

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

**Complaint no.:** 5746 of 2023  
**Date of decision:-** 05.03.2025

1. Manish Aggarwal  
2. Neha  
**Both R/o:** - House no.-D-212, Ramprastha,  
Gaziabad, Uttar Pradesh-201011.

**Complainants**

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

**Versus**

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Gaurav Bhardwaj and Surbhi Garg  
Bhardwaj (Advocates)

**Complainants**

Umang Mahindra (Advocate)

**Respondent**

**ORDER**

1. The present complaint dated 03.01.2024 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 complainant, 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.
2.	Area of project	15.575 acres
3.	Nature of project	Group Housing
4.	DTCP License no.	Licence no. 71 of 2008 Dated-25.03.2008
5.	RERA registered	Registered Registration no. 63 of 2017 Dated-18.08.2017
6.	Unit no.	Q-501, Tower-Q, Floor-5, Type-Luxury. (As on page no. 66 of complaint)
7.	Unit area	2491sq.ft. (As on page no. 66 of complaint)
8.	Allotment letter	21.01.2012 (As on page no. 59(B) of complaint)
9.	Date of execution of buyer's agreement	14.05.2012 (As on page no. 62 of complaint)



10.	Possession clause	<p><b>Clause-7 SCHEDULE FOR POSSESSION AND HOLDING CHARGES.</b></p> <p><i>7.1 The Developer based on its present plans and estimates and subject to all just exceptions, proposes to complete construction/development of the said project and handover the possession of the Said Apartment to the Allottee(s) within a period of 36 months from the date of execution of this agreement unless there shall be any delay or failure due to force majeure. The Allottee(s) understands and agrees that the Developer shall be entitled to a grace period of 180 (one hundred and eighty days after the expiry of the aforesaid 36 (Thirty Six) months. The Developer after completing the construction shall apply and obtain the Occupation Certificate in respect of all the residential apartments from the concerned authority(ies). However, in case any condition arises that is beyond the control of the Company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition.</i></p> <p>[Emphasis supplied]</p>
11.	Due date of possession	14.11.2015 [Calculated 36 months from the date of execution of the agreement + 180 days grace period] [Note: Grace period is included]
12.	Total sales consideration	Rs.80,09,735/- (As per BBA on page no. 67 of complaint)

13.	Amount paid by the complainants	Rs.80,38,427/- (As per S.O.A dated 26.11.2022 on page no. 80 of complaint)
14.	Occupation certificate	Not on record
15.	Offer of possession	26.11.2022 (As on page no. 117 of reply)

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
- I. That the respondent advertised about its new project namely 'Maceo' situated in Sector-91, Mewka Village, District Gurugram. The complainants booked an apartment in the project by paying an amount of Rs.5,00,000/- on 28.09.2011 towards the booking of an apartment in the said project.
  - II. That the respondent vide allotment letter dated 21.01.2012, allotted apartment bearing no.Q-501, Fifth Floor, Tower-Q ad-measuring super area of 2491sq. ft. in the said project. That thereafter, an Apartment Buyer's Agreement was executed between the complainants and the respondent on 14.05.2012 for the unit. As per clause 7 of the agreement, the respondent undertook to complete construction and handover possession within a period of 36 months (180 days grace period) from date of execution of this agreement, i.e. by 14.11.2015.
  - III. That the complainants have paid an amount of Rs.81,38,426/-/- against the total sale consideration of Rs.80,09,735/- as and when demanded by the respondent. In the year 2015, the complainant approached the project site to see the status of the project but the complainants were startled to know that the project is not ready and the construction was

going on at a very slow pace despite knowing the fact that the respondent had to deliver the possession in the year 2015 to the complainants.

- IV. That the complainants were dismayed to observe that the project's status did not align with the promises and representations made by the respondent. The construction, marked by faults and an inconsistent work approach by the builder, failed to adhere to the agreed-upon standards. This erratic working style resulted in the project being completed using leftover materials resulting in a subpar presentation. Furthermore, the respondents consistently failed to furnish a satisfactory response regarding the timeline for providing possession to the complainant, despite the booking being made in 2011 and over a decade having elapsed.
- V. The complainant had made repeated visits to the project site in 2021 with the intention of taking possession. Despite the absence of an occupancy certificate and essential amenities like an elevator, the respondent encouraged them to stay in the apartment. Finally, the respondent on 25.11.2022 sent a "Receipt of Occupation Certificate & Offer of possession cum demand letter" vide letter dated 25.11.2022.
- VI. Thereafter, the complainants kept making calls, inquiring as to the understand the progress and handing over the possession of the flat, but the respondent's representatives never furnished a concrete answer to the same. On 15.10.2023, when the complainants returned to take possession, the unit was still incomplete. Realizing that they had been exploited by the builder, the complainants sent an email on 16.10.2023, highlighting deficiencies in the unit, including broken door bolts, seepage issues, chipped floor tiles, gaps in glass skirting, and hollow washroom

- tiles. Despite regular emails, the respondent did not address the issues, causing the complainant significant mental and financial distress due to the delayed possession.
- VII. The respondent unexpectedly expanded the project area without giving prior notice, although the carpet area of the units remained unchanged. Despite this, the respondent is imposing an extra fee related to the increased project area, as evidenced by possession charges. This will continue to be an ongoing financial burden in monthly maintenance charges. This is further highlighted in the recent possession demand letter dated November 25, 2022, where an amount of Rs. 1,353,940 was charged instead of the expected Rs. 326,774. While the respondent adjusted Rs. 1,253,940 as delayed payment based on their own calculations, they overlooked aspects such as charging a late payment fine @24 percent of Rs. 3,407 for 10 days. Moreover, there was an advance payment of over 9 lakhs, even though the complainant had opted for construction-linked payments.
- VIII. These factors should be taken into account, and the respondent is not justified in raising an additional demand when there is no change in the physical area. The respondent is obligated to hand over possession of the unit, along with interest on delayed possession at the highest possible rates, if not identical to the rates charged by the respondent, also with the consideration of COVID days during delayed duration. As the delayed possession has caused financial hardship, and mental agony to the complainants.
- IX. That the present complaint has been filed in order to seek delayed possession charges on the principal amount paid by the Complainants along with interest at the rate prescribed as per RERA, 2016 and HRERA

