

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

Complaint no.: 3670 of 2023
Order pronounced on: 05.03.2025

1. Ajay Mehra.
2. Anju Mehra.
Both R/o: - K-37-A, Floor-2nd, Kailash Colony,
New Delhi.

Complainants

M/s Anjali Promoters and Developers Pvt. Ltd.
Regd. office: 28, ECE House, Floor-1st, K.G. Marg,
New Delhi-110001..

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Sukhbir Yadav (Advocate)
Harshit Batra (Advocate)

**Complainants
Respondent**

ORDER

1. This 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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project details

2. The particulars of unit, 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.No.	Particulars	Details
1.	Name of project	"Centra-One"
2.	Location of project	Scetor-61, Gurugram.
3.	Nature of project	Commercial
4.	DTCP License	License no. 277 of 2007
5.	RERA Registered	Registered Vide registration no. 28 of 2023 Dated-30.01.2023.
6.	Space Buyer's Agreement	14.01.2009 (As on page no. 26 of complaint)
7.	Unit no	1201-A, Type-Shop, Floor-12 th (As on page no. 30 of complaint)
8.	Unit Area	1000sq.ft. (Super Area) (As on page no. 30 of complaint)

9.	Possession clause	Clause-2 Possession <i>2.1 The possession of the said Premises shall be endeavored to be delivered to the Intending Purchaser by 31st December 2011, however, subject to clause 9 herein and strict adherence to the terms and conditions of this Agreement by the Intending Purchaser.</i> [Emphasis supplied] (As on page no. 34 of complaint)
10.	Due date of possession	31.12.2011
11.	Sale consideration	Rs.57,75,000/- (As on page no. 31 of complaint)
12.	Amount paid	Rs.69,33,957/- (As per S.O.A on page no. 73 of complaint)
13.	Cancellation letter	20.11.2023 (As on page no. 112 of reply)
14.	Occupation certificate	09.10.2018 (As on page no. 72 of reply)
15.	Offer of possession	19.11.2018 (As on page no. 74 of reply)

B. Fact of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants booked a commercial office space bearing no. 012-1201A on the 12th floor having an area of 1000 sq.ft. at the basic

- sale price of Rs.5775/- per sq.ft. in the project "Centra One" for a basic sale consideration of Rs.57,75,000/- under the time linked cum construction linked payment plan and made a payment of Rs.21,00,000/- on 20.08.2007 against the booking amount as per the payment plan alongwith PLC Charges amounting to Rs.5,77,500/-.
- II. That on 14.01.2009, a Space Buyer's Agreement was executed between the respondent and the complainants. As per Clause 2.1 of the said agreement, the respondent had to give possession of the said unit by 31.12.2011.
- III. That the complainants have paid a total sum of Rs.46,43,500/- before the execution of the Buyer's Agreement. On 12.05.2010, the respondent sent two demand notices raising demand of Rs.4,33,125/- and Rs.9,33,125/-. The complainants made two payments on 18.05.2010 of Rs.3,89,812/- and Rs.5,43,312/-.
- IV. Thereafter, on 28.01.2011, the respondent further sent a demand notice to the complainants and raised a demand of Rs.4,44,278/- to which the complainants made a payment of Rs.3,99,850/- and the same was acknowledged by the respondent.
- V. That on 31.03.2011, a demand notice of Rs.2,96,186/- was raised and the complainants made a payment of Rs.2,66,567/- on 07.04.2011. The respondent offered possession of the unit on 19.11.2018 for unit no. 014-1401 on the 13th floor admeasuring approximately 1006 sq.ft. in the project "Centra One" at Scetor-61, Gurugram.
- VI. It is highly germane to mention that the respondent did not offer possession of the unit booked and allotted to the complainants i.e., Unit no. 012-1201A on the 12th floor. Hence, the possession offered

