

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

Complaint no. : 5220 of 2023
Date of complaint : 10.11.2023
Date of decision : 31.05.2024

1. Rohit Madhok
2. Plara Madhok
Both R/o: H-481, Block-H, Palam Vihar,
Gurugram-122017, Haryana

Complainants

Versus

M/s Ambience Projects and Infrastructure Pvt.
Ltd.

Office at: L-4, Green Park Extension, New Delhi-
110016

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Ms. Daggar Malhotra (Advocate)
Sh. Dharmender Sehrawat (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainants/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 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:

| Sr. No. | Particulars | Details |
|---------|-----------------------------------|---|
| 1. | Name of the project | "The Creacions" in Sector 22, Gurgaon. |
| 2. | Nature of the project | Group Housing Colony |
| 3. | Project area | 14.87 acres |
| 4. | RERA Registered/ not registered | Registered 318 of 2017 dated 17.10.2017 valid up to 31.03.2022 + 6month-covid=30.09.2022 Extension no. 02 of 2023 dated 23.02.2023 valid upto 29.09.2023 |
| 5. | DTCP License No. | 48 of 2012 dated 12.05.2012 valid upto 11.05.2018 |
| | Name of licensee | Ambience Projects and Infrastructure Pvt. Ltd. |
| 6. | Unit no. | 403, 4 th floor, Block A (Page no. 33 of complaint) |
| 7. | Unit admeasuring | 1380 sq. ft. (Page no. 33 of complaint) |
| 8. | Provisional allotment | 06.01.2017 (page no. 15 of complaint) |
| 9. | Date of apartment buyer agreement | 09.02.2017 (Page no. 24 of complaint) |

| | | |
|-----|---------------------------------------|---|
| 10. | Possession clause | <p>11. (a) Schedule for possession of the Said Apartment</p> <p>The Company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the Said Apartment/Said Building within a period of 60 months from the date of signing and execution of this Agreement unless delay or failure due to force Majeure 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 failure on the part of the Allottee (s) to abide by all or any of the terms and conditions of this Agreement. .</p> |
| 11. | Due date of delivery of possession | 09.02.2022 (calculated from the date of agreement) |
| 12. | Total sale consideration | Rs. 1,37,49,080/- (As per payment plan at page 80 of the complaint) |
| 13. | Total amount paid by the complainants | Rs. 1,29,40,021/- (as per payments receipt annexed with complaint) |
| 14. | Occupation certificate | 22.12.2023 (page no. 16 of reply) |
| 15. | Offer of possession | 27.01.2024 (As alleged by complainants during hearing) |

B. Facts of the complaint:

3. That the complainants, vide application dated 21.07.2016 applied for booking of residential apartment in the respondent's project namely - "The Creacions," located in Sector 22, Gurugram. Vide Provisional allotment letter dated 06.01.2017, the complainants were allotted apartment no. 403, on the 4th floor in block A, having super area of 1380 sq. ft. at a basic sales price of Rs.1,14,76,080/-. The complainants and respondent entered into an apartment buyers' agreement dated 09.02.2017.
4. That, as per clause 11(a) of the apartment buyers' agreement, the respondent was to complete construction and handover the possession of the completed unit within 60 months from the date of signing and execution of the apartment buyers' agreement. Therefore, the due date of possession is 09.02.2022. That, the project was nowhere near completion before outbreak covid and was already delayed so, the respondent is not entitled to grace period for the same. For the sake of argument, even after adjustment of maximum exclusion period on account of lockdown imposed due to Covid is incorporated in the above period, the due date of possession still expired on 09.11.2022. There has been a delay of more than one year in completion of construction and even till date, no offer of possession has been made by the Respondent. That, till date, the complainants have paid a total of Rs.1,29,40,021/- to respondent and all payments demanded by the respondent, even during Covid, have been paid timely by the complainants.
5. There has been a delay of approximately more than one year from the due date of possession on the part of the respondent. Accordingly, this present complaint is being filed by the complainants.

6. That, as per section 11(4) (a), The promoter shall 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.
7. That, Section 18 provides: "(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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."

