

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

Complaint no. : 445 of 2024
Complaint received on : 02.02.2024
Order pronounced on : 10.10.2024

Late Sh. Kishan Dutt (through will beneficiary Sh. Nihal Singh)
Both R/o: 1550, Behind Pacific Square Sector 15 Part 2,
Gurugram, Haryana 122001

Complainant

Versus

M/s Aster Infrahome Private Limited
Regd. office: 24A, Ground Floor, Vipul Agora Complex,
Mehrauli-Gurgaon Road, Gurgaon, Haryana

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Mohit Dua (Advocate)
Shri Shankar Wig (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint 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 under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

2. The particulars of the project, the details of sale consideration, the amount



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

S. No.	Particulars	Details
1.	Name of the project	"Green Court", Sector 90, Gurugram, Haryana.
2.	Nature of the project	Affordable Housing Project
3.	RERA registered or not	Registered vide no. 137 of 2017 dated 28.08.2017 valid up to 22.01.2020
4.	Unit no.	1002, 10 th floor, Tower- D (Page no. 23 of the complaint)
5.	Unit area	590 sq. ft. (Page no. 23 of the complaint)
6.	Date of execution of buyer's agreement	06.01.2016 (Page no. 20 of the complaint)
7.	Possession clause	<p>Clause 8(a)</p> <p><i>Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan, stamp Duty and registration charges, the Developer proposes to offer possession of the said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environmental clearance whichever is later (hereinafter referred to as the "Commencement Date")</i></p> <p>(Page no. 28 of the complaint)</p>

8.	Environment Clearance	12.01.2016
9.	Due date of possession	12.01.2020 (As per BBA, calculated from environment clearance +4 years)
10.	Basic sale consideration	Rs.24,10,000/- (As per page no.24 of the complaint)
11.	Total amount paid	Rs.23,84,803/- (As per SOA at page no. 120 of the complaint)
12.	Occupation certificate	17.11.2022 (As on page 116 of reply)
13.	Offer of possession	24.11.2022 (As on page 61 of complaint)

B. Facts of the complaint:

3. Somewhere in Jan-2015, the respondent advertised about its new Affordable Group Housing Colony Project namely "Green Court" in Sector 90, Gurugram, Haryana. Believing the representations of the respondent and father of the complainant on the lookout for an adobe for himself and his family, on 24.01.2015, the complainant applied for a allotment through draw of a residential unit in the said project by making a payment of Rs. 1,24,223/- vide receipt no. '002258' dated 28.01.2015.
4. After almost 1 year from the date of booking of the unit, finally, on 06.01.2016, the buyer's agreement was executed between the complainant and the respondent of the said unit. It is pertinent to mention here that the complainant had already made a payment amounting to Rs. 6,02,500/- from the date of booking till execution of agreement in accordance with the

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- demands of the respondent. The said payments are very acknowledged in buyers' agreement dated 06.01.2016.
5. Thereafter, the father of the respondent due to financial issues has acquired housing loan in order to fulfil the demands of the respondent builder by himself. However, a Tripartite Agreement dated 04.03.2016 has been executed between father of the complainant, respondent builder and State Bank of India. It is pertinent to note here that the according to the norms and regulations of SBI payment plan of the said unit need to be changed from time linked plan to construction linked plan for the disbursal of loan amount. The said plan has been issued by the respondent builder and same is annexed with Tripartite agreement.
 6. After considering the stage of construction of the project, the State Bank of India kept on disbursing payment of loan amount as and when demanded by the respondents. Till date the complainant has paid a total sum of Rs. 23,84,803/- which include Bank disbursal towards the unit in question, as and when demanded, as against the total sale consideration of unit.
 7. As per clause 8(a) of the said buyer's agreement dated 06.01.2016, the respondent proposed to offer the possession of the unit in question to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later, i.e., by 12.01.2020 as the respondent company has received the approval of building plan on 22.10.2014 and environment clearance from the concerned department on 12.01.2016 vide Minutes of the 86th meeting of State Environment Impact Assessment Authority held on. 12.01.2016, under the Chairmanship Sh. Bharat Bhushan IAS (Retd.), Chairman, SEIAA held in the meeting room of office of SEIAA Haryana, Sector-2 Panchkula, regarding Environmental Clearance under EIA Notification dated 14.9.2006.

