date of execution of Agreement for sale	09.04.2019 (Page no. 30 of the complaint)
8.	Building plan	08.06.2017 (page no.32 of complaint)
9.	Environment clearance	21.08.2017 (Page no. 30 of complaint)
10.	Possession clause	<i>5. 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</i>

		<i>building plans or grant of environment clearance, (hereinafter referred to as Commencement Date"), whichever is later.</i>
11.	Due date of delivery of possession	21.02.2022  (calculated as four years from the date of environment clearance i.e. 21.08.2017 being later plus six months grace period as per HRERA notification no.9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
12.	Total sale consideration	Rs.22,49,266/- (as per BBA page no. 38 of complaint)
13.	Total amount paid by the complainant	Rs.22,49,266/- (As alleged by the complainant in written submission)
14.	Occupation certificate	25.01.2023 (as per additional documents submitted by the respondent page 10)
15.	Offer of possession	01.02.2023 (vide email page 09 of additional documents submitted by respondent)
16.	Possession letter	24.07.2023 (annexure P/1 of additional written submission on behalf of complainants)

### B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. The respondent represented about their project namely "The Millennia" to the complainants. The complainants believing upon the representation and assurance jointly booked a flat 6-1205 in block/tower-6 admeasuring carpet area 552.36 sq. ft. and balcony having area 79.653 sq. ft. along with two-wheeler open parking against the sale consideration of Rs.22,49,266/.
- II. That the builder buyer agreement was executed between the parties on 09.04.2019. As, per the buyers agreement the respondent was under contractual obligation to perform its duty by way of construction and

development of project in which the unit was allotted to hand over the unit in all respect on or before 20.08.2021 as per the agreed terms of the agreement.

- III. That the payment of the allotted unit was to be made as per the construction link payment plan. The complainants took a home loan of Rs.21,86,285/- against the mortgage of the said unit at an interest rate of 8.70% p.a. from Housing Development Finance Corporation Limited (HDFC) with an EMI of Rs.19,251/- for a period of twenty years.
- IV. That after the execution of buyer's agreement the complainants visited the office of the respondent and their project site but found no construction of the said project and was informed by the respondent that the construction of the project has been banned by Hon'ble NGT, Delhi but the respondent continued demanding the payments against the allotted unit. Moreover, the complainants wrote mails to the respondent about progress of the construction of the project but same were never responded.
- V. That the respondent raised a demand of Rs.3,03,650/- claiming that the project work was ongoing and threatened to impose a penalty if the demands were not met. Additionally, the respondent imposed a penalty of Rs.38,158/- without completing the construction activity, in violation of BBA. Further, the complainants approached HDFC Ltd. to disburse the pending loan amount, but the request was rejected, citing slow construction progress as the reason. So, the complainants were forced to pay extra amount.
- VI. That the complainants wrote an email dated 07.08.2020 to the CRM team of the company, requesting to provide the progress card of the project, but despite the multiple requests, it was not provided. The bank sent a progress

report of the project of the respondent, indicating that only ground floor column work was partly done.

- VII. That the complainants have paid an amount of Rs.21,36,336/- against the allotted unit which is approximately equivalent to 95% of the sale consideration. However, no possession of the unit has been offered by the respondent and only illegal demands are being raised without completing the development of the project. The respondent has failed to fulfill contractual obligations, thereby committing a breach of terms and conditions of the BBA. The respondent has utilized the invested money of the complainants to develop another project, thus defrauding the complainants. The complainants were left with no other efficacious remedy except to file the present complaint before the authority for seeking possession and delayed interest.

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

4. The complainants have sought following relief:

i. Direct the respondent to handover the physical possession of the allotted unit and pay delay possession charges.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

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

I. That the complainants have made detailed and elaborated enquiries with regard to the location of the project, sanctions accorded by the concerned statutory authorities, specifications of the project as well as capacity, competence and capability of the respondent to successfully undertake



- the conceptualisation, promotion, construction, development and implementation of the project. The complainants after being fully satisfied in all respects proceeded to submit their application for obtaining allotment of apartment in the affordable group housing project.
- II. 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. Prior to the expiry of due date, the Covid-19 pandemic struck and resulted in unavoidable delay in delivery of physical possession of the apartment. Covid-19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent. No approval for construction was granted during lockdown. Further, availability of construction material was an issue during frequent lockdown and prohibitory orders during covid19 period.
- III. That as per clause 19.2 of the agreement the developer shall not be held responsible or liable for not performing any of its obligations or undertakings if performance is prevented due to force majeure conditions and accordingly clause 19.3 allottee agrees and understand that if the force majeure condition continues for a considerably long period the performance of this agreement become unviable, the developer alone in its own judgment and discretion may terminate the agreement and in such case the only liability of the developer shall be to refund the amount paid by the allottee without any interest or compensation. The allottee agrees that it shall have no right or claim of any nature and the developer shall be relieved and discharged of all its obligations and liabilities under the

agreement." All the facts were in the notice and knowledge of the complainants and the complainants have pleaded deliberate ignorance about the same. The complainants have intentionally omitted any reference to the aforesaid clauses of agreement.