8. That, on account of sheer failure to carry out the obligation on the part of the respondent, the complainants vide this present complaint seeking the delayed possession charges.

C. Relief sought by the complainants:

9. The complainants sought following relief(s).

I. Direct the respondent to handover the physical possession of the unit with the amenities and specifications.

II. Direct the respondent to pay interest on the total amount paid by the complainants at the prescribed rate of interest from the due date of possession till the date of actual handing over of the physical possession.

10. 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.

11. That the complainants applied for the allotment of flat vide application dated 21.07.2016 and accordingly flat bearing no. A-403, having super area of 1380 Sq. ft.in "The Creacions" residential apartment complex as Sec-22, Gurugram was provisionally allotted to the complainants. The total sale consideration of unit/flat is fixed at Rs. 1,37,49,080/-. The apartment buyer agreement was executed on 09.02.2017.

12. That as per clause 11(a) of apartment buyer agreement the respondent based on its present plan and estimates and subject to all just exceptions endeavour to complete construction of the said apartment within a period of 60 months from the date of signing/execution of this agreement unless delay or failure is due to force majeure condition.

13. That there is no delay in completion of the project as alleged in the complaint. In view of Covid-19 and stoppage of construction work due to pollution on numerous occasions the RERA was pleased to extend the period upto 24.09.2020 vide their letter dated 26.05.2020. This was further extended upto 30.06.2021 vide their letter dated 02.08.2021. RERA vide their letter dated 30.09.2023 RC/REP/HRERA/GGM/2017/318 further extended the period upto 29.09.2023. The project was completed well within this extended time and respondent applied for occupation certificate vide their letter dated 05.09.2022. In view of the fact that the OC was not forthcoming due to administrative reasons at the level of authorities which was to grant OC, respondent applied vide their letter dated 10.10.2023 for further extension of time but in the meantime, OC was granted on 22.12.2023 and hence, the project is completed well within the time granted by RERA. Thus, there is no delay on the part of the respondent and this complaint is liable to be dismissed on this ground alone.
14. 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 complainants.
- E. Jurisdiction of the authority**
15. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- E.1 Territorial jurisdiction**
16. 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

17. 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.

18. 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 the objection raised by the respondent

F.I Objections regarding force majeure.

19. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. Further, the authority has gone through the

possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 60 months from the date of signing and execution of agreement. In the present case, the builder buyer agreement was executed on 09.02.2017, so, the due date of subject unit comes out to be 09.02.2022. The plea of the respondent company regarding Covid 19 is devoid of merit as the covid came in 2020. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

G. I Direct the respondent to handover the physical possession of the unit with the amenities and specifications.

20. The respondent company has obtained the occupation certificate on 22.12.2013 and subsequently offered the possession on 27.01.2024 but till date not handed over the possession of the unit. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.

G.II Direct the respondent to pay interest on the total amount paid by the complainants at the prescribed rate of interest from the due date of possession till the date of actual handing over of the physical possession.

21. 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."

22. Clause 11 of the buyer's agreement provides for handing over of possession and is reproduced below:

11. (a) Schedule for possession of the Said Apartment

The Company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the Said Apartment/Said Building within a period of 60 months from the date of signing and execution of this Agreement unless delay or failure due to force Majeure 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 failure on the part of the Allottee (s) to abide by all or any of the terms and conditions of this Agreement."

23. **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 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.

24. 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.
25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as

on date i.e., 31.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

26. 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;"*

27. 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.
28. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 11(a) of the agreement executed between the parties on 09.02.2017, the possession of the subject apartment was to be delivered within 60 months from the date of signing and execution of agreement. Therefore, the due date of handing over possession was 09.02.2022. The respondent has failed to handover possession of the subject unit till

date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement.

29. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 09.02.2022 till the offer of possession (27.01.2024) plus two months 27.03.2024 (inadvertently in proceeding dated 31.05.2024 it is mentioned as 09.04.2022) at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

30. 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 handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.

- ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession 09.02.2022 till the offer of possession plus two months i.e., 27.03.2024 at the prescribed rate 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.
 - iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order as per rule 16(2) of the rules.
31. Complaint stands disposed of.
32. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2024