

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

Complaint no.: 2266 of 2023
Date of decision : 31.05.2024

Kuldeep Nagpal

R/o: - H.no. 221, Deep Plaza Complex, opp. Civil Court,
Gurugram.

Complainant

Versus

M/s Signature Global (India) Pvt. Ltd.

Office: 1302,13th floor, Tower-A, Signature Tower,
South City-1, Gurugram, Haryana-122001

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri. Sanjeev Sharma (Advocate)

Shri. Niraj Kumar (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of 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:

S.no.	Particulars	Details
1.	Name of the project	The Millennia,37-D, Gurugram, Haryana
2.	Rera Registered/Not	Not registered
3.	DTCP License No	04 of.2017 dated 02.02.2017 Valid upto 01.02.2022
4.	Unit no.	7-1306, 13 TH floor, tower-7 (Page no. 16 of complaint)
	Unit admeasuring	Carpet area -585.944 sq.ft. Balcony area - 79.545 sq.ft. (Page 16 of complaint)
6.	Builder buyer agreement (registered)	17.01.2018 (Page no 14 of complaint)
7.	Date of approval of building plans	08.06.2017
8.	Date of environment clearance	21.08.2017
9.	Possession clause	5. Possession of the Plot 5.1"4 Years from the date of approval of building plans or grant of environment clearance whichever is later"
10.	Due date of delivery of possession	21.02.2022

		[Note: including grace period of 6 months]
11.	Total sale consideration	Rs. 23,83,549/- (As per BBA on Page 23 of complaint)
12.	Total amount paid by the complainant	Rs. 26,32,013/- [As alleged by the complainant at pg.51 of complaint]
13.	Occupation certificate	25.01.2023 (Taken from website)
14.	Offer of Possession	28.03.2023 [page 50 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a. That it is humbly submitted that upon the representation by the Respondent and advertisement done in said behalf, the respondent was to construct an Affordable Group Housing Policy, 2013 Residential Group Housing Colony namely "MILLENIA" on parcel of land admeasuring 9.701 acres located at Sector-37D, Gurgaon, Haryana for which the respondent had obtained licence dated 02.02.2017 bearing licence no. 04 of 2017 having memo no. ZP-1140/SD(SB)/2017/ 12572 dated 08.06.2017 from DGTCP.
- b. The complainant is the original allottee/purchaser wherein the complainant showed the interest in purchasing a commercial unit with the respondent vide application no. 3725 dated 21.07.2017 wherein the application through draw of lots was held on 27.10.2017 and the complainant was allotted unit no. 7-

1306, Block/Tower-7, having carpet area 585.944 sq. ft. on 13th floor and balcony area of 79.545 sq. ft.

- c. The flat buyer agreement was executed on 17.01.2018 wherein the total sale consideration of the unit has not been provided, however the complainant has paid a total amount of Rs. 26,32,013/-.
- d. That as per Clause 5.1 of the Buyers Agreement, the vacant, peaceful and physical possession of the unit in question was to be handed over within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later, however, the possession of the same was not handed over on time.
- e. That it is pertinent to note that the respondent had made an offer of possession on 28.03.2023 and therefore, when the complainants were completely satisfied, the complainant got the conveyance deed executed but the respondent has not provided delay possession charges to the complainant.
- f. That thus, the complainant approached the Hon'ble Authority and filed a complaint relating to issue relating to delay of possession charges as well as illegal charges levied by the respondent amounting to Rs. 68,956/- at the time of offer of possession, by invoking the jurisdiction of this Hon'ble Authority under section 18.

C. Relief sought by the complainant:

4. The complainant has sought following relief:

- a. To order respondent to pay delay possession charges till actual date of handing over of possession.
- b. Direct the respondent to refund the illegal charges extorted by the respondent amounting to ₹68,956/-.

D. Reply filed by the respondent:

5. The respondent has contested the complaint on the following grounds:

- a. That the complainant was allotted a flat bearing no. 7-1307 having carpet area of 585.944 sq. ft. on the 13th floor and balcony area 79.653 sq. ft. together with the two wheeler open parking site through draw of lots held on 27.10.2017 under the affordable group housing policy 2013 notified by Government of Haryana vide Town and Country Planning Department notification dated 21.08.2017 as applicable at relevant point of time.
- b. That subsequent to the allotment of the said flat the complainant entered into agreement with the respondent for the delivery of possession of the said flat on the terms and conditions as contained therein.
- c. That the total cost of the allotted flat including balcony area was ₹23,83,549/- excluding the other charges such as stamp duty, registration charges, other expenses etc. and the payment was time link payment as stipulated by the policy.
- d. That the total cost of the said flat was escalation free, save and except increase on account of development charges payable to the governmental authority and/ or any other charges which

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

- e. That the delivery of the possession of the said flat was agreed to be offered within 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 allottee(s) having timely completed with all its obligations.
- f. That the proposed period of delivery of physical possession was subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having complied with all obligations of allotment in a timely manner and further subject to completion of formalities/documentation as prescribed by the respondent and not being in default of any clause of the agreement.
- g. That the agreed possession period would have been applicable provided no disturbance/hindrane had been caused either due to force majeure circumstances or on account of intervention by statutory Authorities etc.
- h. 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.

