

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

Complaint no. : 2887 of 2021
First date of hearing: 30.09.2021
Date of decision : 11.10.2022

- I. Manjeet Rajain
II. Angad Rajain
III. Mrs. Urvashi Rajain

**all r/O: - G-32, South city 1,
Gurugram**

Complainants

Versus

M/s Bestech India Pvt. Ltd.,
Bhagwan Mahavir Marg,
Sector-44, Gurugram.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member
Member**

APPEARANCE:

Shri. Nitin Jaspal
Shri. Sanjeev Sharma

Advocate for the Complainants
Advocate for the Respondent

ORDER

1. The present complaint dated 09.05.2019 has been filed by the complainant/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 there under or to the allottees as per the agreement for sale executed inter se.

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.N.	Particulars	Details
1.	Name of the project	Brahma Bestech Athena, Sector-16 Gurugram, Haryana
2.	Project area	12.206 acres
3.	Date of allotment	01.08.2012 (As per page 20 of complaint.)
4.	RERA registered/ not registered	HRERA-547/2017/1183 dated 28.07.2017 valid upto 31.12.2022
5.	Unit no.	1203, 12 th floor (As per page 20 of complaint.)
6.	Settlement agreement w.r.t. project land between the respondent and the land contributor	07.11.2019 (As per page 64 of complaint.)



7.	Environment clearance	29.10.2018
8.	Date of flat buyer agreement	Not executed
9.	Possession clause	<p>No buyer's agreement with regard to the unit was executed between the parties. So, as per buyer's agreement executed between one of the allottee namely Vijay Kumar and the respondent in complaint no. 428 of 2019 decided on 22.10.2019 of the same project, clause 11(a) is taken as schedule for possession of the unit providing as under:</p> <p>i. The developer based on its present plans and estimates and subject to all just exceptions endeavour to offer possession of the said unit within 36 months (with grace period of addition 6 months) from the date of signing of this agreement unless there shall be delay or failure due to any circumstances beyond the power and control of the developer or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11 (c) or due to failure of the allottees to pay in time the total price and other charges and dues/payments</p>

		<p>mentioned in this agreement or any failure on the part of the allottee(s) to abide by all or any of the terms and conditions of this agreement, In case there is any delay on the part of the allottee(s) in making of payments to the developer then notwithstanding rights available to the developer elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the allottee(s) in remitting payment(s) to the developer.</p>
10.	<p>Due date of Possession</p>	<p>30.04.2018</p> <p>(Calculated from the date of allotment of unit as BBA is not executed.)</p> <p>In the absence of buyer's agreement between the parties, the due date for completion of project and offer of possession of the allotted unit is calculated from a connected matter of the same project decided by the authority on 22.10.2019 bearing complaint no. 428 of 2019 and the same comes to 30.04.2018 (the buyer's</p>

		agreement was executed in that case of the same project on 30.10.2014 and allotment of the unit was made on 20.09.2012.
11.	Total sale consideration	Rs.3,66,32,500/- (As per page 22 of complaint.)
12.	Amount paid by the complainants	Rs.2,87,64,991/- (As per page 64 of complaint.)
13.	Occupation certificate	31.03.2022 (Annexure R-30)
14.	Offer of possession	15.04.2022 (Annexure R-31)

Facts of the complaint

3. That a project by the name of Brahma Bestech Athena situated in Sector-16, Gurugram was being developed by the respondent/builder. The complainants along with Mrs. Ratan Bala Rajain coming to know about it agreed to purchase a unit in it for a total sale consideration of Rs. 3,66,32,500/-. It was represented to them by the respondent/builder that the project would be completed in December 2015, and they would be offered possession of the allotted unit.
4. That believing the representations of the respondent, the complainants along with Mrs. Ratan Bala Rajain agreed to purchase a unit in its above-mentioned project and were issued a provisional letter of allotment dated 09.06.2012 (**Annexure P/2**). That letter was followed by letter dated 01.08.2012 along with details of payment plan as well as particulars of allotted unit vide **Annexures 2 to 4** respectively. The allottees paid a sum of Rs. 33,99,908/- as booking amount and the

remaining was to be paid to the respondent/builder as per the payment plan (**Annexure P/3**).

5. That from time to time, the respondent/builder kept on raising demands against the allotted unit and the allottees continued to pay the same and paid a total sum of Rs. 287,64,991/- as per statement of account dated 12.06.2021 as **Annexure P/4**.
6. That though the allottees kept on paying the amount against the allotted unit to the respondent/builder but despite repeated reminders and requests, it failed to execute buyer's agreement. In the absence of that document, the due date for completion of the project and offer of possession of the allotted unit could not be ascertained. However, on a request made by one of the allottee Mrs. Ratan Bala Rajain in December 2020, her name was deleted as one of the allottee and her share was transferred in favour of one of the complainants namely Manjeet Rajain. An intimation in this regard was issued by the respondent/builder to the complainants on 07.12.2020.
7. It is the case of the complainants that they have been following the respondent for completion of project and the handing over of the possession of the allotted unit since December 2015, but with no positive results. On 09.06.2012, the three complainants along with one Mrs. Ratan Bala Rajain booked that unit and at that time, the respondent had represented them that the possession of the said property would be handed over to them in or before December 2015.

