

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

Complaint no.:	5638 of 2023
Date of complaint:	06.12.2023
Date of decision:	08.11.2024

1. Tarakeswar Das
2. Sanjukta Purkayastha

R/o: - Flat no. F-1203, Grand Ajnara Heritage GH Society,
Near Supertech Capetown, Central Noida, Sector-74, UP-
201301.

Complainants

Versus

1. Pareena Infrastructures Pvt. Ltd.
2. Surender Kumar (Director)
3. Virender Verma (Director)

Regd. Office at: Flat no. 2, Palm Apartment, Plot No.
13-B, Sector-6, Dwarka, New Delhi-110075.

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Ravinder (Proxy Counsel)

Sh. Prashant Sheoran (Advocate)

Complainants

Respondents

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 as provided 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name and location of the project	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Allotment letter dated	28.01.2016 (page no. 23 of complaint)
7.	Unit no.	2403, 24 th Floor, Tower-5 (page no. 37 of complaint)
8.	Unit admeasuring area	1245 sq. ft. (super area) (page 37 of complaint)
9.	Date of builder buyer agreement	28.01.2016 (page no. 25 of complaint)
10.	Date of start of construction	26.04.2016 (date of start of excavation) (page 90 of complaint)
11.	Possession Clause	13. Completion of Project <i>That the Developer shall, under normal conditions, subject to force majeure,</i>

		<i>complete construction of Tower/Building in which the said flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee (s) (with additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the Developer may consider necessary or may be required by any competent authority to be made in them or any of them.</i>
12.	Due date of possession	26.10.2020 (4 years from the date of start of construction + 6 months of covid)
13.	Total sale consideration	Rs. 84,13,380/- (as per payment schedule on page 53 of complaint)
14.	Total amount paid by the complainants	Rs.73,86,985/- (as per payment receipts on page 64 of complaint)
15.	Occupation certificate	03.06.2024 (submitted by counsel for respondent during court proceedings)
16.	Offer of Possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants on the assurances provided by the representative of the respondent's agreed to buy one flat with a total cost of Rs. 84,13,380/- inclusive of external development charges,



- infrastructure development charges, preferential location charges (wherever applicable), fire fighting charges, car parking charges, club membership charges, IFMS deposit, power backup charges etc. (excluding applicable GST). Accordingly had paid Rs. 6,00,000/- on dated 12.02.2014 as a booking amount, and thereafter had paid Rs. 6,19,915/- on dated 26.07.2014.
- II. That after one year, the complainants received communication from the employee of the respondent company, namely Mr. Amit Soni who requested payment from the complainants for an amount of Rs. 2,26,557/-, which represents 20% of the BSP and the service tax for the aforementioned flat. The complainants, with a hopeful expectation of a timely handover, made the requested payment on 04.06.2015.
- III. That thereafter, the complainants made numerous attempts to contact the respondents, to execute the BBA. Finally, after nearly six months, the respondents executed the BBA on January 28, 2016. The respondents has allotted 2 BHK Type II, residential unit no. 2403, tower T-5, located on 24th floor of the above said project having super area approx. 1245 Sq. Ft., vide allotment letter dated 28.01.2016. The respondents took nearly two years to execute the BBA, thereby withholding the complainant's hard-earned money of Rs. 14,46,472/- without any justified reason.
- IV. That afterwards, the complainants diligently made every payment/installment as and when demanded by the respondents without any default. Up to this point, the complainants have made payments totaling Rs. 73,86,985/- which includes TDS and GST payments. This amount represents 85% of the payment under the 'construction linked plan' and covers expenses until the 'completion of

brick wall'. The complainants lastly made a payment of Rs. 6,78,372/- on 16.03.2020.

