

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

Complaint no.	3510 of 2023
Date of filing	02.08.2023
Date of first hearing	22.11.2023
Date of decision	21.08.2024

Niharika Mukherjee

R/o: - H.No 106, City Heights Apartments, Sector-
39, Gurugram, Haryana- 122001

Complainant

Versus

M/s Sternal Buildcon Private Limited
Regd. Office at: - 12th Floor, Dr. Gopal Das Bhawan,
28 Barakhamba Road, New Delhi-110001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Sanjeev Sharma

Advocate for the complainant

Sh. Niraj Kumar

Advocate for the respondent

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 provision 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"The Serenas", Sector- 36, Sohna, Gurugram
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Registered 02 of 2017 dated 19.06.2017 valid upto 17.05.2021
4.	DTCP License no.	14 of 2016 dated 26.09.2016
	Validity status	25.09.2021
	Name of licensee	Pardeep, Sandeep, Neera and Chander Bala
	Licensed area	9.775 acre
5.	Unit no.	12-901, 9 th floor, Block 12 [As pleaded by complainant at page 5 of complaint and agreed by respondent at page 1 of reply]
6.	Unit measuring	Carpet Area- 583.04 sq. ft. Balcony Area- 110.31 sq.ft. [As pleaded by complainant at page 5 of complaint and agreed by respondent at page 2 of reply]
7.	Date of execution of builder buyer agreement	30.10.2017 (Page 152 of reply)
8.	Building plan	09.01.2017 (As per DTCP)
9.	Environment clearance	18.05.2017 (Taken from another file of the same project i.e., CR/5340/2022)
10.	Possession clause	5. Possession "5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation,

		<p><i>as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) 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> <p style="text-align: right;"><i>(Emphasis supplied)</i></p>
11.	Due date of possession	18.11.2021 (18.05.2021 plus six months grace period due to Covid-19) (Calculated from the date of environment clearance being later)
12.	Total sale consideration	Rs. 24,46,934/- (Customer ledger dated 21.04.2022 at page 18 of complaint)
13.	Total amount paid by the complainant	Rs. 23,30,905/- (Customer ledger dated 21.04.2022 at page 18 of complaint)
14.	Occupation certificate dated	25.03.2022 (As per page no. 143 of reply)
15.	Offer of possession	27.03.2022 (Copy supplied by respondent during the course of proceedings dated 01.05.2024)

B. Facts of the complaint

3. The complainant has made the following submissions –
- a) That the respondent constructed a commercial complex namely "The Serenas" bearing license no. 14 of 2016 dated 26.09.2016, located at Sector 36, Gurugram, Haryana, and the said project in question was launched by the respondent under the Affordable Housing Scheme.
 - b) That the complainant is the original allottee/purchaser. The complainant showed her interest in purchasing the residential unit with the respondent upon which the application for allotment for residential flat under the Affordable Housing Policy, 2013 dated 08.03.2017 was executed wherein

unit no.12-901, block-12, 9th floor admeasuring super built up/ carpet area 583.04 sq. ft. for a total sale consideration of Rs.24,46,934/- in the project along with lawn.

- c) That as per the rules of Affordable Housing Policy, 2013, possession was to be handed over within 4 years from the date of approval of building plans, and as per the information available on the website of the respondent, the date of approval of building plans was 09.01.2017. Thus, the date of handing over physical possession comes out to be 09.01.2021.
- d) That the complainant has made a total payment of Rs.23,30,985/- between March 2017 to March 2022 as and when demanded by the respondent. Same is evident from the statement of account dated 21.04.2022.
- e) That the complainant had availed a loan from Deewan Housing Finance Limited (DHFL) for Rs.15,97,656/- and as per letter dated 14.04.2021, the complainant had received a closure report of her loan account no. 01400004634. The DHFL had also returned all the original documents which were in the custody of DHFL at the time when the loan was availed.
- f) That no buyer's agreement is executed between the parties and despite that the complainant has made the payment of entire sale consideration. It is further submitted that the possession of the unit in question has not been handed over to the complainant till date and the respondent has illegally charged interest on the delay of payment of instalment amount @ 15% per annum which is against the principles of natural justice.
- g) That the complainant is not even aware as to whether the respondent has obtained the occupancy certificate for the project in question or not because the complainant has not been offered a legal physical possession of the unit in question even if the respondent is given the relaxation of the period of construction ban due to COVID-19 as per the notification of the Government of India.

h) That the complainants seek indulgence of the Hon'ble Authority in grant of possession of the unit along with delay possession charges by the respondent. The complainant also reserves her right to file separate complaint for compensation as and when required before the appropriate forum/ authority.

C. Relief sought by the complainant:

4. The complainant herein is seeking the following relief(s):

I. Direct the respondent to delay possession charges along with interest and handover the possession of the unit.

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 has contested the complaint on the following grounds vide its reply dated 29.11.2023 and written submissions dated 18.06.2024: -

a) That the complainant was allotted a unit no. 12-901 in block/tower 12 having carpet area of 583.04 sq. ft. on the 9th floor and balcony area 110.61 sq. ft. together with two wheeler open parking site and the pro-rata share in the common areas through draw of lots held on 20.07.2017 under the Affordable Group Housing Policy, 2013 notified by the Government of Haryana vide Town and Country Planning Department notification dated 19.08.2013 as applicable at relevant point of time.

b) That subsequent to the allotment of the said unit the complainant entered into agreement with the respondent for the delivery of possession of the said unit on the terms and conditions as contained therein.

c) That the total cost of the subject unit was Rs.21,48,944/- excluding the other charges such as stamp duty, registration charges, other expenses etc in accordance with the buyer's agreement with time linked payment plan. The goods and service tax were payable extra as applicable.