8. That in complete contravention of industry norms and standard practices, the respondent never issued a builder buyer agreement to the complainants despite several reminders by them and they paid substantial amount by way of instalments against the allotted unit.
9. That the complainants have been following up with the respondent for completion of the project and delivery of possession since December 2015, but the respondents have been making lame excuses and persistently failing to live up to the commitments. Till the date of filing of this complaint, the respondent despite the passage of 9 years from the date of purchase has neither finished the project nor obtained the Occupation or Completion Certificate from the competent authorities and resultantly did not offer possession of the said property to the complainants.
10. That in furtherance of the misconduct, the respondent on 03.06.2021 sent the complainants a fresh instalment demand notice and demanded from them interest on alleged late payments @18% per annum compounded quarterly. Surprised by the illogical demand of the respondent, the complainants wrote back to it asking about how it is charging them late payment fee when they have already paid the instalments on time. At first, the respondent insisted on the payments being made as per the demand letter. However, when the complainants provided it with comprehensive calculations and dates relating to the payments, the respondent was forced to waive off the illegal payment demands. The respondents has completely ignored the fact that as per

the precedents established by the Hon'ble Supreme Court as well as the prevailing statutes, it is liable to pay the complainants interest for the delay in offering of possession of the said property. However, despite being aware of the prevailing statutes and precedents, the respondent is not willing to compensate the complainants for the delay in offering possession of the allotted unit and hence, the present complaint. The respondent has been delaying the project and holding on their hard-earned money. The act and conduct of the respondent has caused a lot of physical harassment, mental agony and huge financial loss to the complainants.

C. Relief Sought

The complainants have sought the following relief from the respondent:

- i. To handover the actual, physical possession of the unit in the above said project and direct the respondent to pay the delay penalty charges to the complainants with interest as per the RERA provisions.**

D. Reply by the respondent

The respondent by way of written reply/submissions submitted as under:

11. It is a matter of record that the complainants and one Mrs. Ratan Bala Rajain booked the office space in question. However, it was denied that at the time of booking, the respondent had represented the allottees that possession of the said property would be handed over to them on or before December 2015. The demands for payment have been raised

by the respondent in accordance with the agreed schedule of payments. The complainants failed to make timely payment of the instalments which were to be paid within 60 days of booking. Besides that, the complainants have failed to pay the demand raised by the respondent vide letter and email dated 03.06.2021 (**Annexure-6**) as per the agreed payment plan despite the fact that same have been clarified to them vide e-mail dated 17.07.2021 (**Annexure-7**).

12. That there was no occasion for the complainants to issue any reminder to the respondent in this regard. The payments made by the complainants to the respondent are a matter of record. It is pertinent to mention here that contrary to the allegations made by the complainants, the respondent requested them time and again to sign the builder buyer agreement. However, they failed to execute the same. In fact, the respondent had even at the time of name deletion of one of the allottee requested the complainants to execute the builder buyer's agreement. It is the complainants who have failed to execute the same and now are raising frivolous allegations against the respondent. It is a matter of record that sometime in December 2020, Mrs. Ratan Bala Rajain requested the respondent to delete her name as an allottee of the said unit and transferred her share to Mr. Manjit Rajain. The said changes were incorporated by the respondent acceding to the request made by the complainants and Mrs. Ratan Bala Rajain. However, it is pertinent to mention herein that on request of complainants, the respondent, as goodwill gesture, waived administrative charges of Rs. 2,86,150/- for

transfer/name deletion. These changes were communicated to the complainants vide e-mail dated 21.05.2019 (**Annexure-30**). The respondent also issued the documents on 07.12.2020 reflecting the afore-mentioned changes in ownership. It was denied that even at the stage of aforesaid name deletion, the respondent failed to execute the buyer's agreement. In fact, the respondent had again at the time of name deletion requested the complainants to execute the buyer's agreement. However, the complainants failed to execute the same and are now raising baseless allegations against the respondent for the wrongs committed by them. It is the complainants who are not executing the buyer's agreement despite repeated requests being made by the respondent. The due date for completion of the project and offer of possession be counted as 30.04.2018, being taken of the same project by the authority while deciding the complaint bearing no. 428 of 2019 on 22.10.2019.

13. That it is pertinent to mention here that there was no agreed timeline for completion of the project and the complainants failed to execute the buyer's agreement. It was denied that possession of the unit was to be offered in December 2015 and the project is not nearing completion. The respondent cannot be held liable for delay caused due to reasons beyond its power and control such as a dispute between it and the land contributor resulting in settlement dated 07.11.2019, various orders passed by the statutory authorities such as NGT, Environment Pollution Authorities, Haryana State Pollution Control Board, banning of

construction in the NCR Region, COVID-19, shortage of manpower and construction material etc. The respondent would have completed the construction of the project, apply and obtain the occupation certificate from the competent authority and offered possession to the complainants within the period of extended registration under the Act but could not do so due to the circumstances detailed above. Now, after completing the construction of the project, it had obtained Occupation Certificate on 31.03.2022 and offered possession of the allotted unit to the complainants on 15.04.2022.

14. That the complainants were earlier sent a fresh demand vide letter and e-mail dated 03.06.2021 as per the duly agreed payment plan. It is stated that due to system/ software issues, interest had been wrongly reflected in the said demand letter dated 03.06.2021 and the same had been clarified and communicated to the complainants vide email dated 17.07.2021. The communications exchanged between the parties with respect to demand made on 03.06.2021 are matter of record. However, it was denied that any illegal demands were made or the respondent was forced to waive off alleged illegal demands. Be that as it may, it is submitted that despite clarification about writing off of interest amount vide e-mail dated 17.07.2021, the complainants failed to pay the actual due amount of Rs. 29,75,280/- as raised by it vide letter and e-mail dated 03.06.2021.

15. That there is no delay in so far as the respondent is concerned. It is respectfully submitted that the respondent cannot be held liable for

delays caused beyond its power and control. Furthermore, there is no agreed timeline in which possession was to be offered due to the failure on the part of the complainants to execute the buyer's agreement despite several requests by the respondent. It was denied that in given facts of the case, the respondent is liable to pay any interest or compensation to complainants as per any precedents or prevailing statutes. It is absolutely wrong and emphatically denied that there was any necessity or justification for the complainants to institute the present false and frivolous complaint. It is submitted that total consideration of the allotted unit is Rs. 3,66,32500/ plus taxes other charges to be payable at the time of possession.

16. All other averments made in the complaint were denied in total.
17. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and the written submissions filed by both the parties and who reiterated their version made in the pleadings.

E. Jurisdiction of the authority

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

18. 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 completed territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

The 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 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 promoter, 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.

Force Majeure Conditions:

20. While filing the written reply as well as submissions, the respondent detailed the circumstances due to which the project could not be completed such as Green Rating of Integrated Habitat Assessment Guidelines as applicable under the Haryana Building Code, 2016, litigation between it and the land contributor pending before the Hon'ble Punjab and Haryana High Court ending into settlement dated 07.11.2019(**Annexure-R 10**), various orders passed by statutory authorities prohibiting construction in the NCR Region such as NGT, Environment Pollution Authorities, Haryana State Pollution Control Board, COVID-19, shortage of manpower and construction material etc. Thus, it is pleaded on behalf of the respondent that due to force majeure conditions detailed above beyond its control, it could not complete the project within the stipulated period. So, while calculating the due date for completion of the project and offer of possession that period be included. But all the pleas advanced in this regard are devoid of merit. There may be litigation between the respondent/builder and the land contributor ending into settlement dated 07.11.2019 but the complainants were not a party to the same. Even, it is not proved that in-between that period, the promoter did not raise any demand against the allottees of the allotted units and rather charged interest on the delayed payments. Secondly, the various orders passed by the statutory authorities are annual features and the respondent was bound to take the same into consideration while issuing allotment and

giving due date for completion of the project. Thirdly, the due date for completion of the project expired in April 2018 and the events taking place after that cannot be taken into consideration to calculate completion for the project and offer of possession of the allotted unit. Fourthly, if the respondent wants to take benefit of the period of litigation pending before different courts, prohibiting it from raising construction of the project and the various orders passed by the statutory authorities, then it could have moved the competent authority for declaring that period as zero period while calculating the due date for completion of the project.

F. Findings on the relief sought by the complainants.

F.1 To handover the actual, physical possession of the unit in the above said project and direct the respondent to pay the delay penalty charges to the complainants with interest as per the RERA provisions.

F.2 Interest for every month of delay at 18% per annum compounded as per the allotment letter.

21. Both these issues being inter-connected are being taken together.
22. Some of the admitted facts of the case are that the complainants along with one Mrs. Ratan Bala Rajain were allotted the subject unit by the respondent vide provisional letter of allotment dated 01.08.2012 for a total sale consideration of Rs. 3,66,32,500/-. No buyer's agreement was

executed in this regard between the parties. It is also a fact that after the allotment, the allottees continued to make payments against the allotted unit and paid a total sum of Rs. 287,64,991/- against the sale consideration of the unit. It is not disputed that on the basis of the request made by the allottees, name of one of them namely Mrs. Ratan Bala Rajain was deleted and her share was transferred to one of the allottees namely Manjeet Rajain. An intimation in this regard was sent by the respondent to the complainants on 07.12.2020. It is also a fact that no buyer's agreement with regard to the allotted unit was executed between the parties due to one reason or the other. It is contended on behalf of the complainants that since the respondent failed to execute that document, so the due date for completion of the project and offer of possession of the allotted unit be counted from the date of allotment i.e., 01.08.2012 as three years plus grace period and which comes to 01.02.2016. But the contention raised on behalf of respondent is that despite a number of reminders, the complainants failed to execute the buyer's agreement of the allotted unit. So, in the absence of that document, the due date for completion of the project and offer of possession is being counted as three years from the date of execution of buyer's agreement of the same project while dealing with complaint bearing no. 428 of 2019 decided on 22.10.2019. The authority while dealing with the above-mentioned complaint took a view about the due date of completion of the project and offer of possession on the basis of agreement to sell dated 30.10.2014 as 27.04.2018 on the basis of allotment of a unit made on 20.09.2012. Since the subject unit is of the same project and there is gap of only 1.5 months of allotment of the unit and in the absence of buyer's agreement, the due date for completion of the project is being counted from the recitals mentioned in the letter of

allotment dated 09.06.2012 specifically providing "other standard terms and conditions shall be applicable as per standard buyer agreement". But in this case, admittedly no buyer's agreement with regard to the allotted unit was executed between the parties. So, in view of the earlier decision of the authority of the same project, the due date for completion of the project and offer of possession of the allotted unit is being counted from the date of agreement to sell dated 30.10.2014 of a unit in that project and which comes to 30.04.2018.

23. The complainants intended to continue with the project and are 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."

A. Clause 11(a) of the unexecuted buyer's agreement provides for time period for handing over of possession and is reproduced below:

"11. POSSESSION

(a) Schedule for possession of the said unit (taken from the case of the same project decided by he authority on 22.10.2019)

ii. *The Developer based on its present plans and estimates and subject to all just exceptions endeavours to offer possession of the said unit within a period of 36 (Thirty Six) months (with a grace period of additional six months) from the date of signing of this*

agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the developer or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total price and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee(s) to abide by all or any of the terms and conditions of this agreement, In case there is any delay on the part of the allottee(s) in making of payments to the developer then notwithstanding rights available to the developer elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the allottee(s) in remitting payment(s) to the developer.

B. Admissibility of grace period: The promoter has proposed to hand over the possession of the said unit within 36 months of the execution of the agreement and further provided that promoter shall be entitled to a grace period of 6 months from the date of signing of the agreement unless there shall be delay of failure due to the department delay or due to any circumstances beyond the power and control of the developer or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11 (c) or due to failure of the allottee to pay in time the total price and other charges. The date of issuance letter of allotment is 01.08.2012 and the period of 36 months plus grace period of 6 months (being unqualified) expired on 01.02.2016. But in view of the buyer's agreement having not been executed between the parties, the due date for completion of the project and offer of possession of the allotted unit comes to 30.04.2018(inclusive of



grace period). Since the period of 6 months is unqualified one, so the same is allowed to the promoter and thus, the due date for completion of the project and offer of possession of the allotted unit is calculated accordingly as mentioned above.

- C. Admissibility of delay possession charges at prescribed rate of interest:** 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.

- D.** The legislature in its wisdom in the subordinate legislation under the 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.
- E.** 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., 11.10.2022 is 8.25%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.25% per annum.

- F. 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;"*

- G. Thus, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.25% by the respondent/promoter who is the same as is being granted to the complainants in case of delayed possession charges.

24. Therefore, the authority allows delayed possession charges to the complainants on the paid-up amount **w.e.f. 30.04.2018 to 15.06.2022 i.e.**, expiry of 2 months from the date of offer of possession (15.04.2022) besides interest at the prescribed rate of 10.25% per annum to be paid by the respondent/promoter. Similarly, the complainants are also liable to pay the amount due against the allotted unit with interest at the prescribed rate from the date the same became due up to the date of actual payment.

G. Directions of the authority


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 i.e., 10.25 % per annum for every month of delay on the amount paid by the complainants from 30.04.2018 till 15.06.2022 i.e., expiry of 2 months from the date of offer of possession (15.04.2022). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii.** The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.25 % 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 delay possession charges as per section 2(za) of the Act.
- iii.** The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

25. Complaint stands disposed of.

26. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.10.2022