

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

Complaint no. : 4844 of 2022
Date of complaint : 18.07.2022
Date of order : 27.10.2023

1. Kavita Pathak, W/o Munish Pathak,
2. Munish Pathak, S/o Raj Kumar Pathak,
both R/o Flat no.1601, Block- C-2,
Puri Diplomatic Green,
Sector-110-A, Choma (62), Gurgaon, Haryana.

Complainants

Versus

M/s Puri Constructions Private Limited.
Regd. Office at: - 4-7B, Ground Floor,
Tolstoy House 15 & 17, Tolstoy Road,
Connaught Place, New Delhi-110001.

Respondent

CORAM:
Sanjeev Kumar Arora

Member

APPEARANCE:
Sanjeev Sharma (Advocate)
Smriti (AR)

**Complainants
Respondent**

ORDER

1. The present complaint 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*.

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:

S.N.	Particulars	Details		
1.	Name of the project	Diplomatic Greens, Sector 110A & Sector 111, village Chouma, Gurugram.		
2.	Project area	21.01875 acres		
3.	Nature of project	Group Housing		
4.	RERA registered/not registered	Not registered		
5.	DTCP License no.	55 of 2010 dated 25.07.2010	87 of 2012 dated 29.08.2012	33 of 2013 dated 25.05.2013
	Validity status	24.07.2025	28.08.2025	24.05.2024
	Area	15.457 acres	4.268 acres	1.293 acres
	Name of licensee	Nature Villa Promoters Pvt. Ltd. & 2 Ors.		
6.	Date of booking	19.01.2012 (page 10 of complaint)		
7.	Apartment no.	1601, 16 th floor, block no. C2 admeasuring 2950 sq.ft. (super area) (page 24 of complaint)		
8.	Date of builder buyer agreement	14.03.2012 (page 22 of complaint)		
9.	Possession clause	14. Possession <i>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 of the provisions of this Agreement and compliance with all provisions formalities, documentation etc.,</i>		

		<p><i>as prescribed by the Company, the company proposes to hand over 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 the occupation certificate in respect of the Group Housing Complex.</i></p> <p><i>(Emphasis supplied)</i></p>
10.	Due date of possession	14.09.2015 [calculated from the date of execution of agreement] (Note: Excluded 180 days of grace period)
11.	Total sale consideration	Rs.2,27,98,191/- as per payment plan (page 47 of complaint)
12.	Paid up amount	Rs.2,55,33,343/- as per customer ledger dated 23.08.2022 (page 47 of reply)
13.	Occupation certificate	29.08.2016 [annexure R3, page 48 of reply]
14.	Offer of possession	12.05.2017 [annexure R4, page 51 of reply]
15.	Conveyance deed dated	03.10.2017 [annexure R5, page 57 of reply]

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
1. That the complainant/allottees booked a unit in the project of respondent named "Diplomatic Greens" at Sector 110A, Gurgaon. Thereafter, a unit bearing no. 1601, on 16th floor, block C-2 in the said project was allotted to them vide buyer's agreement dated 14.03.2012 for a basic sale consideration of Rs.2,13,50,000/-. However, they have

paid an amount of Rs.2,55,33,343/- in all and nothing remained pending to be paid to the respondent.

- II. That as per clause 14(a) of the buyer's agreement the respondent-builder was supposed to handover physical possession of the said unit within 42 months from the date of execution of the agreement. However, due to its failure to complete constructions of the project within the agreed time the same was handed over on 12.05.2017. Therefore, the complainants are entitled to the disbursement of delay possession interest for the delay period as per section 18(1) of the Act of 2016 for every month of delay till the handing over of possession.
- III. That the respondent has illegally levied huge escalation charges @4% of the total cost (3.25% + .75%) upon the complainants on account of steel and escalation in the value of US dollars which was not part of the buyer's agreement and needs to be returned to the complainants along with interest from the date of such amount paid.
- IV. That the respondent-builder promised to give balconies as per broacher while booking of the unit, but the area of balconies was shortened when offered to them. Therefore, the amount of short balcony be returned to the allottees as per section 12 of the act.
- V. That the respondent has illegally charged certain amount on account of HVAT (Haryana Value Added Tax) from the complainants which was not even paid to the statutory body and continues to lie with the respondent till date. Hence, the amount paid be returned to them along with interest.
- VI. That the complainants also reserve their right to file a separate complaint for compensation as and when required before the

appropriate forum/authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - I. Direct the respondent to pay delayed possession charges as per the provisions of the Act.
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 vide reply dated 24.08.2022 contested the complaint on the following grounds: -
 - i. That the present complaint is barred by the law of limitation as the respondent has offered possession of the unit to the complainants on 12.05.2017 itself. Further, the complainants have already taken over the physical possession of the unit after execution of the conveyance deed on 03.10.2017 and enjoying the premises from the last 5 years. Now the complainants after an expiry of 4.5 years from the date of execution of conveyance deed has filed this complaint for delay in handling over possession which is in itself an abuse of the process of law and highly delayed.
 - ii. That as per the Limitation Act, 1963, the period of limitation shall be computed as per article 55 and 113 of the schedule. Since more than 3 years have elapsed, the claim of the complainants in this complaint is not maintainable.
 - iii. That reliance may also be placed on the principle of "Equity aids the vigilant, not those who slumber on their rights". The law encourages

a speedy resolution for every dispute. It does not favour the cause of someone who suddenly wakes up to enforce his or her rights long after discovering that they exist.

- iv. That the complainants are barred by law of estoppel as the complainants have already previously at the time of execution and registration of conveyance deed on 03.10.2017 voluntarily agreed to the terms and has expressed their full consent and satisfaction with regard to the timelines of the possession as well as other aspects of the transaction. Hence as per the law of estoppel, the complainants cannot now contradict the contents of conveyance deed which they have previously stated as true in the eyes of law.
- v. That the complainants does not fall within the definition of allottee as provided in Section 2(d) of the RERA Act, 2016 since the relation of allottee and a promoter stands concluded and all the obligations of the promoter under the agreement stand discharged after the execution of the conveyance deed as the buyer became the owner of the unit. Therefore, the owner is estopped from claiming any interest on the delay in handing over possession.
- vi. That the entire transaction from allotment of unit to the offering of possession to the complainants have been undertaken prior to the coming into force of the RERA Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017. Further, the agreed terms of the buyer's agreement were also executed prior to the application of the Act of 2016. Therefore, the provisions laid down in RERA Act, 2016 and HRERA Rules cannot be enforced retrospectively.

- vii. That the part occupation certificate of the subject tower was received on 29.08.2016 i.e., before coming into force of the RERA Act, 2016. Further even the rules published under RERA Act have been left out of its purview where occupation certificate has been received prior to coming into force of RERA Act. Hence the provisions of the RERA Act are not applicable to the said project.
- viii. That this authority vide its subsequent order in case bearing no. 1494/2022, titled as "Shashi Kant Bhalla vs Puri Construction Pvt. Ltd." has discussed the issue of limitation for the unit in the same project and the said complaint was dismissed only on the issue of limitation.
7. 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 submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on relief sought by the complainants.

F.1 Direct the respondent to pay interest on account of delay in offering possession on the amount paid by complainants from the date of payment till the date of delivery of possession.

12. In the instant case, the builder-buyer agreement was executed between the parties on 14.03.2012 and as per clause 14 of the said agreement, the possession was to be handed over within 42 months from the date of the execution of the agreement 14.03.2012 + 42 months which comes to 14.09.2015. The said clause is reproduced below:

14. Possession

*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 of the provisions of this Agreement and compliance with all provisions formalities, documentation etc., as prescribed by the Company, the company proposes to hand over 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 the occupation certificate in respect of the Group Housing Complex.
(Emphasis supplied)*

13. However, the respondent obtained the occupation certificate only on 29.08.2016, and thereafter the offer of possession was made to the complainants on 12.05.2017. Thereafter, on 03.10.2017, both the parties executed the conveyance deed thereby settling all their claims and counterclaims.
14. In the instant case, the complainants have approached the Authority post conveyance deed seeking the relief of the delayed possession charge as per sec -18 of the Act of 2016. The respondent contends that since the conveyance deed has been duly executed, no claims remain. On perusal of the record put before this Authority, it is the view of the Authority that the delayed possession charge being a statutory right, the same is available to the allottee(s) even post conveyance deed. On execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not mark an end to the liabilities of a promoter since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility. The relevant sections are reproduced hereunder:

"11. Functions and duties of promoter.

(1) xxx

(2) xxx

(3) xxx

(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. Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or cooperative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project): Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;"

Therefore, the authority observes that the execution of a conveyance deed does not conclude the relationship or mark an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title, and interest have been transferred in the name of the allottee on the execution of the conveyance deed.

15. Furthermore, the same view was held in "CR/4031/2019 and others" in the case titled "*Varun Gupta Vs Emmar Mgf Land Ltd.*" The Authority observed in para 51:

"51. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the Wg. Cdr. Arifur Rahman (supra), this authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter."

Hence, the right of delayed possession charge under section 18 is a statutory right that remains alive even post-conveyance deed.

16. Also, an averment has been made by the respondent that present complaint is barred by the law of limitation as the respondent has offered possession of the unit to the complainants on 12.05.2017 itself and the complainants have already taken over the physical possession of the unit after execution of the conveyance deed on 03.10.2017 and enjoying the premises from the last 5 years. The authority observes that present complaint has been filed on 18.07.2022 and article 137 of Limitation Act, 1963 prescribes the time limit of 3 years for instituting the complaint. So, in the instant case time limit for instituting the complaint initiates from the date of offer of possession i.e., 03.10.2017 and concludes after 3 years that is 03.10.2020. But as per the view taken

in authoritative pronouncement of the hon'ble apex court in suo moto proceedings bearing no. **3 of 2020** vide order dated 10.01.2022, wherein which it was held that the period in between 15.03.2020 till 28.02.2022 would stand excluded while calculating the period of limitation. So, if exclude the said period from the above-mentioned date, the ultimate date for institution of complaint comes out to be 03.10.2022 that is within the period of limitation. Therefore, the present complaint is well within the limitation period and is maintainable

17. In the instant case, the complainants have continued with the project and are seeking DPC as provided under the proviso to sec 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."*

18. **Admissibility of delay possession charges at prescribed rate of interest:** 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's 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, 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 the website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as of the date i.e., 27.10.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be the marginal cost of lending rate +2% i.e., **10.75%**.
21. The definition of the 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 that 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., **10.75%** by the respondent/

promoter which is the same as is being granted to it in case of delayed possession charges.

23. On consideration of the circumstances, the documents, submissions made by the parties, and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14 of the agreement executed between the parties on 14.03.2012, the possession of the subject unit was to be delivered on or before 14.09.2015. The respondent failed to hand over possession of the subject unit by that date. Accordingly, it is the failure of the respondent/promoter to fulfill its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is a delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement executed between the parties.
24. Accordingly, it is the failure of the promoter to fulfill its obligations and responsibilities as per the agreement dated 14.03.2012 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 allottees shall be paid, by the promoter, interest for every month of a delay from the due date of possession i.e., 14.09.2015 till the date of the offer of possession i.e. 12.05.2017 plus 2 months i.e., 12.07.2017 at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the Authority:

25. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- I. The respondent is directed to pay delayed possession charges to the complainants against the paid-up amount for every month of delay from the due date of possession i.e. 14.09.2015 till the offer of possession i.e. 12.05.2017 plus two months which comes to 12.07.2017 at the prescribed rate i.e. 10.75% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
26. Complaint stands disposed of.
27. File be consigned to the Registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.10.2023