

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

<b>Complaint no.</b>	<b>2361 of 2023</b>
<b>Date of filing complaint</b>	<b>25.05.2023</b>
<b>First date of hearing</b>	<b>11.10.2023</b>
<b>Date of decision</b>	<b>07.08.2024</b>

1. Mukesh Kumar Das
2. Neeta Das

**Both R/o:** I-906, Corona Optus, Sector- 37C,  
Gurugram and at present r/o flat no. M- 801, BPTP  
Spacio, Sector 37D, Gurugram, Haryana

**Complainants**

Versus

Signature Global (India) Private Limited  
**Registered office:** 1302, 13<sup>th</sup> floor, Tower-A,  
Signature Tower, South City-I, Gurugram, Haryana

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Shashi Kant Sharma (Advocate)

Complainant

Shri Niraj Kumar (Advocate)

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 under the provisions of the Act or the Rules and regulations made thereunder 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 and location of the project	The Millenia, Sector 37D, Gurugram
	Project Area	9.701 acres
2.	Nature of the project	Affordable Group Housing Colony
3.	DTCP license no.	04 of 2017 dated 02.02.2017 valid upto 01.02.2022
	Name of licensee	Signature Global (India) Pvt. Ltd.
4.	RERA Registered/ not registered	Registered 03 of 2017 dated 20.06.2017 upto 4 years from the date of environment clearance, i.e., upto 21.08.2021
5.	Unit no.	Flat no. 602, Tower 8, 6 <sup>th</sup> Floor (As per BBA at page 27 of complaint)
6.	Unit admeasuring area	596.13 sq. ft. (Carpet Area) 79.65 sq. ft. (Balcony Area) (As per BBA at page 27 of complaint)
7.	Allotment letter	26.07.2018 (Page 23 of complaint)
8.	Date of builder buyer agreement	16.08.2018 (Page 25 of complaint)
	Possession clause as per builder buyer agreement	<b>5. Possession</b> <i>"5.1 Within 60 (sixty) day 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 the Developer in terms of the Agreement and not being in default under any part hereof....."</i>
	Possession clause as per Affordable Housing Policy, 2013	1(iv) All such projects shall be required to be necessarily completed <b>within 4 years from the approval of building</b>





		<i>plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>
9.	Date of approval of building plan	08.06.2017 (As stated by respondent at page 3 of reply and confirmed from another file CR/5675/2022 decided on 21.09.2023 of same project)
10.	Date of environment clearance	21.08.2017 (As stated by respondent at page 3 of reply and confirmed from another file CR/5675/2022 decided on 21.09.2023 of same project)
11.	Due date of possession	21.02.2022 (Calculated from date of environment clearances i.e., 21.08.2017 being later, which comes out to be 21.08.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic)
12.	Total sale consideration	Rs. 24,24,330/- (Page no. 33 of complaint and agreed to by respondent at page 2 of its reply)
13.	Total amount paid by the complainant	Rs. 26,18,283/- (As per Statement of Account dated 23.03.2023 at page no. 78 of complaint)
14.	Occupation certificate	25.01.2023
15.	Offer of possession	23.03.2023 (Page 76 of complaint)
16.	Conveyance Deed	19.01.2024 (Page no. 4 of additional submissions dated 19.04.2024)
17.	Possession Certificate	16.04.2024 (Page no. 42 of additional submissions dated 19.04.2024)



**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- a) That the respondent had advertised and represented the complainants that the respondent is having a well-known project namely "The Millennia" at Sector 37D, Village Gadoli Khurd and Gadoli Kalan, Gurugram, where the respondent is going to develop flats under the categories of affordable 2BHK/3BHK under management quota.
- b) That relying upon pamphlets, inducement and advertisement of the respondent, complainants showed their willingness to purchase a flat bearing no. 602, tower 8, 6<sup>th</sup> floor, measuring 675.78 sq. ft. in the said project of the respondent at a sale consideration of Rs.26,18,283/- including GST and other taxes.
- c) That the said flat was booked on 06.05.2018 and the allotment letter was issued by the respondent on 26.07.2018. Thereafter, a builder buyer agreement was executed between the parties on 16.08.2018 and the same was registered in the office of Sub-Registrar, Kadipur Tehsil, Gurugram.
- d) That the complainants took the bank loan from HDFC bank and have paid an amount of Rs.26,18,283/- till date.
- e) That as per clause 6.1 of the buyer's agreement, the respondent was liable to handover possession of the unit on or before 20.08.2021. But despite repeated request of the complainants, the respondent neither delivered the physical possession nor completed the unit till date.
- f) That the complainants paid the amount from time to time as and when demanded by the respondent. That from 20.08.2021, the complainants sent various reminders by e-mail in addition to telephonic calls, messages to get information about the possession of the unit. The complainants had also communicated financial hardships owing to Ban





EMIs leading to mental and financial distress with request to handover the possession of the unit on priority.