- V. That as promised by the broker/representative of the respondents, the respondents were obligated to arrange loan approval for the said flat in favour of the complainants, however, the respondents, failed to provide even the necessary assistance to the complainants and also delayed in handing over the required documents requested by the bank. The complainants had to make numerous visits to the office before finally receiving the documents.
- VI. That the BBA executed between the complainants and the respondents was in a pre-printed format, and the complainants were not permitted to modify any of the terms and conditions of the BBA. They were compelled to sign the BBA under duress. The terms and conditions specified in the BBA are one-sided, and the complainants are not bound by such biased conditions.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:
- Direct the respondents to deliver the possession of the unit along with complete amenities.
 - Direct the respondents to pay delayed possession charges at 18% p.a. interest from the promised date of delivery till the actual delivery of possession to the complainants, in interest of justice.
 - Direct the respondents to make the payment of the monthly interest as instalment until the actual delivery of possession of the unit to the complainants.



- d. Direct the respondents to execute conveyance deed and registry in favour of the complainants as per section 11(4)(f) of the act in time bound manner.
5. On the date of hearing, the authority explained to the respondents/promoter about the contravention 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 respondents.

6. The respondents have filed the joint reply and have contested the complaint on the following grounds:
- i. That the present complaint is not maintainable in the eyes of law.
 - ii. That the complainants are estopped from filing the present complaint by his own act and conduct, admission, omission, laches and acquiescence.
 - iii. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "MICASA" at Sector 68.
 - iv. That the construction of the said project is at an advance stage and the construction of various towers has already been completed and soon obtain occupation certificate of the tower in which unit in question is situated. That the respondents are a committed real estate developer, who is developing various residential colonies as per rules and law.
 - v. That the respondents continues to bonafidely develop the project in question despite of there being various instances of non-payments of installments by various allottees. This clearly shows unwavering commitment on the part of the respondents to complete the project.



Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondents to deliver the project as soon as possible. The amounts which were realized from the complainants have already been spent in the development work of the proposed project. On the other hand the respondents are still ready to deliver the unit in question of this due completion to the complainants, of course, subject to payment of due installments and charges.

- vi. That it has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondents with a mere motive of avoiding the payment of balance consideration and charges of the unit in question. If such frivolous and foundationless allegations will be admitted then, interest of other genuine allottees of the project, will be adversely affected. In these circumstances, the present complaint deserves to be dismissed.
- vii. That as per apartment buyer agreement the date of delivery of possession was not absolute and was subject to terms and conditions of agreement itself. That admittedly it has been written in the clause 13 that the company shall endeavor to complete the construction within period of 4 years from start of construction or execution of this agreement, whichever is later but said time period of 4 years are not absolute. That further extension of 6 months is also agreed between the parties at the discretion of respondents, however said period of 4 years 6 months is also not absolute and it is subject to several reasons beyond the control of respondents and it was also agreed by the complainants that if the project gets delayed due to force majeure circumstances than the said period consumed during concerned circumstances shall stand extended. That it is admitted fact by both the



parties that construction was started on 26-04-2016 (as mentioned in account statement attached herein as Annexure R1.), thus the starting date for calculation of date of possession would be 26-04-2016 and final date of possession shall be calculated after considering all the relevant circumstances.

- viii. That since prescribed period of 4.6 years is subject to force majeure circumstances. It is submitted that there were a number of judicial orders, notifications and other circumstances which were completely beyond the reasonable control of the respondents, which directly impeded the ability and even the intention of the respondents to continue with the development and construction work of the said project. It will be detailed hereinafter that on account of various notifications and judicial orders the development and construction work of the said project was impeded, stopped and delayed. That the total number of days for which despite of their being an absolute willingness on the part of respondents, respondents could not raise construction.
- ix. That completion of the project shall be considered as 4 years after addition of force majeure circumstances. Similarly on account of corona virus pandemic HRERA granted additional time of 6 months for completion of project in year 2020 and additional 3 months in year 2021 from 01-04-2021 to 30-06-2021.
- x. That whenever construction was stopped due to any reason either because of lockdown or any interim orders of Hon'ble Supreme court/MCG/Environment pollution control boards of state of Haryana and separately of NCR, it created a hurdle in pace of construction and after such period was over, it required considerable period of time to



resume construction activity. It is submitted that whenever construction activity remains in abeyance for a longer period of time, then the time required gathering resources and re-commence construction; also became longer, which further wasted considerable time. That longer the construction remains in abeyance due to circumstances discussed herein, longer the time period required to start again.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents as well as submissions made by the parties.

