

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

Complaint no.: 7923 of 2022
Date of decision:- 24.07.2024

1. Smt. Kanchan
2. Sh. Jitender Kumar
Both R/o:- House No.-394, Sector-7,
Urban Estate, Gurugram

Complainants

Versus

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

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Mukul Kaushik

Complainants

Sh. Umang Mahendra

Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 12.01.2023 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the

promoter shall be responsible for all obligations, responsibilities and functions 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Maceo", Sector-91, Gurugram, Haryana.
2.	Nature of the project	Group Housing Colony
3.	Area of the project	15.575 acres
4.	Hrera registered	Registered
5.	DTCP license	License no.71 of 2008 Dated-25.03.2008
6.	Unit no.	Apartment no-002, Tower-N, Floor-Ground (As on page no. 45 of complaint)
7.	Unit admeasuring	1310 sq.ft. [Super-Area] 794.81 sq.ft. [Carpet Area] (As on page no. 45 of complaint)

8.	Builder buyer agreement	02.08.2019
9.	Possession clause	<p>Clause 8 POSSESSSION OF THE APARTMENT FOR RESIDENTIAL USAGE:</p> <p>8.1 Schedule for possession of the said Apartment for Residential Usage: The Company agrees and understands that timely delivery of possession of the Apartment to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be , as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement. The Promoter assures to handover possession of the Apartment along with ready and complete common areas with all specifications, amenities and facilities of the project in place on 16.08.2019, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project "Force Mjeure", Court orders, Government policy/guidelines, decisions or any other reason beyond the control of the Company which affects the regular development of the real estate project.</p> <p>[Empahsis supplied] (As on page no. 49 of complaint)</p>
10.	Due date of possession	16.08.2019
11.	Total sale consideration	Rs.55,69,517/- (As on page no. 45 of complaint)
12.	Total amount paid by the complainant	Rs.56,04,924/- (As on page no. 47 of complaint)

13.	Occupation certificate	28.11.2019 (As on page no. 70 of complaint)
14.	Offer of possession	30.11.2019 (As on page no. 73 of complaint)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint:

- I. That the representatives of respondent approached the complainants in 2019 and informed that some units are available with the respondent which are in the final stage of construction and their finishing would be completed in 2-3 months in the project Maceo, Sector-91, Gurugram. The representatives also assured that all the plans have been sanctioned and the company had also applied for Occupation Certificate on 04.10.2018 and 19.04.2019.
- II. That believing upon the assurances, the complainants booked an apartment bearing no. N-002 on Ground Floor in Tower N having super area of 1310 sq.ft along with 1 covered car parking at the total sale consideration of Rs.55,69,517/- along with all charges. The complainants paid a sum of Rs.5,50,000/- as booking amount and an allotment letter was issued by the respondent on 15.05.2019.
- III. The complainants paid a sum of Rs.21,97,258/- on 25.07.2019 as per the demands raised by the respondent. An agreement to sale was executed between the complainants and the respondent on 02.08.2019. By this time the complainants have paid a total

amount of Rs.27,47,258/-. As per clause 8.1 of the agreement, the respondent assured to handover possession of the unit alongwith common areas with all specifications, amenities and facilities on 16.08.2019. The respondent also assured that before 16.08.2019, the respondent would obtain the occupation certificate from the concerned department. As per the Buyers Agreement, 16.08.2019 was the due date of possession.

- IV. That neither the furnishing work of the flat was completed nor was the occupation certificate obtained. Thus, on the due date of of possession, the respondent was not in position to deliver the actual physical possession of the unit to the complainants.
- V. That the respondent obtained the Occupation certificate of the Tower N on 28.11.2019. That on 30.11.2019, the respondent in a hasty manner issued a letter of offer of possession cum demand notice to the complainants and demanded Rs.29,90,903/- from the complainants as outstanding amount.
- VI. That the complainants paid a sum of Rs.25,65,000/- on 06.12.2019 against the demand raised by the respondent. Also, the complainants paid Rs.2,36,608/- on 18.01.2020. The complainants visited the unit and were shocked to see the state of affairs. The respondent also demanded full and final amount without completion of the finishing works. The apartment was not in livable condition at the time of offer of possession.
- VII. That the complainants also paid the power backup charges amounting to Rs.28,029/- and Rs.28,021/- on 28.01.2020 & 31.01.2020 respectively. Thereafter, the complainants got a mail

