

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

Complaint no. : 2167 of 2021
First date of hearing: 28.10.2021
Date of decision : 17.05.2022

1. Harish Jaggi
2. Anjali Jaggi
R/O: - B-249, Greater Kailash-I,
New Delhi-110048

Complainants


Versus

M/s Puri Construction Pvt. Ltd.
Regd. Office at: - 4-7B, Ground Floor,
Tolstoy House, 15 & 17, Tolstoy Marg,
New Delhi-110001

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Sanjeev Sharma
Shri M.K Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 26.04.2021 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 provision of the Act or the rules and regulations made there under or to the allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Diplomatic Greens" at sector-110A & 111, Gurgaon
2.	Nature of the project	Group Housing Complex
3.	Project area	2.525 acres
4.	DTCP license no.	55 of 2010 issued on 25.07.2010 valid up to 24.07.2025
5.	Name of licensee	Natura Villa Promoters Pvt. Ltd. and 2 others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	903, 9th floor, tower C1 (annexure 1 on page no. 24 of complaint)
8.	Unit measuring	2950 sq. ft. (annexure 1 on page no. 24 of complaint)
9.	Date of execution of Flat buyer's agreement	10.05.2012 (annexure 1 on page no. 22 of complaint)

10.	Possession Clause	<p>14. POSSESSION</p> <p>(a) "Subject to terms of this clause and subject to the apartment allottee having complied with all the terms and conditions of this agreement, and not being in default under any provisions of this agreement and compliance with all the provisions, formalities, documentation etc., as prescribed by the Company, the company proposes to handover the possession of the apartment within 42 months of the execution of this agreement. The apartment allottee agrees and understands that the company shall be entitled to a grace period of an additional one hundred eighty (180) days for applying and obtaining occupation certificate in respect of group housing colony."</p>
11.	Total consideration	<p>Rs. 2,30,24,604/- [as per agreement on page no. 25 of complaint] Rs 2,41,71,205/- [as per the customer ledger on page no. 71 of complaint]</p>
12.	Total amount paid by the complainants	<p>Rs. 2,40,63,462/- [as per customer ledger on page no. 71 of complaint]</p>
13.	Due date of delivery of possession	<p>10.11.2015 [calculated from the date of execution of agreement] Note: Grace period of 180 days for applying and obtaining occupation certificate is</p>

		disallowed as OC was applied on 29.07.2016.
14.	Occupation certificate	29.08.2016 [annexure R2 on page no. 24 of reply]
15.	Offer of possession	16.01.2017 [annexure R3 on page no. 27 of reply]

B. Facts of the complaint

3. That the respondent obtained licence no. 55 of 2010 and floated a group housing complex scheme located at sector-110A and 111, Village Chauma, Tehsil & District Gurugram, Haryana called as "Diplomatic Greens".
4. That the respondent and the complainants entered into a builder buyer agreement on 10.05.2012 wherein the complainants were allotted unit no.903, 9th floor, C1-tower, admeasuring 2950 Sq. Ft. for a total consideration of Rs. 2,41,60,964/-.
5. That as per clause 14 (a) of the agreement, the possession of the unit in question was to be handed over within 42 months along with grace period of 6 (six) months. That the vacant and peaceful possession of the Unit was to be handed over by 10.11.2015 end of 42 months and lastly by 08.05.2016 by adding 6 months' grace period.

6. That the respondent had offered possession of the unit in question to complainants on 17.02.2017 but the actual handover of the possession was done on 08.07.2019 after a delay of 3 years 2 months and also that the respondent did not adjust the delay possession charges.
7. That as per the statement of account which was received by the complainants dated 23.03.2021, the complainants had paid a total amount of Rs. 2,40,63,462/-.
8. That the respondent should be penalised for non-registration of the project with RERA.
9. That the complainants aggrieved of having not received delay possession charges on time is filing the present complaint before this Hon'ble Authority.

C. Relief sought by the complainants:

10. The complainants have sought the following relief:
 - (i) Direct the respondent to pay interest for delay possession charges on the amount paid by the complainants.
11. 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.