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8. Though the booking of the said unit was made in 2015 and further the builder buyer agreement was executed in 2016 and as per the said builder buyer agreement the unit in question was supposed to be handed over by 12.01.2020, but till the due date of possession the project was nowhere nearing completion. Upon this, the complainant asked the respondent as to the date of handing over, but to no avail as no concrete reply was given by the said respondent. Thereafter, the complainants kept contacting the respondent on several occasions seeking an update on the construction status and if the requisite sanctions and approvals had been obtained, but all in vain.
9. After a delay of more than 3 years, on 24.11.2022, the respondent issued wherein the respondent has offered to take the possession of the unit in question along with demand letter of Rs. 6,43,175/- upon which the complainant protested to the respondent that they issued the said letter of possession after 2 years from the due date without any justified reasons and the delay has caused hardship upon us, the wait of 3 years is not a short period. And further protested to the said demands of the respondent as the same was not been represented at the time of booking, draw or at the time execution of BBA.
10. Upon receipt of said notice, the complainants immediately arranged funds and ready to make the remaining payment in order to avoid imposition of any delayed payment charges or holding charges and visited the respondent's office to complete necessary documentary formalities and take possession of their unit. However, much to the dismay of the complainants, the respondent sought a time of 2 months in order to furnish the unit. The complainant requested the respondent officials to make the payment of delay possession charges from due date of possession till actual handing over of possession as per buyer's agreement as the construction of the unit got delayed beyond the

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period as agreed in buyer's agreement but the respondent clearly refused to make the payment on account of delay possession charges as per buyer's agreement.

11. The respondent has failed to complete the project on time, resulting in extreme kind of financial hardship, mental distress, pain and agony to the complainant along with the delay in handing over the possession of the said unit, the Respondent had failed in providing the same. Accordingly, the complainant is entitled to get interest on the paid amount along with interest at the rate as prescribed by the Hon'ble Authority per annum from due date of possession as per flat buyer agreement till the date of handing over of possession.

C. Relief sought by the complainants:

12. The complainants have sought the following relief(s):

i. Direct the respondent to pay delayed possession charges @ 10.75% as per RERA Act, from due date of possession i.e., 12.01.2020 till actual handing over of possession.

13. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

14. The respondent company is well repudiated company in the real estate market and never had such intentions to cause delay in delivery of its any of the project. Due to reasons beyond the controls of respondent's company, the delay occurred and still in hard stuck situation after Covid- 19, force majeure conditions such as various orders passed by the Environmental Pollution (Prevention and Control) Authority for NCR from 26.10.2019 to 14.12.2019, which further led to shortage of labour and orders passed by National Green Tribunal is standing in all respect to complete the project as

soon as possible. Allegations made in the complaint are totally false, fabricated, bogus, misrepresented, and indefinite and have no evidentiary value in the eye of law. There is no negligence or any unfair trade practice in order to dupe the hard-earned money of the complainant on the part of respondent company.

15. That due to reasons beyond the controls of respondent company, the delay occurred and still in hard stuck situation after Covid- 19, is standing in all respect to complete the project as soon as possible. There is no negligence or any unfair trade practice in order to dupe the hard-earned money of the complainant on the part of respondent company.
16. That the complainant was informed about the terms and conditions of builder buyer agreement at the time of booking of the said unit and that said agreement was signed by the complainant after understanding each and every clause, no harassment caused to the complainant.
17. It is important to mention here that the Hon'ble court of Smt. Sakshi Saini, Learned Civil Judge, Gurugram was pleased to grant date of offer of possession as July 2021. It is equally important to mention here that the contention of the date of possession taken by Learned Civil Judge, Gurugram on the basis of certain documents & figures after obtaining the confirmation from the said department.
18. It is therefore most respectfully prayed that the complaint filed by the complainant may kindly be dismissed with heavy cost holding the same as devoid of merit and abuse of the process
19. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties

E. Jurisdiction of the Authority:



20. 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

21. 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 the entire Gurugram District for all purposes 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

22. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

23. Hence, given 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 objections raised by the respondent:

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F.I Objections regarding passing of various force majeure conditions such as orders by EPCA, lockdown due to Covid-19 pandemic, shortage of labour and NGT orders

24. The respondent/promoter raised an objection in its reply as well as during the course of arguments that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Environmental Pollution (Prevention and Control) Authority for NCR (hereinafter, referred as EPCA) from 26.10.2019 to 14.12.2019, 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 the Affordable Group Housing Policy, 2013 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 22.10.2014 and environment clearance is 12.01.2016 as taken from the project details. The due date is calculated from the date of environment clearance being later. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA etc., were for a shorter duration of time and were not continuous being annual feature. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

25. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:



"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

26. The respondent was liable to handover the possession of the said unit by 12.01.2020 and is claiming benefit of lockdown which came into effect on 24.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.
27. In view of the above, the objection raised by the respondent to extend the due date of handing over possession due to force majeure circumstances due to various authorities/tribunals/courts orders and COVID-19 is declined.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to pay to pay delayed possession charges @ 10.75% as per RERA Act, from due date of possession i.e., 12.01.2020 till actual handing over of possession.

28. As per documents available on record, the respondent has offered the possession of the allotted unit on 24.11.2022 after obtaining occupation certificate from competent authority on 17.11.2022. The complainant took a plea that offer of possession was to be made in made in 2020, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.

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29. In the present complaint, 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. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

"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."*

30. **Due date of handing over possession and admissibility of grace period:**

The counsel for the respondent brought into the notice of the Authority, that the authority has already considered the due date of possession as 06.11.2020 by calculating 4 years from the date of consent to establish i.e. 06.05.2016 plus 6 months grace period in lieu of covid-19. However, aggrieved by this order by not allowing the delay on account of ban on construction etc. as already allowed by the Ld. Civil Judge in suit no. CS-3317-2022, the respondent preferred an appeal against the said order of authority for not allowing extra grace period on account of delays due to reason beyond the control of the promoter.

31. Moreover, on the documents and submissions made by both the parties, the Authority is of the considered view that the buyer's agreement and the Affordable Group Housing Policy, 2013 the promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (22.10.2014) or grant of environment clearance, (12.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later and has sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy,



2013. As such in absence of any provision related to grace period, the said plea raised by the respondent is disallowed in the present case.

32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is continuing with the project and 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 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.

33. 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.
34. 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., 10.10.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
35. The definition of term 'interest' as defined under section 2(z) 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;"*

36. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which the same as is being granted her in case of delayed possession charges.
37. 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 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 8(a) of the BBA dated 06.01.2016, and the due date comes out as 12.01.2020. Occupation certificate was granted by the concerned authority on 17.11.2022 and thereafter, the possession of the subject flat was offered to the complainant on 24.11.2022. Copies of the same have 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 subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the BBA dated 06.01.2016 to hand over the physical possession within the stipulated period.
38. Section 19(10) of the Act obligates the allottee to take possession of the

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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 17.11.2022. The respondent offered the possession of the unit in question to the complainant only on 24.11.2022, 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. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she 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 till actual handing over of possession or offer of possession plus two months whichever is earlier.

39. 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 complainant is entitled to delayed possession at prescribed rate of interest i.e., 11 % p.a. w.e.f. 12.01.2020 till the expiry of 2 months from the date of offer of possession (24.11.2022) which comes out to be 24.01.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

H. Directions issued by the Authority:

40. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:



- I. The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 11% per annum from the due date of possession i.e., 12.01.2020 till offer of possession i.e., 24.11.2022 plus two months after obtaining occupation certificate or till actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - II. The respondent is also directed to issue revised account statement after adjustment of delay possession charges and the complainant is directed to pay the remaining amount, if any, remains within 60 days.
 - III. The respondent is further directed to handover the possession of the allotted unit within 30 days of payment of outstanding amount, if any.
 - IV. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
41. Complaint stands disposed of.
42. File be consigned to the Registry.

Dated: 10.10.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram