

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

Complaint no.:	6105 of 2022
Date of decision:-	10.07.2024

Gurpreet Kaur
R/o:- A-248, Vikas Puri, New Delhi
110018.

Complainant

Versus

M/s. Anant Raj Ltd.
Regd. office:CP-1, Sector-8, IMT Manesar,
Haryana-122051.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Harshit Goyal

Complainant

Sh. Umang Mahindra

Respondent

HARERA
GURUGRAM

ORDER

1. The present complaint dated 16.09.2022 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Maceo", Sector- 91, Gurgaon
2.	Nature of project	Group housing colony
3.	RERA registered/not registered	Registered vide registration no. 314 of 2017 dated 18.08.2017
	Validity status	17.08.2019
4.	DTPC License no.	71 of 2008 dated 25.03.2008
	Validity status	24.03.2025
	Licensed area	15.575 acres
	Name of licensee	Jubliant Software Service Private Limited
5.	Date of apartment buyer agreement	06.06.2014 (As per page no. 18 of complaint)
6.	Unit no.	E-401 on 4 th floor of tower E

		(As on page no. 26 of complaint)
7.	Unit area admeasuring	1862 sq. ft. [Super area] (As on page no. 26 of complaint)
8	Possession clause	<p>Clause 7.1</p> <p><i>The Developer based on its present and estimates and subject to all just exceptions, proposes to complete construction/development of the said project and handover the possession of the said Apartment to the Allottee <u>within a period of 36 months from the date of execution of this agreement unless there shall be any delay or failure due to force majeure</u> . The Allottee(s) understands and agrees that the developer shall be entitled for a <u>grace period of 180 days after the expiry of the aforesaid 36 months</u>. The Developer after completing the construction shall apply and obtain the occupation certificate in the in respect of the residential apartment(s) from the concerned authority. However, in case any condition arises that is beyond the control of the company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition.</i></p> <p>(As on page no. 30 of complaint)</p>
9	Due date of possession	06.12.2017 (Calculated from date of apartment buyer agreement i.e. 06.06.2014 + grace period of 180 days) <i>Grace period of 180 days is allowed.</i>
10	Total sale consideration	Rs. 63,24,978/- (As per page no. 27 of complaint)

11	Amount paid by the complainant	Rs. 67,93,552/- (As per clause 2.1 of the conveyance deed)
12	Occupation certificate	28.11.2019 [As on page 19 of reply]
13	Offer of possession	30.11.2019 [As per page no. 47 of complaint]
14	Conveyance deed was executed on	24.11.2020
15	Possession handover letter	25.11.2023

B. Facts of the complaint:

1. The complainant has made the following submissions in the complaint:

- I. That the complainant is an allottee and have booked an apartment in the real estate project namely "Maceo" situated at Sector 91, Gurugram developed by the respondent M/s Anant Raj Limited. The respondent is a real estate developer and launched the project in the year 2012.
- II. That the project is a residential group housing colony comprising of 2, 3 and 4 BHK apartments and amenities of club with swimming pool, gymnasium and health center, yoga and meditation atrium, billiards, steam sauna rooms, CCTV controlled system and many more features duly prescribed in the brochure.

- III. In the year 2012, the representatives of the respondent company approached the complainant and presented a rosy picture of the project in question and assured timely delivery of the possession of the project in question. On the basis of the assurances given by the agents of the respondent to be true and correct, the complainant submitted an application form for booking of an apartment in the project.
- IV. An Apartment Buyer Agreement was executed between the complainant and the respondent on 06.06.2014 in respect of the unit bearing no. E-401 of Tower E having super area of 1862 sq. ft.
- V. The conveyance deed was registered on 24.11.2020 bearing registration no .2712 and Book No .1 with the concerned sub-registrar office without delivery of physical possession of the unit.
- VI. As per clause 7.1 of the Apartment Buyer Agreement dated 06.06.2014, the respondent was liable to complete the construction of the unit and handover physical possession within a period of 36 months from the date of execution of agreement. Therefore, the due date of delivery of possession was 06.06.2017. However, the respondent have failed to deliver the physical possession of the booked unit with completed construction works till date.
- VII. That the complainant had already paid the total sale consideration amount of the booked unit as and when demanded by the respondent. The complainant had invested her hard-