12. That the complaint filed by the complainants are not maintainable under the provisions of RERA Act and

applicable rules, as the occupation certificate was received in the year August, 2016 before coming into force of Real Estate (Regulation and Development) Act, 2016. Hence the complaint should be outrightly rejected by this Hon'ble Authority.

13. That the complainants have got no cause of action to file the present complaint. The whole complaint is based upon the ground of expiry of 48 months from the date of agreement, subject to force majeure conditions. The respondent has offered possession of the unit on 16.1.2017 i.e., only with a delay of 8 months from the agreed date of offer of possession, which was also duly explained in the letter / booklet for offer of possession. It is quite strange that the complainant(s) who is well known to the officials of the respondent never raised any issue regarding the same since 16.1.2017 till 2021 i.e., after expiry of 4 years of offer of possession, hence the present complaint be dismissed on this ground alone. Further the complainants have wrongfully mentioned date of offer of possession as 17.2.2017 in their complaint.

14. That the respondent had offered the possession of the apartment to the complainants and other allottees on 16.1.2017 and since then more than 350 families are residing in the said complex and it is complainants who took the

physical possession in 2019 after requesting the respondent to waive off all the holding charges and without making the complete payments which are still pending as on date also as reflected in the statement of accounts. Hence the complaint is being based upon false representations and facts and breach is solely on account of complainants and hence the complaint be dismissed.

15. That the complainants are estopped from filing the present complaint as the offer of possession was made on 16.1.2017 and the complainants after accepting the same made delayed payments in the month of September 2017 and requested the respondent to waive off the applicable interest on delayed payments which was waived off as reflected in the statement of accounts and subsequently the physical possession was also taken over by the complainants as admitted by them hence now after accepting the offer of possession, without any demur or protest about the delayed compensation, the complainants are now estopped from filing the present complaint by their own act and conduct.

E. Jurisdiction of the authority

16. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. 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

17. 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

18. 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)(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; The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

19. 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.

G. Findings on the relief sought by the complainants.

Relief sought by the complainants: The complainants had sought following relief(s):

- i. Direct the respondent to pay interest for delay possession charges on the amount paid by the complainants.**

20. In the present complaint, the complainants intend 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."

21. Clause 14 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"Clause 14(a) "Subject to terms of this clause and subject to the apartment allottee having complied with all the terms and conditions of this agreement, and not being in default under any provisions of this agreement and compliance with all the provisions, formalities, documentation etc., as prescribed by the Company, the company proposes to handover the possession of the apartment **within 42 months of the execution of this agreement.** The apartment allottee agrees and understands that the company shall be entitled to a grace period of an additional one hundred eighty (180) days for applying and obtaining occupation certificate in respect of group housing colony."*

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, 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.

23. 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.
24. 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., 17.05.2022 is 7.40%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.40% per annum.
25. 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;"*

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.40% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions 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 apartment buyer's agreement executed between the parties on 10.05.2012, the possession of the booked unit was to be delivered within 42 months of execution of this agreement including the grace period of 180 days for applying and obtaining occupation certificate, which is not allowed in the present case. So, the due date of possession comes out to be 10.11.2015.
28. Accordingly, 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 9.40% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e., 10.11.2015 till offer of possession of the booked unit i.e., 16.01.2017 plus two months which comes out to be 16.03.2017 as per the

proviso to section 18(1)(a) of the Act read with rules 15 of the rules.

H. Directions of the authority

29. 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):

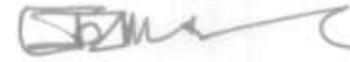
- i. The respondent is directed to pay interest at the prescribed rate of 9.40% p.a. for every month of delay from the due date of possession i.e., 10.11.2015 till offer of possession of the booked unit i.e., 16.01.2017 plus two months which comes out to be 16.03.2017 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.
- iii. The complainants are also directed to pay the outstanding dues, if any.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.40% 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.

- v. The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.

30. Complaint stands disposed of.

31. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.05.2022



HARERA
GURUGRAM