

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

Complaint no. 179 of 2024
Date of filing complaint 29.01.2024
First date of hearing 20.03.2024
Date of decision 12.03.2025

Mrs. Neelima Sharma

R/o: House no. 2011, Ward no. 16, Sector-28,
Faridabad, Gurugram, Haryana

Complainant

Versus

Signature Global Homes Private Limited

Registered office: 1309, 13th floor, Dr. Gopal Das
Bhawan, 28 Barakhamba Road, New Delhi- 110001

Correspondence Address: Ground floor, Tower-A,
Signature Towers, South City-I, Gurugram, Haryana

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Vinay Kumar Saini, Bhajan Lal Jangra,
Mohinder Singh and Rishabh Sharma
(Advocates)

Complainant

Shri Mintu Kumar (AR of the company)

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	"Signature Global Park II", Sector 36, Village Dhunela, Gurugram
	Project Area	11.0625 acres
2.	Nature of the project	Affordable Plotted Colony under DDJAY
3.	DTCP license no.	39 of 2019 dated 01.03.2019 valid upto 29.02.2024
	Name of licensee	Signature Global Homes Pvt. Ltd.
4.	RERA Registered/ not registered	Registered 43 of 2019 dated 01.08.2019 upto 30.06.2021
5.	Unit no.	Plot no. 27, Block C, 3 rd floor (As per BBA at page 36 of complaint)
6.	Unit admeasuring area	756.60 sq. ft. (Carpet Area) 134.23 sq. ft. (Balcony Area) (As per BBA at page 36 of complaint)
7.	Date of builder buyer agreement	13.08.2021 (As on page 26 of complaint)
	Possession clause as per builder buyer agreement	7. Possession of the Residential Independent Floor <i>"7.1 The Promoter assures to handover possession as per agreed term and conditions by 31-March-2023 unless there is delay due to "force majeure", Court orders, Government policy/guidelines, decisions, etc. affecting the regular development of the real estate project....."</i> (Emphasis supplied) (As per BBA at page 42 of complaint)
10.	Due date of possession	31.03.2023
11.	Total sale consideration	Rs.63,26,184/- (As per SOA dated 06.01.2025 annexed at

		page 4 of additional documents placed on record dated 10.01.2025)
12.	Total amount paid by the complainant	Rs. 63,34,242/- (As per SOA dated 15.02.2025 placed on record by the respondent)
13.	Occupation certificate	29.02.2024 (As per additional documents placed on record dated 10.01.2025)
14.	Offer of possession	13.03.2024 (page no. 15 of reply)
15.	Possession Certificate	11.08.2024 (Placed on record by counsel for the respondent during proceedings dated 04.12.2024)
16.	Conveyance Deed	24.06.2024 (Submitted by counsel for the respondent during proceedings dated 04.12.2024 and placed on record on 18.02.2025)

B. Facts of the complaint:

3. The complainants have made the following submissions by filing of present complaint dated 29.01.2024: -
- That the complainant being the original allottee was allotted independent floor /unit no. C-27, 3rd floor, block -C in the project "Signature Global Park-II", situated at Sector -36, Sohna road, Gurugram.
 - That the respondent represented that they are owners of the land admeasuring 11.0625 Acres situated in the village Dhunela, Tehsil - Sohna, Sector -36 District Gurugram and DGTCP had granted licence to make and develop the residential project as per the layout plan sanctioned. It was further represented that the respondent procured necessary approvals and other sanctions which include environment clearance etc.
 - That the complainant had booked a unit no. C-27, 3rd floor, block -C in the said project believing upon the representation, promises and assurances of the respondent, against a total sale consideration of Rs.62,40,955/-, which included cost and tax.