- g) That from 23.03.2023, the complainants along with their family members visited the respondent to enquire about handing over the possession of the unit and on every visit the respondent responded that finishing work is going on and the possession would be delivered very shortly. The flat was found to be in same condition as before when visited by the complainants personally.
- h) The respondent issued an offer of possession dated 23.03.2023 demanding a sum of Rs.1,40,963/- and Rs.58,703/- as delayed payment interest and instructed to clear the outstanding dues within a period of 30 days from 23.03.2023.
- i) That in the said offer of possession, the respondent stated that on receipt of the entire payment, the respondent will execute the conveyance deed in favor of the complainants, however it was nowhere communicated as to when the possession would be handed over to the complainants. The respondent has duly executed all the necessary documents but after completion of the documents and payments did not honor its commitment.

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

4. The complainants have sought following relief(s):
  - I. Direct the respondent to pay interest @ 10.75% per annum on the amount already paid by the complainants, i.e., Rs.26,18,283/- from 20.08.2021 till actual handover of the physical possession.
  - II. Direct the respondent to issue a fresh offer of possession after completion of the unit.
  - III. Direct the respondent that after payment of the above amount of delayed interest, the possession should be handed over to the complainants within a stipulated time period.
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 contested the complaint on the following on the following grounds vide its reply dated 05.10.2023 and written submissions dated 18.06.2024:

- a) That the complainants were allotted a unit no. 8-602 in block/tower 8 having carpet area of 596.13 sq. ft. on the 6<sup>th</sup> floor and balcony area 79.65 sq. ft. together with two wheeler open parking site and the pro-rata share in the common areas through draw of lots held on 24.07.2018 under the Affordable Group Housing Policy, 2013 notified by the 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 subject unit the complainants entered into an agreement with the respondent for the delivery of possession of the said unit on the terms and conditions as contained therein.
- c) That the total cost of the subject unit was Rs.24,24,330.50/- excluding the other charges such as stamp duty, registration charges, other expenses etc in accordance with the buyer's agreement with time linked payment plan. The goods and service tax were payable extra as applicable. The total cost of the subject unit 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 agreed to pay on demand by the respondent.
- d) That the delivery of the possession of the said unit was agreed to be offered within 4 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







occupation certificate and allottees having complied with all their obligations.

- e) That the project building plan was approved vide approval dated 08.06.2017 while the environment clearance approval was provided to the project vide approval dated 21.08.2017. Therefore, 4 years of possession date shall be considered from the date of EC, i.e., 21.08.2017, which is later in time.
- 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/hindrance 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 which was beyond the power and control of the respondent. 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 and also by the 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 the development of the project was also adversely affected due to various orders of 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.
- k) That the period of 151 days in addition to the period affected by Covid-19 was consumed on account of circumstances beyond the power and control of the respondent owing to passing of orders by statutory authorities affecting the regular development of the real estate project. Since, the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of time already indicated hereinbefore, the said period ought to be excluded, while computing the period availed by the respondent for purpose of raising construction and delivering possession.
- l) That the respondent after receipt of OC dated 25.01.2023, made the offer of possession to the complainant vide letter dated 23.03.2023. The complainants have refused to take the possession of the flat and also refused to pay a sum of Rs.82,260/- towards administrative charges, electricity connection charges, water connection charges etc. and





another sum towards late payment charges amounting to Rs.64,223.81/- and also Rs.29,459.60/- towards maintenance charges.

m) That the respondent executed conveyance deed with the complainants on 19.01.2024 and thereafter possession acknowledgement letter has been executed by the complainants on 02.04.2024 whereby the complainants have accepted that they have no claims whatsoever against the company and against the said allotment.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

**E. Jurisdiction of the authority**

9. 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**

10. 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**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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."

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

**F. Findings on the objections raised by the respondent.**

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

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) and various court orders. But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by August 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 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 the relief sought by the complainant.**

**G.I Direct the respondent to pay interest @ 10.75% per annum on the amount already paid by the complainants, i.e., Rs.26,18,283/- from 20.08.2021 till actual handover of the physical possession.**

**G.II Direct the respondent to issue a fresh offer of possession after completion of the unit.**

**G.III Direct the respondent that after payment of the above amount of delayed interest, the possession should be handed over to the complainants within a stipulated time period.**

14. The complainants were allotted unit no. 602, tower 8, 6<sup>th</sup> floor in the respondent's project at total sale consideration of Rs.24,24,330/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 16.08.2018. The possession of the unit was to be offered within 4 years from approval of building plans (08.06.2017) or from the date of environment clearance (21.08.2017), whichever is later, which comes out to be 21.08.2020 calculated from the date of environment clearance being later. 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 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 21.08.2020 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. Therefore, the due date of handing over possession comes out to be 21.02.2022. The complainants paid a sum of Rs.26,18,283/- towards the subject unit, and are ready and willing to retain the allotted unit in question.

15. The respondent offered the possession of the subject unit to the complainants on 23.03.2023 after obtaining occupation certificate on 25.01.2023 from the competent authorities. Subsequently, the conveyance deed with respect to the subject unit of the complainants was executed and registered on 19.01.2024 and thereafter, on 16.04.2024 possession certificate was also issued in favour of the complainants during the course of present complaint.

16. The complainant herein 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.”*

17. **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, *ibid*. 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.

18. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

19. 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., 07.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.

20. 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;"*

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondents/ promoters





which is the same as is being granted to them in case of delayed possession charges.

22. On consideration of the documents available on record and submissions made by both the parties, 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 dated 16.08.2018. By virtue of clause 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject apartment was to be delivered by 21.08.2021. As far as grace period is concerned, the same is allowed for a period of 6 months in lieu of HARERA notification no. 9/3-2020 dated 26.05.2020. 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 allottee 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.
23. However, it is the failure of the promoter to fulfil its obligations and responsibilities as per the 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 Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11% p.a. w.e.f. 21.02.2022 till the date of actual handing over of possession i.e., till 16.04.2024 or till offer of possession (23.03.2023) plus two months i.e., 23.05.2023, whichever is earlier. The date of offer of possession plus two months being earlier than the date of actual handing over of possession, the respondent is directed pay interest at the prescribed rate i.e., 11% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 21.02.2022 till the date of offer of





- possession (23.03.2023) plus two months i.e. up to 23.05.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
24. 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. Thereafter, the respondent offered the possession of the unit in question to the complainant only on 23.03.2023. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Further, conveyance deed was executed on 19.01.2024 and possession certificate was issued in favour of the complainants on 16.04.2024.
25. As per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainants. Since on perusal of documents on record it is found that possession had already been handed over by the respondent to the complainants and conveyance deed had also been executed between the parties on 19.01.2024, no direction to this effect is required to be passed by the Authority.

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

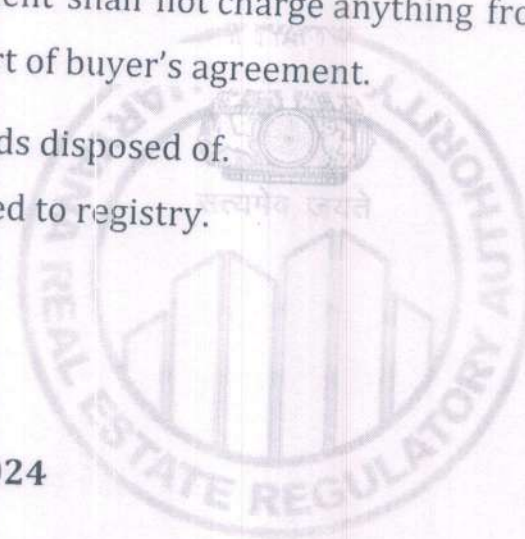
26. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):
- I. The respondent is directed pay interest at the prescribed rate i.e., 11% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 21.02.2022 till the date of offer of possession (23.03.2023) plus two months i.e. up to 23.05.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.





- II. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- 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., 11% 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. Further no interest shall be charged from complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
- IV. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.
27. Complaint stands disposed of.
28. File be consigned to registry.

**Dated:07.08.2024**



**HARERA**  
**GURUGRAM**

**Ashok Sangwan**  
**(Member)**

Haryana Real Estate  
Regulatory Authority,  
Gurugram