from Mr. Parag Sharma representative of the respondent, conforming that finishing work i.e. final coat of paint, sanitary fitting & fixture, wooden flooring in master bedroom, chinaware etc in the unit has been completed and the apartment is ready for handing over of possession. The said email confirmed that the finishing work was not completed at the time of issuance of letter of offer of possession dated 30.11.2019.

VIII. On visiting the site for inspection, the complainants were shocked and surprised that there were several deficiencies in the apartment but the respondent company without completing the finishing works offered possession as the kitchen granite slab was not constructed instead of promised covered parking they offered open car parking with shelter which was totally contrary to terms of application agreement. The complainants vide an e-mail dated 27.07.2020 highlighted the said deficiencies to the respondent.

IX. That the brother of the complainant again visited the unit on 01.08.2020 and met Mr. Parag Sharma, representative of the respondent who offered a covered a car parking in different block far away from the tower of the complainant and the same was separated by a revenue road. Thus the respondent failed to provide amenities promised at the time of execution of agreement to sell of apartment dated 02.08.2019.

X. The respondent vide e-mail dated 07.08.2020 informed the available options of the car parking but did not disclose in which tower the parking space is available. So, the respondent offered a car parking and refund of an amount of Rs.1,00,000/-. The same

was accepted by the complainants vide e-mail dated 27.08.2020. However, the kitchen slab was still pending as granite was not procured by the respondent. Further, there was severe seepage in dining room, bed room and outside the shaft area.

- XI. Even after acceptance of the open car parking and refund of Rs. 1,00,000/-, the respondent did not refund the amount of Rs.1,00,000/- and also did not complete the finishing work of the apartment.
- XII. That the complainants again sent an reminder e-mail to the respondent to handover possession of the unit but the respondent chose not to pay any heed to request of the complainants. The respondent replied that it needs a day's time to understand the issue and get back to complainants with updates but never responded back which proves that the respondent intentionally delayed the handing over of possession.
- XIII. The complainants sent 9 reminders e-mails between 05.06.2022 to 23.08.2022 to the respondent requesting to handover the physical possession along with interest on delay payment but the respondent neither responded to the said e-mails nor handed over possession of the unit. On 23.08.2022, the respondent sent an e-mail that they offered possession through letter dated 30.11.2019 and also intimated that the unit has been ready for physical possession since 31.01.2020. The said admission of the respondent itself stated that the unit was not ready on the due date of possession i.e. 16.08.2019. Further from the abovementioned e-mail it was also clear that the respondent

failed to complete the finishing work of the unit within the prescribed time, which shows that the respondent is in default. Vide e-mail dated 23.08.2022, an outstanding amount of Rs.1,04,227/- on account of CAM charges was made by the respondent. Further, an outstanding on account of holding charges amounting to Rs.1,74,318/-. Despite several attempts, the respondent is not interested in handing over possession of the unit to the complainants.

C. Relief sought by the complainants:

4. The complainant has sought following relief(s):
- Direct the respondent to handover physical possession of the unit to the complainants.
 - Direct the respondent to pay delayed possession charges.
 - Direct the respondent to pay Rs.1,00,000/- on account of legal expenses.

D. Reply by respondent:

5. The respondent by way of written reply has made following submissions:
- That the respondent developed a residential project in Sector- 91, Gurugram, Haryana namely "MACEO". That Anant Raj Limited in the year 2020 demerged its project division into Anant Raj Global Limited by which the said project vested with M/s Anant Raj Global Limited and the same is now known as M/s TARC Limited.
 - That the complainants approached the respondent and booked a unit bearing no. 002 situated on the ground floor, located in Tower-N, having super area of 1310 sq.ft. for a total consideration of



Rs.55,69,517/- and an allotment letter dated 15.05.2019 was issued to the complainants. Pursuantly, the agreement to sale dated 02.08.2019 was executed between the complainants and the respondent.

- III. The respondent was supposed to handover possession of the unit on 16.08.2019. However, the delay in offering possession of the unit was completely subject to Force Majeure condition which were beyond control of the respondent and the same has been stipulated in Clause 8.1 of the agreement.
- IV. It is imperative to mention herein that in the year 2019, the project had to underwent unforeseen and adverse circumstances causing the progress and completion of the project to be hampered and delayed because of which the possession of the unit could not be handed over within the stipulated period. The delay was caused on account of the order passed by the Hon'ble National Green Tribunal, the Hon'ble Environmental Pollution (Prevention and Control) Authority and the Centre Pollution Control Board which issued various directions to builders to take additional precautions and steps to curtail pollution.
- V. On account of the aforementioned reasons, the progress of the project was abruptly hampered. All these events led to suspension and stoppage of work on several occasions, which also resulted in labourers and contractors abandoning work very often. As a result of various directions from the authorities on several occasions, regarding water storage and pollution control etc. The labourers and contractors abandoned the works, and the respondent had to

run from pillar to post in order to find new contractors and labourers, thus affecting the progress of the project.

- VI. That the respondent received the Occupation Certificate on 28.11.2019 and without delay the possession was offered to the complainants on 30.11.2019. Accordingly, the complainants visited the unit somewhere in 2020 alongwith the respondent's representative, wherein the unit was slightly unfinished due to the force majeure circumstances, and immediately action was taken of the said unfinished work/deficiencies but again failed to complete the same due to sudden COVID -19 pandemic.
- VII. That the complainants tried to conceal the delay on their part in making the requisite payments as per the payment plan. As such, the complainants were in wilful default in remitting the remaining installments which were due and payable to the respondent in the very initial stage. As a result, the respondent sent several "Reminder Letters" dated, 16.08.2019, 10.09.2019, 12.11.2019, 15.06.2020 and "Demand letter cum service invoices" dated, 09.07.2019, 23.07.2019 and 07.01.2020 to the complainants.
- VIII. The respondent is requesting the Authority to wave off the interest from the year 2019 to 2021 and it is most humbly submitted that the said unit is ready for the possession since 2022. It is further pertinent to state that if the respondent is directed to pay delayed possession charges to the complainants from the very initial payments, the same shall further affect the respondent's ability to offer possession to the complainants as the respondent has faced major losses.



- IX. Hence, the present complaint ought to be dismissed on the aforesaid grounds. The reliefs sought in the instant complaint may be denied as the delay in the finishing works, paints, seepage etc. were merely subject to Force Majeure.
- X. That the respondent had informed the complainants about the finishing work of the final coat of paint, sanitary fittings & fixtures, wooden flooring in master bedroom, chinaware etc. in the unit vide email dated 14.07.2020 and the complainants have failed to take possession since 2020. Further, it is importantly to state that the complainants have failed to take possession of the unit at the time of offering the same and thereafter, the complainants have created an issue which is related to the car parking.
- XI. However, the respondent the showing their bonafide intention to resolve the said issue made a statement to refund of Rs.1,00,000/- to the complainants. Even the respondent had again issued an email dated 23.08.2022 to the complainants stating that the unit is complete and further requesting to remit the dues before the possession of the unit.
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 objections raised by the respondent:

F.I. Objection regarding Force Majeure conditions.

11. The respondent-promoter has raised a contention that the handover of the unit was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to lock down due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 8.1 of the agreement dated 02.08.2019, which is prior to the coming of Covid-19. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover physical possession of the unit.

G.II. Direct the respondent to pay delayed possession charges.