- d) That it was represented by the respondent that the project is being developed in phases and recreational centre amenities and faculties are being developed as per the sanctioned plan. The project shall be developed by the promoter in accordance with the approval plans and other sanctions including environmental clearance and in terms of Affordable Plotted Housing Policy 2016. Thereby the complainant was lured and attracted to book residential flat in the project vide application no. FAAP/00170/21-22 dated 06.06.2021 and as per the policy the complainant was allotted floor no. 3rd in block C having carpet area of 756.60 sq. feet and balcony area of 134.23 sq. feet built upon a plot no. C-27.
- e) That subsequently, a registered builder buyer agreement dated 13.08.2021 was entered into between the parties wherein all the terms and conditions were incorporated. The respondent was under contractual obligation to perform its duty by way of construction and development of the project and handover the unit complete in all respect on or before 31.03.2023 in terms of the buyer's agreement.
- f) That after signing the buyer's agreement in respect of the unit, the complainant visited the office of the respondent several times and it was told by the respondent that that construction of the project will be completed within time and would be handed over within prescribed time i.e. by 31.03.2023 however the respondent neglected to hand over the booked floor/unit but kept sending demands.
- g) That without completing the construction work of the project, the respondent raised a demand of Rs.12,44,555/- though the construction activity was stopped. The complainant was facing financial crunch and had to seek bank loan sum of Rs.12,44,555/- on 28.03.2023 only to pay the demand within time and fulfil her obligation towards the respondent. ✓

- h) Thereafter, the complainant again wrote e-mails to CRM team of the company and personally visited the office of the respondent, but the respondent replied that tentative date of possession is now March 2024, but as per BBA the possession was to be given by 31.03.2023 hence there is delay in completion of the project of 12 months. The complainant was forced to pay sum of Rs.53,08,887.17/- despite the facts that project is still incomplete.
- i) That the complainant is seeking possession and delayed possession charges along with statutory penalty for wilful breach of buyer's agreement dated 13.08.2021 because the respondent by its acts, conduct, acquiescence and omission violated the proviso of Section 11, 14 and 18 of the RERA Act, and therefore is liable to be prosecuted.
- j) That respondent had failed to complete the project and failed to give offer of possession within time hence cause of action to file the present complaint arose on 11.12.2023, when the complainant received demand cum statement of account from the respondent cause of action is still subsisting.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to pay interest for every month of delay at prevailing rate of interest from the date of booking till handing over of the possession of the unit.
 - II. Direct the respondent to handover the physical possession of the unit no. C-27, 3rd floor, block C in the project "Signature Global Park- II, Sector-36, Sohna Road, Gurugram with balcony.
 - III. Direct the respondent not to levy any holding charges upon the complainant till the offer 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 grounds vide its reply dated 20.03.2024:
- a) That the delivery of possession and execution of conveyance deed is subject to force majeure circumstances, intervention of statutory authorities etc. affecting the regular development of the real estate project. This has also been recorded at clause 7.1 of the buyer's agreement dated 13.08.2021. It was further specifically mentioned that if the possession is delayed due to force majeure, then the respondent shall be entitled to extension of time for delivery of possession of the residential independent floor. Hence, the respondent is entitled for extension.
 - b) That the complainant is aware about the facts that the project of the respondent was affected by force majeure circumstances of Covid-19 and other various prohibition order issued/passed by the courts and different statutory authorities on construction, which resulted into derailment of the progress of the project, however the complainant deliberately chose not to bring these facts before the Authority. Further, the complainant cannot be made to rely on selected covenants/clauses of the buyer's agreement. The covenants incorporated in the agreement are to be cumulatively considered in their entirety to determine the rights and obligations of the parties.
 - c) That the complainant inspected the site where the project is constructed and accepted the site where the project is constructed and accepted the site plan etc. This has also been recorded in buyer's agreement dated 13.08.2021 at clause 6. Further, it is specifically mentioned in clause 7.1 that if the possession of the unit is delayed due to force majeure, then the respondent shall be entitled to extension of time for delivery of possession of the residential independent floor.