- d) That the total cost of the said unit was escalation free, save and except increase on account of development charges payable to the governmental authority and any other charges which may be levied or imposed by the governmental authority from time to time, which the complainant had agreed to pay on demand by the respondent.
- e) That the delivery of the possession of the said unit was agreed to be offered within 4 years, from the approval of building plans or grant of environmental clearance, whichever is later. However the delivery of possession was subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely completed with all its obligations.
- f) That the proposed period of delivery of physical possession was subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having complied with all obligations of allotment in a timely manner and further subject to completion of formalities/documentation as prescribed by the respondent and not being in default of any clause of the agreement.
- g) That the agreed possession period would have been applicable provided no disturbance/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory authorities etc.
- h) That prior to the completion of the project, various force majeure circumstances (such as construction bans, Covid-19 pandemic, various lockdowns etc.) affected the regular development of the real estate project which was beyond the power and control of the respondent. That prior to the completion of the project, various force majeure circumstances (such as construction bans, Covid-19 pandemic, various lockdowns etc) affected the regular development of the real estate project. The deadly and contagious Covid-19 pandemic had struck which have resulted in

unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent.

- i) That the development of the project was also adversely affected due to various orders of the Hon'ble Supreme Court, National Green Tribunal (NGT), Municipal Corporation Gurugram (MCG) etc. had directed ban on construction activities in Delhi NCR due to rise in pollution level mainly in festive season/ winter season for various periods thereby severely affecting the regular development of the real estate projects.
 - j) That the period of 151 days in addition to the period affected by Covid-19 was consumed on account of circumstances beyond the power and control of the respondent owing to passing of orders by statutory authorities affecting the regular development of the real estate project. Since, the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of time already indicated hereinbefore, the said period ought to be excluded, while computing the period availed by the respondent for purpose of raising construction and delivering possession.
 - k) That the respondent received the OC on 25.03.2022 from the Town & Country Planning Department Haryana and the respondent issued offer of possession vide letter dated 27.03.2022 requesting the complainant to accept the possession and execute the necessary documents for the execution of the conveyance deed of the given unit.
 - l) That due to non-payment of outstanding amount of Rs.3,82,799/- and stamp duty charges, possession could not be handed over to the complainant.
7. All other averments made in the complaint were denied in toto.

8. 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 on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

9. 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

10. 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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

“Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

12. 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 Objection regarding force majeure conditions:

13. 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 and orders passed by National Green Tribunal (hereinafter, referred as NGT). But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. 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 four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 25.02.2017 and date of environment clearance is 18.05.2017 as taken from the documents on record. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 18.05.2021. Further, ***as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.05.2021 i.e., after

25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **18.11.2021**.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to delay possession charges along with interest and handover the possession of the unit.

14. The complainant booked a unit bearing no. 12-901, 9th floor, block 12 admeasuring carpet area 583.04 sq.ft and balcony area 110.31 sq. ft. in the project "The Serenas" being developed by the respondent. The complainant paid till date Rs. 23,30,905/- against the sale consideration of Rs. 24,46,934/-. A buyer agreement w.r.t the allotted unit was executed between the parties on 30.10.2017.
15. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 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."

16. Further, clause 5.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"5.1 within 60 days from the date of issuance of occupancy certificate, the Developer shall offer the possession of the said flat to the Allottee(s). Subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by developer in terms of the agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the payment

plan, stamp duty and registration charges, the developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance.” .

17. Admissibility of grace period: As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession was to be handed over within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later with a grace period of 6 months (COVID-19). Accordingly, the authority in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic allows the grace period of 6 months to the promoter at this stage.

18. Admissibility of delay possession charges at prescribed rate of interest: The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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]

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.”

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 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., 21.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
21. 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;"*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent which is the same as is being granted to them in case of delayed possession charges.
23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5.1 of the buyer's agreement executed

between the parties on 22.09.2017, the possession of the subject unit was to be delivered within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later. The due date of possession is calculated from the date of environment clearance i.e., 18.05.2017. As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.05.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be 18.11.2021. Further, a relief of 6 months will be given to the allottee that no interest shall be charged from the complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

24. The respondent has obtained the occupation certificate on 25.03.2022. Copy of the same has been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 30.10.2017 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 30.10.2017 to hand over the possession within the stipulated period.
25. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 25.03.2022. The respondent offered the

possession of the unit in question to the complainant only on 27.03.2022. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 18.11.2021 till the date of offer of possession (27.03.2022) plus two months i.e., 27.05.2022. The complainant is further directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

26. Accordingly, the non-compliance of the mandate contained in Section 11(4) (a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 18.11.2021 till the offer of possession i.e., 27.03.2022 plus 2 months i.e., 27.05.2022 as per section of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
27. Further, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.

H. Directions of the authority

28. 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 respondents are directed to pay interest on the paid-up amount, i.e., Rs.23,30,905/- at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 18.11.2021 till the date of offer of possession (27.03.2022) plus two months i.e., 27.05.2022 to the complainant. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- II. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents which is the same rate of interest which the promoters 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. The 6 months grace period due to Covid-19 shall also apply to the allottee in case of any default in making payment.
- III. The respondent is directed to issue a revised account statement after adjustment of delay possession charges and other charges as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any, after adjustment of delay possession charges within a period of next 30 days.
- IV. 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.
- V. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.



HARERA
GURUGRAM

Complaint No. 3510 of 2023

29. The complaint stands disposed of.

30. File be consigned to the Registry.

Dated: 21.08.2024

Ashok Sangwan
(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram



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