- by the respondent is illegal and not valid in any manner. The respondent unilaterally changed the unit from O12-1201A on the 12th floor to O14-1401 on the 13th floor and the new offered unit is a non PLC unit.
- VII. That the respondent had unilaterally increased the area of the unit without any clarification or justification. Moreover, the respondent asked the complainants to sign the Indemnity bond cum undertaking with the said offer of possession, which is mandatory to sign for taking the possession of the unit. The offer of possession sent by the respondent is not legal and acceptable as it is not offered for the unit booked by the complainants.
- VIII. That the demand raised by the respondent had illegal demand on account of Rs.1,51,680/- for Enhanced External Development Charges, Rs.2,15,978.14/- for Electrification and STP Charges, Rs.1,06,376/- for GST and cost of an increase in area.
- IX. That as per the Statement of Account dated 19.12.2018, the complainants have paid a total sum of Rs.71,17,557/- i.e., more than 92% of the total sale consideration and yet the respondent failed to give possession of the unit to the complainants.
- X. That the complainants received a letter cum invoice dated 08.03.2022 from M/s. Worthy Maintenance Services Pvt. Ltd and a demand of Rs.10,53,158/- was raised by the respondent through the said maintenance service provider. It is apposite to mention here that till date, the respondent has not offered a valid offer of possession and therefore, the complainants are not liable to pay the above said unreasonable demand.

- XI. That the complainants have been following up with the respondent's representatives to get possession of the unit which was originally allotted to them. However, the respondent did not consider the requests made by the complainants and ignored all the telephonic conversations as well as email sent by the complainants.
- XII. That the cause of action for the present complaint arose in January 2009, when the Buyer agreement was forced upon the allottees. The cause of action further arose in December 2011, when the respondent failed to hand over the possession of the unit. The cause of action again arose on various occasions, when the protests were lodged with the respondent about its failure to deliver the unit and the assurances were given by it that the possession would be delivered by a certain time.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to give possession of the unit.
 - ii. Direct the respondent to give delayed possession interest at the prescribed rate from the due date of possession till the actual date of handing over of possession or to give refund of the amount deposited by the complainants with interest if the respondent fails to handover the possession of the unit.
 - iii. Restrain the respondent from charging Rs.1,52,680/- on account of Enhanced External Development Charges, Rs.2,15,978.14/- for Electrification and STP Charges, Rs.1,06,376/- for GST and cost of an increase in area.

- iv. Restrain the respondent from charging maintenance charges till date of the actual handover of unit 012-1201A.
5. Vide proceedings dated 22.01.2025, the counsel for the complainant was asked to clarify the specific relief as to whether the complainants wants possession of the unit or refund of the amount paid by the complainants. The counsel for the complainants stated that the complainants' wishes refund of the amount paid. Thus, the relief sought by the complainants is of refund.

D. Reply filed by the respondent

6. The respondent has submitted the following by way of written reply:
 - I. That the present complaint is untenable both in facts and in law and is liable to be rejected. The complainants have filed the complaint under form CRA however, the complainants are seeking relief of both refund and possession. The Act does not allow the complainants to seek both the reliefs of possession and refund simultaneously.
 - II. That the complainants booked a unit in the group housing real estate project i.e., "Centra One" located at Sector 61, Gurugram, Haryana. Pursuant thereof, a space tentatively bearing number 012-1201A on 12th Floor, admeasuring 1000 sq. ft. was allotted to the complainants.
 - III. That consequently, a Space Buyer's Agreement dated 14.01.2009 was executed between the complainants and the respondent. Thereafter an Addendum to the Space Buyer's Agreement was executed between the parties.
 - IV. It is imperative to mention here that both the parties were obligated to fulfil their respective obligations as set out under the Agreement.

The agreement categorically mentions that the unit of the complainants was tentative in nature and was subject to change during the completion of the construction of the project and the same was to be confirmed to the complainants during the offer of possession.

- V. That the unit allocated to the complainants was tentative in nature and was subject to change. On the basis of the same, the unit was changed and the new unit no. 014-1401 on 13th Floor was allotted to the complainants which was duly communicated to the complainants in 2016. The complainants were very well aware of the change of the unit.
- VI. That the respondent has raised the demand of VAT under Haryana Value Added Tax Act, 2003 dated 23.11.2016 wherein the unit no. 014-1401 was categorically mentioned. The complainants did not raise the objections qua the change in the unit at that point of time and even had made payment of the demand of VAT on 15.05.2017, without any protest, thereby giving consent to the change in unit of the complainants.
- VII. That the due date of offer of possession, as per clause 2.1 of the Agreement was 31.12.2011. However it was subject to the Clause 9 (force majeure) and strict adherence to the terms and conditions of the Agreement by the complainants/allottees.
- VIII. That the construction of the unit was hampered due to force majeure and other circumstances beyond the control of the respondent, the benefit of which is bound to be given to the respondent in accordance with clause 9 of the Agreement. The respondent faced certain force



majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially.

- IX. That a period of 292 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. The respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the respondent. Despite all the hardships faced by the respondent, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities.
- X. That despite the default caused, the respondent was issued the occupation certificate on 09.10.2018. Even after the defaults of the

- complainants, the respondent completed the construction and offered the possession of the unit to the complainants on 19.11.2018 and earnestly requested the complainants to take possession of the unit after remittance of the balance sales consideration of the unit. However, the complainants failed to take the possession of the unit
- XI. That the respondent had demanded all the charges as per the terms and conditions of the Agreement which was duly executed between the parties. The complainants had agreed to make payment of the enhanced EDC, increase in area, electrification and STP and GST.
- XII. That the respondent in their utmost bonafide had proposed to waive off the unpaid interest and holding charges as a special consideration vide email dated 13.07.2023 to the complainants despite which the complainants had failed to make payment of the balance sales consideration along with the stamp duty and registration charges.
- XIII. That out of the total sales consideration of Rs.77,98,591/- the complainants had made payment of Rs.69,33,957 only and the payment was made by the complainants on 15.05.2017. That the complainants failed to make payment on the milestone "offer of possession" for which various reminders on 21.05.2019 were also issued to the complainants.
- XIV. That due to non-payments of the outstanding dues even after various opportunities were provided by the respondent over a period of 5 years, the respondents were left with no other option but to terminate the unit of the complainants and hence, the unit was eventually terminated on 20.11.2023.

- XV. That the termination letter was sent to the complainants on the updated address provided by the complainants vide email dated 05.09.2022 i.e. K37 A, second and third floor, kailash colony, New Delhi-110048.
- XVI. That the right of the respondent to validly cancel / terminate the unit arises not only from the Agreement but also from the 'Model RERA Agreement' which also recognizes the default of the allottee and the forfeiture of the interest on the delayed payments upon cancellation of the unit in case of default of the allottee.
7. Copies of all the relevant documents have been filed and placed on the record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents as well as written submissions made by the complainants.

E. Jurisdiction of the authority

8. 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 allottees 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.

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 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 complainant:

F.I. Objection regarding Force majeure circumstances:

11. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as non-availability of raw material due to various orders of the High

Courts, NGT, regulating the mining activities, brick kilns, regulation of construction and development activities by the judicial authorities in NCR on account of environmental conditions, restrictions on usage of water, etc. Stay on mining operations as per the orders of the NGT, etc. 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 while calculating the due date. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time and these are the circumstances taking place in normal course. Thus, the Authority is of the view that no relief with respect to this can be granted to the respondent.

G. Findings on the relief sought by the complainants:

G.I. Direct the respondent to refund the payment made in lieu of unit till date alongwith interest from the date of each deposit.

12. In the present case, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"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. -

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:"

(Emphasis supplied)

13. Date of possession: In the present case, the complainants applied for a unit in the project "Centra-one" in Sector-61, Gurugram, and pursuant to it, a unit bearing no. 1201-A, Type-Shop on Floor-12th admeasuring 1000 sq.ft. of super area was allocated to the complainants following the execution of the Space Buyer's Agreement on 14.01.2009. As per Clause 2.1 of the Agreement, the unit was to be delivered to the complainants by 31st December 2011. Therefore, the due date for the handover of possession was 31.12.2011.

14. Admissibility of refund along with prescribed rate of interest: The complainants are seeking refund of the amount paid by them at the prescribed rate of interest as provided 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.

15. 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.
16. 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., 05.03.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
17. 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;"*

18. In the present complaint, the complainants booked a unit in the project "Centra-One" and a unit bearing no. 1201-A, Type-Shop, Floor-12th was allotted to the complainants. Subsequently a Space Buyer's Agreement was executed between the complainants and the respondent on 14.01.2009 and the complainants paid an amount of Rs.69,33,957/- against the total sale consideration of Rs.57,75,000/-. That on 19.11.2018, the respondent offered possession to the complainants for unit no. 014-1401 on the 13th floor admeasuring 1006 sq.ft. The respondent did not offer possession of the unit which was booked and allotted to the complainants i.e., 012-1201A on the 12th floor. According to Clause 2.1 of the Space Buyer's Agreement dated 14.01.2009, the possession of the unit was to be handed over to the complainants by 31.12.2011. Thus, the due date comes out to be 31.12.2011.
19. Vide proceeding dated 04.12.2024, the counsel for the respondent stated that in terms of clause 1.1 and 4.2 of the Space Buyer's Agreement dated 14.01.2009, the unit number was tentative in nature. Further, the complainants were very well aware of the change of the unit as is evident from the demand letter dated 23.11.2016 raised for unit no.1401 on the 13th floor. The unit of the complainants was cancelled after issuing various reminders on account of non-payment of dues.
20. The counsel for the respondent stated that the complainants implicitly agreed about the changed unit when they made the payment of demand raised for the changed/new unit vide demand letter dated 23.11.2016.

Moreover, the complainants have written multiple emails showing its acceptance towards the unit -014-1401 and placed reliance on an email of the complainants dated 05.09.2022 wherein, the complainants stated “
....In respect of my unit no. 014-1401 in Centra One”.

21. There is a delay in handing over the possession as due date of possession was 31.12.2011 whereas, the respondent has failed to obtain the occupation certificate from the concerned authorities till the due date of possession and only obtained the same on 09.10.2018 and offered possession of a different unit i.e., 014-1401 on 13th floor to the complainants on 19.11.2018. The respondent not only have changed the unit number of the complainants unilaterally but have also changed the floor on which the unit of the complainants was situated.
22. The Authority observes that violation of Section 18 of the Act, 2016 has been established as the respondent failed to give possession of the unit to the complainants in accordance with the terms of the agreement executed between the complainants and the respondent. The relevant part of Section 18 is reiterated below:

“ 18. Return of amount and compensation:-

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-

(a) In accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that

apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner provided under this Act:

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.

23. Thus, keeping in view the aforesaid factual and legal provisions, the failure of the respondent is established under the Act, 2016 as the respondent failed to offer possession of the unit (as per the terms and conditions of the Space Buyer's Agreement) to the complainants and offered some other unit. Consequently, the complainants does not wish to continue with the project and are seeking refund of the amount paid by them. The cancellation letter dated 20.11.2023 is bad in law as the demands were made against some other unit which was not the unit allotted to the complainants and due to non-payment of the demands, the unit was cancelled by the respondent. Thus, the cancellation dated 20.11.2023 is hereby set aside.
24. The respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the same along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

22. 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 respondent is directed to refund the full paid-up amount of Rs.69,33,957 /- alongwith interest at the prescribed rate i.e., 11.10% on the amount paid by the complainants, from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
- ii. A period of 90 days is given to the respondent to comply with the directions given in the order and failing which legal consequences would follow.

23. Complaint stands disposed of.

24. File be consigned to registry

Dated: 05.03.2025

HARERA
GURUGRAM


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram