

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

Complaint no.	:	5408/2022
Date of filing complaint:		27.07.2022
First date of hearing:		07.11.2022
Date of decision	:	24.01.2024

Himanshu Sharma Resident of: House no. 19-P, Sector 13, Sonipat.	Complainant
Versus	
M/s Sai Aaina Farms Pvt Ltd Regd. office: 302 a, 3 rd Floor, Global Foyer Building, Golf course road, Sector 43 Gurugram-122001	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Complainant in person	Complainant
Shri Rahul Raghav Advocate	Respondent

EX-PARTE ORDER

1. The present complaint has been filed by the complainant/allottee 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 allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Mahira homes 68" Sector 68 Gurugram.
2.	Project area	9.968 Acres
3.	Nature of the project	Affordable housing
4.	DTCP license no. and validity status	106 of 2017
5.	Name of licensee	Mohan investment and properties Pvt Ltd and others.
6.	RERA Registered/ not registered	21 of 2018 dated 02.02.2018
7.	Unit no.	J-704, Seventh Floor, Tower J (Page no. 22 of complaint)
8.	Unit area measuring	541.78 Sq. Ft. (Page no. 22 of complaint)

	(Carpet area)	
9.	Date of execution of apartment buyer's agreement	18.07.2018 (Page no. 18 of complaint)
10.	Date of approval of building plans	23.02.2018 (Page no. 20 of complaint)
11.	Date of grant of environment clearance	Not available
12.	Possession clause	<p><i>8.1 Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Promoter/Developer and not being in default under any part hereof and Apartment Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Promoter/Developer proposes to offer possession of the Said Apartment to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i></p>
13.	Due date of	23.08.2022

	possession	(Calculated from the date of approval of building plans) (An extension of 6 months provided in view of HARERA notification no. 9/3-2020)
14.	Basic sale consideration	Rs. 22,17,114/- (Page no. 22 of complaint)
15.	Amount paid by the complainants	Rs. 20,95,176 (Page no. 9 of complaint)
16.	Cancellation letter	08.06.2021 (Page no. 45 of complaint)
17.	Offer of possession.	Not offered
18.	Occupation certificate /Completion certificate	Not obtained

B. Facts of the complaint:

3. That unit J-704 was allotted to me through a draw on 10.05.2018. unit was financed from Indiabull Housing Finance (IHF). After making payment of about 50%, IHF refused disbursement of further payment on 31.10.2019 on the pretext of total project progress was 30% and demand raised was 63%. Developer threatened cancellation of the allotment and the complainant was forced to switch over the loan to Yes bank as the developer convinced them that by all means they shall complete the project within 4 years i.e. by 18.07.2022. However, there was no progress

on the ground for J-Block till April 2021, hence Yes bank also declined to make payment of the last instalment falling due on 27.04.2021. Both the bank and developers were requested to find some way out as 88% of the payment was already made. Upon cancellation of license of Mahira Homes 68 by DTCP on 09.05.2022, the complainant requested the developer to provide the receipts and the statement of account vide email dated 15.05.2022. However, the developer responded that the allotment of the unit has been cancelled. As notified by DTCP, complainant submitted his claims to the office vide letter dated 16.05.2022 acknowledged dated 18.05.2022 based on the allotment letter and receipts of payment made.

C. Relief sought by the complainant:

4. The complainant have sought the following relief(s):
 - i. Direct the respondent to set aside the cancellation of unit.
 - ii. Direct the respondent to handover possession of the aforesaid unit along with prescribed interest per annum from the promissory date of delivery of the flat in question till actual delivery of the flat.
5. The authority issued a notice dated 12.10.2022 of the complaint to the respondent by speed post and also on the given email address at MD@mahiragroup.com. The delivery reports have been placed in the file. Thereafter, multiple proceedings took place on dates 07.11.2022, 23.08.2023 and the respondent was asked to file a reply. Despite service of notice, the respondent has preferred neither to put in appearance nor file reply to the complaint within

the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondents.

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 based on these undisputed documents and submission made by the complainant.

D. Jurisdiction of the authority:

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

D. I Territorial jurisdiction

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 the entire Gurugram District for all purposes 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.

D. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

8. So, given 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.

E. Findings on relief sought by the complainant.

E.I Direct the respondent to set aside the cancellation of unit.

9. The complainant contends that the cancellation of the unit done by the respondent is illegal and void and it was due to the lagging construction progress that the bankers did not make payments to the respondent/promoter. On perusal of the records brought before this Authority, it is of the view that the cancellation letter dated 18.06.2021 was illegal and contrary to the terms of apartment buyer's agreement dated 18.07.2018. Clause 2.5 of the said agreement mandated that a 15-day notice be sent to the allottee for making due payments before cancellation of unit and publishing names in the newspaper, however, the respondent did not follow the said clause and gave a mere 7 days' notice for making due payments after issuing a reminder notice on 01.06.2021. The said clause is reproduced below:

"In case there is any delay in making timely payment of installments on the part of the Allottee, in that event, the Allottee shall be liable to pay an interest on the amount due @ 15% per annum from the due date, applicable for the period of delay. Subject to the provision for payment of interest in case, the Allottee fails to make the payment of any installment of the total price or any other amounts falling due within the stipulated time, in that event the Promoter/Developer may at its own absolute discretion issue a notice to the Allottee for making the payment of the due amount within a period of 15 (fifteen) days from the date of issuance of such notice. If the Allottee still defaults in making payment of the amount due along with interest within the stipulated period of said 15 (fifteen) days, the Promoter/Developer may publish the name of the Allottee in a regional Hindi newspaper in Haryana as a defaulter requiring the payment of the amount due within 15 (fifteen) days from the date of the publication of such notice. Upon the failure of the Allottee to clear/make payment of the entire due amount within the aforesaid additional period of 15 (fifteen)-days, the allotment of the Said Apartment shall stand cancelled without the need for the Promoter/Developer to do or undertake any further steps.

(Time is the essence of this transaction.)"

10. Moreover, the cancellation letter dated 08.06.2021 prima facie has self-contradictions. The said letter gave 7 days' time period for making due payments and before publishing of name in the newspaper. The relevant portion is reproduced below:

"It is to intimate you that this is cancellation letter issued due the payment overdue. Please be Informed that the overdue amount must be deposited with us within 7 days from the date of issuance of this letter. In case of non-receipt of payment within the time allowed, we shall be forced to cancel the above allotted unit after deduction of charges along with taxes as per Affordable Housing Policy 2013. The cancellation list will be publish in newspaper named Punjab Kesri on June 15th 2021. To avoid

cancellation, we request you to make the payment within the time allowed."

On perusal of this letter, it becomes clear that the 7 days period was to expire on 15th June 2021 when the list was also to be published, thereby not giving entire 7 days. Therefore, the allottee was not given the requisite time for making payments. Hence, the said cancellation is illegal.

E.II Direct the respondent to handover possession of the aforesaid unit along with prescribed interest per annum from the promissory date of delivery of the flat in question till actual delivery of the flat.

11. In the instant case, the apartment buyer agreement was executed between the allottee and the respondent on 18.07.2018, and as per clause 8.1 of the said agreement, the possession was to be handed over within 4 years from the date of approval of building plans or grant of environment clearance. The said clause is reproduced below:

*"8.1 Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Promoter/Developer and not being in default under any part hereof and Apartment Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Promoter/Developer proposes to offer possession of the Said Apartment to the Allottee **within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date")**, whichever is later."*

In the instant case, the building plans were approved on 23.02.2018, and no submission was made regarding the date of environment clearance, therefore the due date of possession comes out to be 23.08.2022.

12. There has been a delay in obtaining the occupation certificate by the respondent, and he is directed to complete the construction of the project expeditiously and offer the complainant possession of their apartment.
13. In the instant case, the complainant wishes to continue with the project and is 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."

14. **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.

15. 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.
16. 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., 31.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be the marginal cost of lending rate +2% i.e., **10.85%**.
17. 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;"

18. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
19. 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 8.1 of the agreement executed between the parties on 18.07.2018, the possession of the subject unit was to be delivered within 4 years from the date of the approval of building plans or getting environment clearance. Furthermore, a 6-month extension is provided in view of HARERA notification no. 9/3-2020. The building plan was approved on 23.02.2018, there is no submission on record regarding the date of attaining environment clearance. Therefore, the due date for handing over possession was 23.08.2022 (Calculated from date of approval of building plan). 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 apartment buyer's agreement dated 18.07.2018 executed between the parties.

20. Accordingly, it is the failure of the promoter to fulfill its obligations and responsibilities as per the agreement dated 18.07.2018 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. 23.08.2022 till the date of valid offer of possession plus 2 months at the 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 issued by the Authority:

21. 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 cancellation of the unit is set aside and the respondent is directed to handover physical possession of the apartment.
- II. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of

- possession i.e. 23.08.2022 till the date of valid offer of possession plus two months, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- III. The rate of interest chargeable from the allottee by the promoter, in case of default, shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- IV. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- V. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
- VI. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
22. Complaint stands disposed of.
23. File be consigned to the Registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2024