earned money on the basis of false promises made by the respondent at the time of booking in order to allure the complainant. However, the respondent has failed to abide his obligations.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent to pay delay possession charges at the prescribed rate of interest from due date of delivery of possession 06.06.2017 to the date of offer of possession 30.11.2019.
- ii. Direct the respondent to deliver possession of the unit.
- iii. To impose penalty on the respondent for non-completion of the club house of Maceo till date.

D. Reply by respondent:

5. The respondent has made following submissions by way of written submissions:

- I. That the complainant has approached the Authority with unclean hands and ulterior motive so as to obtain favorable orders by concealing material facts. It is pertinent to highlight that the facts being concealed are material for the adjudication of the matter.
- II. Further, in all fairness and abiding by the Apartment Buyer Agreement dated 06.06.2014, the respondent paid an amount of Rs.3,67,299/- to the complainant in lieu of delayed possession charges, which has been deliberately concealed by the complainant. The complainant has not objected to the said delayed

- possession charges till date, thereby evidencing that the same has been accepted.
- III. It is pertinent to mention herein that the respondent on 30.11.2019 offered possession of the unit no. E-401, Tower 'E', having super area of 1862 sq. ft. to the complainant vide its offer for possession cum demand letter dated 30.11.2019 wherein the complainant was called upon to take the possession of the unit by clearing the outstanding dues of Rs.19,71,634/- by 06.01.2020.
- IV. That thereafter the complainant in compliance to the above mentioned offer of possession cum demand letter dated 30.11.2019 on 18.01.2020 made a total outstanding payment of Rs.17,95,418/- to the respondent, wherein the respondent adjusted the *First Tranche* of the delayed possession charges amounting to Rs.1,76,216/-
- V. It is pertinent to mention herein that the authorized representative of the respondent was regularly following up and requesting the complainant to take possession of the unit. However, the complainant did not respond to the respondent's request and sent an email to the respondent on 12.10.2020 requesting possession of the unit.
- VI. That further again after repeated follow up by the authorized representative of the respondent, the complainant sent a whatsapp message to execute a registered conveyance deed in favor of the complainant.
- VII. That the respondent herein acting diligently and in compliance to the above mentioned whatsapp messages of October, 2020 registered the conveyance deed on 24.11.2020. It is pertinent to

mention herein that a bare perusal of clause-J of the conveyance deed clearly stipulates that the complainant herein has fully satisfied itself as to the quality of construction of the apartments done and delivered in accordance with the agreed terms and conditions, drawings, design and specifications etc. and further all or any issues concerning disputes and/or disagreements between the parties have been amicably resolved fully and finally settled and closed upon this deed. The relevant extract from Clause-J of the conveyance deed dated 24.11.2020 is hereby reproduced:

Clause J:

The VENDEE has fully satisfied itself as to the quality of construction of the Apartments done and delivered in accordance with the agreed terms and conditions, drawings, design and specifications etc. and in accordance with modifications as were necessary and agreed between the VENDOR and the VENDEE. Further, all or any issues concerns, disputes and/or disagreements between the VENDEE and the VENDOR have been amicably resolved fully and finally settled and closed and it is only upon full satisfaction of the VENDEE, that this deed is being executed between the parties. The Vendee confirms that it is entering into this Deed with full knowledge of all the laws, rules, regulations, notifications, etc. Applicable with respect to the said land and the project and in particular the terms and conditions contained in this deed and that it has clearly understood its rights, duties, responsibilities, obligations under each and all the clauses of the same."

- VIII. It is relevant to state herein that the respondent again adjusted the *second tranche* of the delayed possession charges amounting to Rs.1,91,083/- in the hope that the complainant would timely take possession of the unit. It is further relevant to state herein that the due date of possession as per the agreement was 06.12.2017 and the possession was offered on 30.11.2019 making a 724 days delay. There were 124 days of force majeure, after deducting these 124 days a total of 600 days of delay was there. That accordingly the delay possession charges calculated @Rs.10 per sq.ft. per month

amounted to Rs.3,67,299/- which has been adjusted by the respondent.