- d) That the period of six days from 16.11.2021 to 21.11.2021 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. The said period ought to be excluded while computing the period availed by the respondent for the purpose of raising construction and delivering possession.
- e) That construction of the project is complete, and respondent has already offered possession of the unit to the complainant vide letter dated 13.03.2024. However, for the reasons best known to the complainant, she chooses not to take the possession of the unit. The respondent is still ready to handover the possession of the unit to the complainant subject to clearance of dues, if any. As of now Rs.10,21,039.67/- is still outstanding and apart from this late payment charges of Rs.3,745.67/- are also outstanding.
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. Findings on objections raised by the respondent:

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

9. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as the outbreak of Covid-19 pandemic. 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 31.03.2023. In the present case, the buyer's agreement was executed between the parties on 13.08.2021. However, given that the allotment of

the subject occurred amidst pandemic, it is reasonable to assume that the respondent was aware of the prevailing circumstances and agreed to the designated timeframe for possession accordingly. Consequently, any extension in timeframe for handover of possession in lieu of Covid-19 cannot be granted and the due date for handover of possession remains unaltered i.e. 31.03.2023.

F. Jurisdiction of the authority

10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the following reasons given below.

F.I Territorial jurisdiction

11. 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 the complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

12. 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."

13. 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.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay interest for every month of delay at prevailing rate of interest from the date of booking till handing over of the possession of the unit.

G.II Direct the respondent to handover the physical possession of the unit no. C-27, 3rd floor, block C in the project "Signature Global Park- II, Sector-36, Sohna Road, Gurugram with balcony.

14. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

15. The factual matrix of the case reveals that the complainant was allotted unit no. 37D-J5-1F in the respondent's project at the sale consideration of Rs. 87,56,502/-. A buyer's agreement was executed between the parties on 20.12.2021. The possession of the unit was to be offered by 31.12.2023 in terms of clause 7.1 of the buyer's agreement executed between the parties. Therefore, the due date of handing over possession comes out to be 31.12.2023. The complainant paid a sum of Rs. Rs. 63,34,242/- towards the subject unit, and is ready and willing to retain the allotted unit in question.

16. The respondent offered the possession of the subject unit to the complainant on 13.03.2024 after obtaining occupation certificate on 29.02.2024 from the competent authorities. Subsequently, conveyance deed was executed on 24.06.2024 and possession certificate was also issued in favour of the complainant on 11.08.2024.

17. 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. Section 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."*

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges and 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.

19. 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.

20. 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., 12.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

21. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

“(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”*

22. 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.

23. 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 13.08.2021. By virtue of clause 7.1 of the buyer's agreement executed between the parties, the possession of the subject unit was to be delivered by 31.03.2023. 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.

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 delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 31.03.2023 till the date of offer of possession (13.03.2024) plus two months i.e., till 13.05.2024 or actual handing over of possession i.e., till 11.08.2024, 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 complainant from due date of possession i.e., 31.03.2023 till the date of offer of possession (13.03.2024) plus two months i.e. up to 13.05.2024 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, ibid.

25. The authority further observes that Section 17 of the Act obligates the promoter to handover the physical possession of the subject unit complete in all respect as per specifications mentioned in BBA and thereafter, the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act. However, the possession had already been handed over to the complainants in the present case. Same is evident from possession certificate dated 11.08.2024 issued in favour of the complainant.

Therefore, no direction to this effect is required.

G.III Direct the respondent not to levy any holding charges upon the complainant till the offer of possession.

26. In the case of Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020. The relevant part of same is reiterated as under-



"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

Therefore, the respondent is directed not to levy any holding charges upon the complainant.

I. Directions of the authority

27. 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., 31.03.2023 till the date of offer of possession (13.03.2024) plus two months i.e. up to 13.05.2024 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- II. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- III. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.



- IV. The respondent is directed not to claim holding charges from complainant at any point of time even after being part of the builder buyer agreement as per law settled by the Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020.
28. Complaint stands disposed of.
29. File be consigned to registry.

Dated:12.03.2025



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

HARERA
GURUGRAM