- i. 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 lockdown was withdrawn various restrictions continued to be imposed.
- j. That it is also to be noted that on the same principle, 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.
- k. That it is also matter of fact 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.

- l. That it is important to mention herein that graded response action plan has been implemented during winters and depending upon severity it also includes ban on construction activity and infact such restrictions have been imposed from time to time. Reference may be made to article in this regard which was published in business standard.
- m. That it is needless to mention that owing to a ban on construction activity, especially a complete and a long ban, the labour force gets demobilized. They have to be let off and they generally go back to their native places or seek work elsewhere and resumption of work and gaining pace of construction takes a very long time even after the ban stand lifted. Now as a matter of practice construction labour is not coming to NCR for construction in project site in winter season due to above reason & they are preferring to work in other state outside NCR during that time of year resulting in further delay of mobilization of construction activity.
- n. That the Hon'ble Haryana Real Estate Regulatory Authority vide order no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 extended the 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.
- o. That the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula had decided to grant extension of 3 months in addition to waiver granted during first wave of Covid pandemic from 15 of April 2021 to 30th of June 2021 considering the 2nd wave of Covid19 as a Force Majeure event.
- p. 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.
- q. That the Hon'ble RERA, Gautam Budh Nagar while deciding complaint No. -ADJ/NCR144/07/56387/2020 and leading complaint No. NCR144/09/61244/2020 and NCR144/01/0447/2020 vide order dated 19.03.2021 and 16.12.2020 has given extension of 74 days and 102 days to the developer on account of construction. It is pertinent to mention that said extension was in addition to Covid19 six months extension as noted in the said judgments.
- r. That in the light of aforesaid facts and notifications, it is submitted that the respondent is entitled for 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.

s. Further, all these facts were and are in the notice and knowledge of the complainant and the complainant has pleaded deliberate ignorance about the same. The complainant has intentionally omitted any reference to the aforesaid clauses of agreement. It is further submitted that the occupancy certificate of the project has been received and the respondent is in process to issue offer of possession to the allottees including the complainant.

6. 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 submissions made by the complainants.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

8. 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



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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee 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 of 2016 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. Findings on the objections raised by the respondent

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

11. 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 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 environment clearance is 21.08.2017 as taken from the project details. 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. **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 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 relief sought by the complainant.

G.I. To order respondent to pay delay possession charges till actual date of handing over of possession

12. In the present complaint, 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

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.

24. As per clause 5.1 of the buyer's agreement dated 17.01.2018, the possession of the subject unit was to be handed over by 21.02.2022. Clause 5.1 of the buyer's agreement provides for handover of possession and is reproduced below:

5.1

The developer shall 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. Whichever is later."

25. 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 application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted



such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

27. 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.
28. 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., 31.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
29. 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 agreement executed between the parties on 17.01.2018, the possession of the subject apartment was to be delivered within 4 years from the date of environment clearance or building plan whichever is later. The due date of possession is calculated from the date of environment clearance being later i.e., 21.08.2017. As far as grace period of 6 months is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 21.02.2022. The respondent has offered the possession of the subject apartment on 28.03.2023. Accordingly, it is the failure of the respondent/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 allottee 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 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.II Direct the respondent to refund the illegal charges extorted by the respondent amounting to ₹68,956/-.

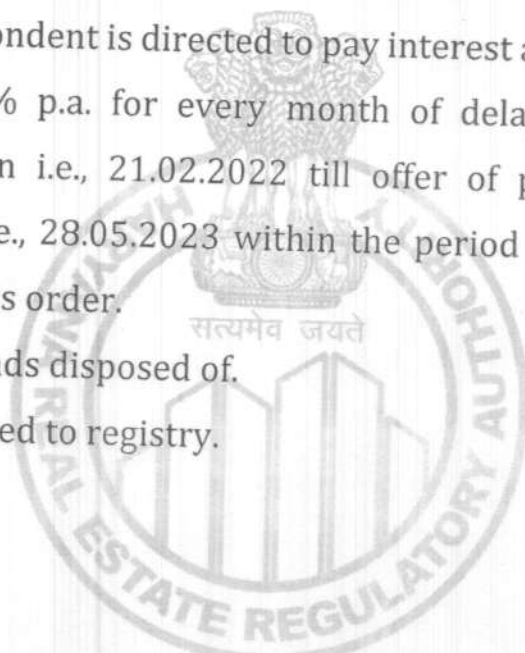
30. The complainant in its complaint has stated that the respondent has charged illegal charges of ₹68,956/- but no specific mention is there in its pleadings nor does any accounts statement is accompanied with



the offer of possession placed on record. Accordingly, the authority cannot deliberate upon the said relief.

H. Directions of the authority

31. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
 - a. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. 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 within the period of 90 days from the date of this order.
32. Complaint stands disposed of.
33. File be consigned to registry.



Sanjeev Kumar Arora
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2024