E. Jurisdiction of the authority

8. The respondents have raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. 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

9. 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



10. 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) 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.

11. 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.

F. Findings on the objections raised by the respondents.

F.I. Objection regarding force majeure conditions.

12. The respondents-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, 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). Further, the authority has gone through the possession clause of the agreement and observed that the respondents-developer proposes to handover the possession of the allotted unit within a period of four years from the date of execution of agreement or date of start of construction whichever is later. In the present case, the date of execution of



agreement is 28.01.2016 and date of start of construction is 26.04.2016. The due date is calculated from the date of start of construction being later, so, the due date of subject unit comes out to be 26.04.2020. ***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 complainants is 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 26.10.2020.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondents to deliver the possession of the unit along with complete amenities.

G.II Direct the respondents to pay delayed possession charges at 18% p.a. interest from the promised date of delivery till the actual delivery of possession to the complainants, in interest of justice.

G.III Direct the respondents to make the payment of the monthly interest as instalment until the actual delivery of possession of the unit to the complainants.

13. The complainants was allotted a unit bearing no. 2403, on 24th floor, in Tower 5 in project of the respondents named "Micasa" at Sector-68, Gurugram. The allotment letter of the unit was allotted on 28.01.2016 and the builder buyer agreement was executed on 28.01.2016. The complainants vide present complaint is seeking possession, delay

possession charges and direction for execution of conveyance deed in his favour.

14. In the present complaint, the complainants intends 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.”

15. Clause 13 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

“13. Completion of Project

That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee (s) (with additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the Developer may consider necessary or may be required by any competent authority to be made in them or any of them.”

16. **Due date of possession and admissibility of grace period:** As per clause 13 of the agreement dated 28.01.2016, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 4 years of the start of construction or execution of agreement whichever is later. The date of start of construction was 26.04.2016. Therefore, the due date is calculated from date of start of construction i.e., 26.04.2016 as it is later. Hence, the due date comes out to be 26.04.2020. 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. Hence, the due date comes out to be 26.10.2020.

17. Payment of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges at the 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., 08.11.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.



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., **11.10%** by the respondents/promoter which is the same as is being granted to them in case of delayed possession charges.
22. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondents are 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 13 of the buyer's agreement, the possession of the subject apartment was to be delivered within stipulated time i.e., by 26.10.2020. However, during court proceedings dated 08.11.2024 the counsel for the respondents stated that it has obtained the occupation certificate for the tower in question on 03.06.2024. However no possession has been handed over to the allottee till date.



23. The Authority is of considered view that there is delay on the part of the respondents/promoter to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 28.01.2016. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
24. 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 respondents/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 26.10.2020 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.IV Direct the respondents to execute conveyance deed and registry in favour of the complainants as per section 11(4)(f) of the act in time bound manner.

25. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title



documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

26. As OC of the unit has been obtained by the competent authority on 03.06.2024, therefore, conveyance deed can be executed with respect to the unit. Accordingly, the authority directs the respondents to execute the conveyance deed in favour of the complainants after settling the dues, if any within 90 days from the date of this order.

H. Directions of the authority

27. 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 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 respondents are directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainants to the respondents from the due date of possession 26.10.2020 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier 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., 11.10% by the respondents/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 respondent is directed to execute the conveyance deed in favour of the complainants after settling the dues, if any within 90 days from the date of this order.
 - v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - vi. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
28. Complaint stands disposed of.
29. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.11.2024