12. The aforementioned reliefs are interrelated and thus are being addressed together. In the present complaint, the complainants acquired a unit numbered N-002 on the ground floor of Tower-N, measuring 1310 sq. ft, along with one covered car parking space, for a total sale consideration of Rs. 55,69,517/- in the project "Maceo" being developed by the respondent. The unit was allotted to the

complainants via an allotment letter dated 15.05.2019, followed by the execution of an Agreement to Sell between the complainants and the respondent on 02.08.2019. According to clause 8.1 of the aforementioned agreement dated 02.08.2019, the respondent committed to handing over possession of the unit to the complainants by 16.08.2019. The said clause is reproduced below:

" 8.1 Schedule for possession of the said Apartment for Residential Usage: The Company agrees and understands that timely delivery of possession of the Apartment to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2 (1) (f) of Rules, 2017, is the essence of the Agreement. The Promoter assures to hand over possession of the Apartment along with ready and complete common area with all specifications, amenities and facilities of the project in place on 16.08.2019, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project "Force Majeure", Court orders, Government policy/guidelines, decisions or any other reason beyond the control of the Company which affects the regular development of the real estate project. "

[Emphasis supplied]

13. Therefore, the due date for handing over possession to the complainants was 16.08.2019. The respondent obtained the occupation certificate for Tower-N from the competent authorities on 28.11.2019. Subsequently, the respondent issued an offer of possession along with a demand letter to the complainants. It is apparent from several payment receipts appended to the complaint that the complainants have thus far paid Rs. 56,04,924/- against the total sale consideration of Rs. 55,69,517/-, which exceeds 100% of the total sale consideration for the subject unit.
14. Upon receiving the offer of possession, the complainants visited the project site and identified several deficiencies in their unit, such as seepage issues in the dining room and the absence of a kitchen slab,



among others, which were duly communicated to the respondent through various emails on record. The unit was unfinished and not in a livable condition. Additionally, the car parking allotted to the complainants did not comply with the terms outlined in the agreement dated 02.08.2019, as the agreement specified a covered parking space while the respondent offered an open space parking spot. These concerns were brought to the attention of the respondent, who acknowledged them and assured that they would be rectified. The respondent admitted in its reply that the unit was not prepared for possession at the time it was offered, and requested the complainants for additional time to complete it. Furthermore, on page no 5, paragraph 13 of the reply, the respondent admitted that the unit had been ready for possession since 2022 but the exact date is not specified.

15. The Authority vide its order dated 11.10.2023, directed the respondent to deliver possession of the unit to the complainants within 45 days after rectifying the defects. During the proceedings on 03.01.2024, the respondent's counsel informed the Authority that possession of the unit had been handed over to the complainants on 14.12.2023. This was subsequently confirmed by the complainants' counsel during the proceedings on 08.05.2024. In view of the above, it is construed that the respondent failed miserably to deliver the possession of the unit to the complainants on time.
16. In the present complaint, the complainants intends to continue with the project and are seeking 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.*

17. **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."

18. 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.

19. 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., 24.07.2024 is 9 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
20. 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;"

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
22. 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 failing to deliver possession by the agreed-upon date as per Clause 8.1 of the agreement dated 02.08.2019. According to the agreement, the respondent was

obligated to hand over possession of the unit to the complainants by 16.08.2019. Despite receiving more than 100% of the total sale consideration for the unit, the respondent did not fulfil its obligation. The respondent has failed to deliver possession of the unit to the complainants even after a delay of four years. Also, the offer of possession made by the respondent on 30.11.2019 is not a valid offer and is bad in the eyes of law as the unit was not complete at that time.

23. 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. In the interest of justice the Authority is of the view that the allottees, shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 16.08.2019 till the actual handing over of possession i.e., 14.12.2023, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
24. **Holding charges:** Further, the Authority observes that the respondent is charging holding charges from the complainants. The complainant/promoter is not entitled to charge holding charges from the respondents/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. **3864-3889/2020** on 14.12.2020. Thus, the respondent/promoter is directed not to charge holding charges from the complainants.

G.III. Direct the respondent to pay litigation charges of Rs.1,00,000/-

24. The complainants are seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority

25. 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 interest for every month of delay from due date of possession i.e., 16.08.2019 till the actual handing over of possession i.e., 14.12.2023, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The respondent/promoter is directed not to charge holding charges from the complainants as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.

iii. The respondent shall not charge anything from the complainants which was not a part of the builder buyer agreement dated 02.08.2019.

26. Complaint stands disposed of.
27. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.07.2024



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GURUGRAM