

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

Complaint no.	382 of 2023
Date of filing complaint	13.02.2023
First date of hearing	03.08.2023
Date of decision	19.02.2025

Rampal Singh Chauhan

R/o: Village- Bass, Post- Achina, Tehsil- Charkhi
Dadri, District Bhiwani, Haryana- 127307

Complainant

Versus

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

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Sahil Bhardwaj and Sh. Vivek Janghu (Advocates)

Complainant

Sh. 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 of the project	"The Millennia", 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 up to 01.02.2022
	Name of licensee	Signature Global (India) Private Ltd.
4.	RERA Registered/ not registered	Registered 03 of 2017 dated 20.06.2017 up to 4 years from the date of environment clearance, i.e., up to 21.08.2021
5.	Unit no.	Flat no. 11-1901, tower 11, 19 th floor (As per BBA at page 18 of complaint)
6.	Unit admeasuring area	519.229 sq. ft. (Carpet Area) 79.653 sq. ft. (Balcony Area) (As per BBA at page 18 of complaint)
7.	Date of builder buyer agreement	14.12.2017 (Date on stamp paper attached to BBA at page 28 of complaint- As pleaded by complainant and agreed by respondent at page 2 of reply)
	Possession clause as per builder buyer agreement	5. Possession <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 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</i>



		<p><i>said Flat to the Allottee within a period of 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later."</i> (As per BBA at page 27 of complaint)</p>
	Possession clause as per Affordable Housing Policy, 2013	<p><i>1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building 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></p>
8.	Date of approval of building plan	<p>08.06.2017 (As confirmed from another file CR/5675/2022 decided on 21.09.2023 of same project)</p>
9.	Date of environment clearance	<p>21.08.2017 (As confirmed from another file CR/5675/2022 decided on 21.09.2023 of same project)</p>
10.	Due date of possession	<p>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)</p>
11.	Total sale consideration	<p>Rs.21,16,742.50/- (BBA at page no. 24 of complaint and as pleaded by respondent at page no. 2 of reply)</p>
12.	Total amount paid by the complainant	<p>Rs.23,84,745/- (As per SOA dated 17.12.2024 placed on record by respondent by way of affidavit dated 13.02.2025)</p>
13.	Occupation certificate	<p>25.01.2023 (Page 143 of reply)</p>
14.	Offer of possession	<p>23.02.2023 (As pleaded by respondent at page no. 13 of reply and not objected to by the complainant)</p>



15.	Possession Certificate	17.10.2023 (Page no. 146 of reply)
-----	------------------------	---------------------------------------

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- a) That the respondent approached the complainant through its agents with an offer to buy its project in the year 2017 for a basic sale price of ₹21,16,742.5/-. The respondent assured and represented the complainant that they have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would hand over the flat within a month.
- b) That relying upon those assurances and believing them to be true, the complainant booked a residential flat bearing no. 1901 in tower no. 11 on the 19th floor having carpet area of 519.229 sq. ft. at the rate of ₹4000/- per sq. ft. and for balcony at the rate of ₹500/- sq. ft.
- c) That upon the regular follows up of the complainant, the respondent had executed an agreement for sale dated 14.12.2017 allotting the aforesaid unit in favor of the complainant. The complainant as on date has paid Rs. ₹23,10,394.43/- towards the sale consideration of the unit.
- d) That the date of offer of possession will be 4 years from the date of approval of building plan or grant of environmental clearance, whichever is later as per clause 5(iii)(b) of the Affordable Housing Policy 2013. The building plans were sanctioned, and environmental clearance has been received by the respondent on 08.06.2017 but the same could not be considered. With respect to environmental clearance, the date of obtaining consent to establish is given, i.e., 20.08.2017. Thus, the promised date to hand over the possession of the said unit comes out to be 20.02.2022, but the respondent has still not handed over the unit after repeated reminders and requests by the allottees.

- e) That the applicable Input Tax Credit (ITC) under GST chargeable over the affordable housing project is 1% but the respondent has charged 8% from the complainant which is a clear violation of law and clearly depicting unfair trade practice.
- f) That the respondent, while luring the complainant into investing in the unit, promised two kitchen slabs. However, upon visiting the unit, the respondent was startled to observe one slab counter in the kitchen instead of two and all the intimations made in this regard fall into the deaf ears of the respondent.
- g) That the cause of action accrued in favor of the complainant and against the respondent on 07.08.2017 when the complainant had booked the said unit, and it further arose when respondent failed/neglected to deliver the said unit on the agreed date. The cause of action is continuing and is still subsisting on a day-to-day basis as the respondent has still not handed over the possession of the unit as agreed.

C. Relief sought by the complainant:

4. The complainant has sought following relief:

1. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs.23,10,394.43/- towards the sale consideration paid by the complainant from the date of payment till the date of delivery of possession.
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 01.02.2024:
- a) That the complainant was allotted a retail unit no. 11-1901 in admeasuring 519.229 sq. ft. and balcony area 79.653 sq. ft. together with two-wheeler

- open parking site and a pro-rata share in the common areas through draw of lots held on 27.10.2017 in the presence of the officials of DGTCP.
- b) That after the allotment of the subject unit the complainants entered into an agreement with the respondent for the delivery of possession vide BBA dated 14.12.2017 on the terms and conditions as contained therein.
- c) That the total cost of the subject unit was Rs.21,16,742.50/- 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 by 20.08.2021 as the delivery of possession was subject to force majeure events. 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.
- e) 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.
- f) 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.

- g) 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.
- h) 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 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.
- i) 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.
- j) 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. Since the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of

the time already indicated hereinbefore, the said period ought to be excluded, while computing the period availed by the respondent for purpose of delivering possession.

k) 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 conveyance deed was executed, and possession was handed over to the complainant vide possession certificate dated 17.10.2023 whereby the complainant has agreed that he has no claims whatsoever against the respondent and hence the complaint deserves to be dismissed.

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 based on 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 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 at the applicable rate on account of delay in offering possession on Rs.23,10,394.43/- towards the sale consideration paid by the complainant from the date of payment till the date of delivery of possession.

14. The complainant was allotted unit no. 11-1901, tower 11, 19th floor in the respondent's project at total sale consideration of Rs.21,16,742.50/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 14.12.2017. 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.14,28,803/- 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 complainant on 23.02.2023 after obtaining occupation certificate on 25.01.2023 from the competent authorities. Subsequently, possession certificate was also issued in favour of the complainant on 17.10.2023.
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 complainant is 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., 19.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
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., 11.10% by the respondent 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 14.12.2017. 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 @ 11.10% p.a. w.e.f. 21.02.2022 till the date of offer of possession (23.02.2023) plus two months i.e., till 23.04.2023 or actual handing over of possession i.e., till 17.10.2023, 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., 11.10% 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 (23.02.2023) plus two months i.e. up to 23.04.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

H. Directions of the authority

24. 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 delay possession charges at the prescribed rate i.e., 11.10% 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 the date of offer of possession (23.02.2023) plus two months i.e. up to 23.04.2023 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., 11.10% 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(z a) 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.
25. Complaint stands disposed of.
26. File be consigned to registry.

Dated:19.02.2025

Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram