

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

Complaint no.: 7183 of 2022
Date of decision : 31.05.2024

Kiran Kumar
R/o: - H.no. 127, Basant Vihar Colony, Gali no. 1 peer
wali Karnal rural part 1.

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. Satish Tanwar (Advovate)
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.n o.	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 up to 01.02.2022
4.	Unit no.	2-1104, 11 TH floor, tower-2 (Page no. 19 of complaint)
	Unit admeasuring	Carpet area -552.360 sq. ft. Balcony area - 79.653 sq. ft. (Page 19 of complaint)
5.	Conveyance deed	19.06.2023 (page 146 of reply)
6.	Builder buyer agreement (registered)	04.12.2017 (Page no 17 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. 22,49,267/-



		(As per BBA on Page 25 of complaint)
12.	Total amount paid by the complainant	Rs. 22,49,267/- [As per CD on pg. 154 of reply]
13.	Occupation certificate	25.01.2023 (Taken from website)
14.	Offer of Possession	01.02.2023 [page 142 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a. That the complainants are law abiding Indian Citizen and the Respondent is a private limited company incorporated under The Companies Act, 1956 registered with the Office of Registrar of Companies, Delhi and the company is engaged in the business activities relating to construction, development, marketing & sales of various types of residential as well as commercial properties to its various customers/clients and works for gains
- b. That after visiting various places in Gurugram in search of a good residential property, the complainants came into contact with the respondent company through publication and its officials by the sales/marketing agent of the respondent, where it was informed to the complainant that the respondent's company is s developing a project "THE MILLENIA" affordable group housing society situated at Sector-37D, Gurugram and on-going through the attractive Brochure, the payment plan and assurance given by the officials of the respondent's company regarding constructing of various projects in Gurugram and other Districts of Haryana within the stipulated period. It was intimated, the rates of the properties would



soar to the great highs and by the reputation of the respondent's company, the complainants decided to have a residential unit in the respondent's company project.

- c. That complainants duly believed the statement of the representative of respondent and applied with Application no.10158 dated 27.07.2017 and thereafter the draw of lots held on dated 27.10.2017 as per rule of DTCP / DC Gurugram a Unit bearing No 1104 was allotted in Tower-2 having the carpet area of 552.360 Sq. Ft. and balcony area 79.653 sq. ft. along with two wheeler open parking site and the prop rata share in the Common Areas on 11th Floor in the project The Millenia in affordable group housing scheme situated at Sector-37D, Gurugram with total sale consideration of Rs.22,49,267.00/- including all other charges. The complainant duly paid the total consideration of Rs.22,49,267.00/-
- d. That the complainants without making any kind of delay always deposited the amount required as per the payment plan/schedule opted by the complainants immediately on receipt of letters from the respondent company which has also been admitted and acknowledged by the respondent's company officials. The Stamp Duty + Registration Charges & Administrative Charges as mentioned in the payment plan is liable to be payable by the complainants and that too at the time of offer of possession.
- e. That apart from issuing a payment receipts on different dates, the respondent company also issued a Allotment Letter Dated 01.11.2017 carrying the details of unit allotted and also the details



of amount to be deposited by the complainants time to time as per payment plan opted by the complainants.

- f. That the complainant deposited the required amount as per the payment plan opted by the complainants according to the Builder Buyer Agreement, which was executed between the complainant and the respondent company on 27.11.2017 following carrying all the details of terms and conditions of the said BBA were complied by the complainants time to time as well as the respondent company from all the time as and when it was required.
- g. That after several requests finally the respondent agreed to execute the Builder Buyer Agreement with the complainant and ultimately it was executed on 03.01.2018 vide Vasika No.4462 dated 03.01.2018 registered in the office of Sub Registrar, Kadipur, Gurugram, showing the total sale consideration of Rs.22,49,267.00/- (Rupees Twenty two lac eighty forty nine thousand two hundred and sixty seven only) including of Fixtures & Fittings, Electricity Connection Charges and other charges and again the respondent assured the complainant that they have taken all necessary sanctions for the completion of aforesaid project.
- h. That as per one of the terms and conditions of the said buyer's agreement dated 03.01.2018, in para no.5.1 it is clearly mentioned that regarding the possession of the said unit it was agreed and settled that the possession of the said Unit/Flat shall be handed over to the complainants within a stipulated period of 4 (four) years from the date of approval of building plan or grant of environment clearance (hereinafter referred to as the "Commencement Date")



whichever is later). Hence, from the above said clause as mentioned in Buyer Agreement, the respondent company was duly bound to handover the physical possession of the above said Unit/flat to the complainants positively up to 13.11.2021 and it was told by the authorised person of respondent that till date they have never delayed the completion of any project they have in their hand.

- i. That on account of not completing the construction of the above said Unit/flat allotted to the complainant within the stipulated period of 4 years, the complainants have suffered a huge monetary loss besides having sleepless night for the past more than 1 year. The complainants had been burdened by the respondent by paying penal rate of interest to the bank, and the complainants has also suffered with great mental harassment and humiliation. The act and conduct of the respondents have also snatched the mental peace of the complainants. The following are the details of monetary loss which has been suffered by the complainants on account of total negligence/carelessness on the respondent part.
- j. That as the Respondent failed to discharge to complete and handover the possession of the allotted unit / flat to the complainants within the stipulated time and thus they have cheated the complainant to invest their hard earn money on believing upon their false assurances. The Respondent in a master minded and scripted way succeeded to their ulterior motive and cause wrongful losses to the complainant and wrongful gains to themselves. Thus the Respondent has not only breached the trust of the complainants but also in a planned and thoughtful way cheated/defrauded

the complainant. The complainants due to their said illegal acts, conduct and misdeeds, suffered mental agony, sorrow, trauma and apathy. The Respondent involved in the swindling and embezzlement of funds of not only of the complainant but similarly situated innocent people at large. That due to illegal acts and conducts of the Respondent, the Complainants had suffered to great mental agony, physical harassment, financial loss, humiliation, hence the respondent is liable to pay the delay possession charges on paid amount to the complainant as per Section 18 of Haryana Real Estate Regulatory Authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
 - a. To order the respondent to handover the actual physical possession of the flat to the complainant.
 - b. To order respondent to pay delay possession charges till actual date of handing over of possession.

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. 1104 having carpet area of 552.360 sq. ft. on the 11th 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 ₹22,49,267/- 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 the respondent to handover the actual physical possession of the flat to the complainant.

12. In the present complaint the conveyance deed has already been executed between the parties on 19.06.2023. Also, vide proceedings dated 03.05.2024 it has been recorded by the authority that the possession of the said unit has already been taken by the complainant on 01.02.2023 after receipt of OC on 25.01.2023 from the competent authority. Accordingly, in view of the above mentioned facts the present relief stands redundant.

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

13. 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 04.12.2017, 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 04.12.2017, 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 01.02.2023. 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., 01.04.2023 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.

H. Directions of the authority

30. 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



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possession i.e., 21.02.2022 till offer of possession plus two months i.e., 01.04.2023 within the period of 90 days from the date of this order.

31. Complaint stands disposed of.
32. File be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2024

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