- IV. That the sale consideration of the flat was not to be paid as per the construction payment link plan as alleged by the complainant. The affordable housing policy 2013 and the agreement stipulates a time-linked payment plan. All the facts were in the knowledge of the complainant, and the complainant pleaded deliberate ignorance about the same. The complainant intentionally omitted any reference to the clauses of the agreement.
- V. That all the demands raised by the respondent were as per the affordable housing Policy 2013. Also, the respondent has neither committed any breach of any terms and conditions of the buyer's agreement and has not utilized invested money of complainants to develop other project.
- VI. That the respondent is acting well within the permissible limit of buyer's agreement and applicable laws, and there is no delay in offering possession in terms of applicable laws and buyers agreement. The complaint under reply, being false and frivolous, needs to be dismissed as it has no cause of action.
- VII. 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 based on these undisputed documents and written submission made by the respondent.

**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**

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.*

9. 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 objection raised by the respondent.**

**F.I Objection regarding force majeure conditions**

10. 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 other court orders. 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. 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**

11. In the present complainant 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."*

12. Further, clause 5.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

**5. 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.***

13. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in 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 the allottees 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 date for handing over possession loses its meaning.

14. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottees are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit.
15. **Admissibility of grace period:** As per clause 5 of buyer's agreement, the respondent promoter has proposed to handover the possession 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. The authority calculated due date of possession from the date of environment clearance being later i.e., 21.08.2017 being later which comes out to be 21.08.2021. 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 and the due date comes out to be 21.02.2022

**16. Admissibility of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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., 04.01.2024 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(z) 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;"*

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/ promoters which is the same as is being granted to them in case of delayed possession charges.
21. 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 of the buyer's agreement executed between the parties on 09.04.2019, the possession of the subject unit was to be delivered within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later. The due date of possession is calculated from the date of environment clearance i.e., 21.08.2017 being later. As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The due date of possession of the aforesaid project in which the subject unit is being allotted to the complainants was 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. As such the due date for handing over of possession comes out to be 21.02.2022. Further, a relief of 6 months will be given to the allottees that no interest shall be charged from the complainant-allottees for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

22. The respondent has obtained the occupation certificate on 25.01.2023 and has offered the possession of the allotted unit on 01.02.2023. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 09.04.2019 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 09.04.2019 to hand over the possession within the stipulated period.

23. 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 01.02.2023, 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 complainant keeping in mind that even after intimation of possession practically she 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 actual handing over of possession or offer of possession plus two months whichever is earlier.

24. 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 interest i.e., 10.85 % p.a. w.e.f. 21.02.2023<sup>12</sup> till 01.04.2023 i.e., expiry of 2 months from the date of offer of possession (01.02.2023) as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

**G. II Direct the respondents to handover the physical possession of the allotted unit.**

25. The complainants have filed the present complaint before the Authority seeking for physical possession of the allotted unit along with delay possession charges. The counsel for the complainants vide hearing dated 26.10.2023 brought to the notice of the authority that the possession certificate of the allotted unit has been received 24.07.2023 but the physical possession has not been handed over by the respondent. In, view of the same Authority directs the respondent to handover the physical possession of the allotted unit as per buyer's agreement within a period of 30 days from the date of this order. Further, the complainants are also directed to take possession of the allotted unit in compliance of obligation conferred upon him under section 19(10) of the Act after payment of outstanding dues if any against the said unit within next 30 days.

### **H. Directions of the authority**

26. 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):

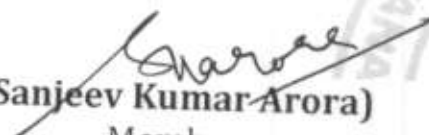
- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 21.02.2022 till 01.04.2023 i.e., expiry of 2 months from the date of offer of possession (01.02.2023) as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act. Further, the amount of waiver given to the complainants as per email dated 03.01.2024 may be deducted/adjusted from the delay possession charges. 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 respondent is directed to handover the physical possession of the allotted unit as per buyer's agreement within a period of 30 days from the date of this order. The complainants w.r.t. obligation conferred upon him under section 19(10) of the Act of 2016, shall take physical


possession of the subject unit and pay outstanding dues, if any as per the buyer's agreement, after adjustment of interest for the delayed period within next 30 days.


- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement or provided under Affordable Housing Policy. Also, the holding charges shall not be charged by the promoter at any point of time as per Law settled by Hon'ble Supreme Court in Civil Appeal no. 3864-3889/2020 dated 14.12.2020

27. Complaint stands disposed of.

28. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Vijay Kumar Goyal)  
Member

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 04.01.2024

GURUGRAM