- IX. In view of the aforesaid submissions, the instant complainant ought to be dismissed with exemplary costs payable to the respondent.
6. 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 these undisputed documents and submission made by the parties.

E. 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.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

9. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

10. 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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to pay delay possession charges at the prescribed rate of interest from due date of delivery of possession 06.06.2017 to the date of offer of possession 30.11.2019 and deliver possession of the unit.

F.II To impose penalty on the respondent for non-completion of the club house of Maceo till date.

11. The abovementioned reliefs are interconnected thus, are taken together. In the present complaint, the complainant intends to continue with the project and is seeking possession and delay possession charges along with interest on the amount paid. 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.

"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.*

12. Whether the complainant can claim delayed possession charges after execution of the conveyance deed ?

The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainant on 24.11.2020. The transaction between the parties stands concluded upon the execution of conveyance deed.

13. It had been contended by the respondent that on execution of the conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainant is stopped from claiming any interest in the facts and circumstances of the case.

14. It is important to look at the definition of the term "deed" itself in order to understand the extent of the relationship between the allottee and the promoter. A deed is a written document or an instrument that is sealed, signed, delivered by all the parties to the contract i.e., buyer and seller. It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a sale deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own,

keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration usually monetary. Therefore, a "conveyance deed" or "sale deed" implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

15. From the above it is clear that 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 conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.
16. The allottee has invested her hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get her title perfected by executing the 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. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as *Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019)* dated 24.08.2020, the relevant paras are reproduced herein below:



"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested their hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

17. The Authority has already taken a view in **Cr. No. 4031/2019** and others titled as **Varun Gupta V/s Emaar MGF Land limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

18. After consideration of all the facts and circumstances, the Authority holds that even after execution of the conveyance deed, the

complainant/allottee cannot be precluded from her right to seek delay possession charges from the respondent-promoter.

19. Admissibility of grace period: The promoter was obligated to hand over the possession of the unit by 06.12.2017 as the same has been undertaken by the respondent in clause 7.1 of the agreement to sell dated 06.06.2014.

20. 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."

21. 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.

22. 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., 10.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.

23. 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;"

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
25. Upon considering the documents and submissions concerning the alleged violation of statutory provisions, the Authority is of the view that the respondent has violated Section 11(4)(a) of the Act by failing to deliver possession of the property by the agreed-upon date stipulated in Clause 7.1 of the sale agreement dated 06.07.2014. According to this clause, the respondent was obligated to deliver possession of the unit to the complainant within 36 months from the date of agreement's execution, i.e., by 06.07.2017. Additionally, the



parties had mutually agreed to a grace period of 180 days. Therefore, the deadline for handing over possession extended to 06.12.2017. The respondent eventually offered possession of the unit on 30.11.2019, subsequent to obtaining the occupation certificate on 28.11.2019, and the conveyance deed was executed on 24.11.2020. The complainant received possession of the unit on 25.11.2023, significantly beyond the stipulated timeframe. Thus, it is evident that the respondent did not offer possession of the unit within the agreed time period. The respondent has stated that an amount of Rs.,3,67299/- has been paid by the respondent to the complainant on account of delayed possession charges, which has been accepted without any protest by the complainant.

26. 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., 06.12.2017 till offer of possession plus two months as per section 18(1) of the Act of 2016 read with rule 15 of the rules after deducting the amount already paid by the respondent to the complainant on account of delayed possession charges, if any.

H. Directions of the Authority

27. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):



- i. The respondent is directed to pay the interest at the prescribed rate i.e., 10.95% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 06.12.2017 till offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover of possession, whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules, after deducting the amount already paid by the respondent to the complainant on account of delayed possession charges, if any.
 - ii. The respondent shall not charge anything from the complainant which is not the part of the agreement.
28. Complaint stands disposed of.
29. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 10.07.2024