Rules, 2017 from the due date of possession, along with other reliefs mentioned herein below. Hence, this complaint.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):-
- I. Direct the respondent to handover physical possession of the unit bearing no. Q-501 allotted vide allotment letter dated 21.01.2012.
  - II. Direct the respondent to the respondent to make the payment on account of interest in making delay in handing over the possession of the flat from the due date of possession of the unit i.e., 14.11.2015 till actual handing over of possession.
  - III. Direct the respondent to allow the complainants to inspect the unit before taking the possession.
  - IV. Direct the respondent not to charge holding charges and maintenance charges till the actual handing over of possession of the unit.

**D. Reply by respondent:**

5. The respondent by way of written reply made following submissions.
- I. That the respondent, is a well-renowned entity in the real estate sector and has a distinguished past achievement of successfully executing several real estate projects and further developed a residential project in Sector- 91, Gurugram, Haryana namely "Maceo". That in the year 2020, M/s Anant Raj Industries Limited had demerged the project division and vested in Anant Global Limited and the same company is presently now known as TARC Limited.
  - II. That the complainants booked an apartment bearing no. Q-501 on Fifth Floor in Tower- Q and made payment of Rs.5,00,000/-

Subsequently, the complainants and the respondent executed the Apartment Buyer Agreement on 15.05.2012 for a total sale consideration of Rs.80,09,735/-. Further, the said sale consideration was non-inclusive of the applicable taxes which are levied at the time of Offer of Possession, which is clear from a bare perusal of the Payment Plan annexed along with the said Agreement. Moreover, the Payment Plan clearly stipulates that Services Tax shall be payable on each installment as per the government rules, and other charges like stamp duty and maintenance charges shall be payable at the time of possession.

- III. That the respondent paid an amount of Rs.12,53,940/- towards the delayed possession charges to the complainants which has been deliberately concealed by the complainant. That the respondent was supposed to handover the possession after 36 months from the date of execution of the said Agreement, with an additional grace period of 180 days, thereby due date of possession was 14.11.2015.
- IV. That somewhere in 2015, the project had to undergo unforeseen and adverse circumstances causing the progress and completion of the said project to be hampered and delayed. The delay was caused on account of the order passed by the NGT, the 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. Pursuant to the same, the respondent had always updated the complainants with respect to the status of the project by sending regular update letters and emails. That, on 28.12.2017, the respondent sent a letter to the complainants for approval of a revised building plan



- wherein the respondent categorically stated that the building plan earlier approved is not proposed to be revised and if the complainants has any objection/suggestion on the revised building plan, they may file it in the office of Haryana Development Authority. However, the complainants never filed any sort of objections/suggestions on the revised building plan and thus the complainants herein accepted the revised building plans.
- VI. Moreover, despite the constant force majeure reasons, the respondent managed to complete the construction of the majority number of towers of the project in 2019 itself and received the Occupancy Certificate on 28.11.2019. Furthermore, at the time of the construction of Tower 'Q' wherein the unit is situated, all the internal finishing work was completed by mid 2020, pursuant to which the respondent applied for an Occupation Certificate with the concerned governmental department on 25.08.2020. However, due to the COVID-19 pandemic from 2020 onwards, the Occupancy Certificate was granted to the respondent on 25.11.2022 i.e., almost after a period of 2 years from the date of application. Pertinently, such a period was declared as 'Force Majeure' by the Government of India, and ought to be excluded from the computation of a delayed period.
- VII. That the respondent sent a letter on 25.11.2022 to the complainants, informing the complainants regarding the receiving of the occupation certificate. However, the complainants neither sent an objection email nor sent any communication to the respondent which can showcase that the complainants has an objection in respect of the delaying the project.
- VIII. That the complainants ought to have referred the disputes, if any, to

the arbitration in view of Clause 35 of the Apartment Buyer Agreement. The complainants and the respondent have specifically and categorically agreed that in the event of disputes, claims and /or differences shall be referred to a sole arbitrator appointed by the respondent.

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 complainants at a later stage.

**F. Findings on objections raised by the respondent**

**F.1 Objection regarding delay due to force majeure circumstances**

11. The respondent-promoter has raised a contention that the construction of the project 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 while calculating the due date. In the

present case, the allotment letter was issued by the respondent to the complainants on 21.01.2012. The buyer's agreement was executed between the parties on 14.05.2012. As per clause 7.1 of the agreement dated 14.05.2012, the due date for completion of project was 14.11.2015 including the unqualified grace period of 180 days. The respondent is seeking the benefit of covid-19, which came into picture after the due date of possession. 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. Thus, the Authority is of the view that no relief with respect to this can be granted to the respondent.

**F.II. Objection regarding the complainant is in breach of agreement for non-invocation of arbitration.**

12. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
13. The Authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the

intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on the catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

**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 interest on the delayed possession from the due date of possession till the actual handover of possession of the unit.**

14. Both the above mentioned reliefs are dealt together. In the present complaint, the complainants booked a unit in the project of the respondent namely "Maceo" situated at Sector-91, Manesar, Gurugram. The allotment was made in favour of the complainants on 21.01.2012 and thereafter, the Buyer Agreement was executed between the complainants and the respondent on 14.05.2012. As per Clause 7.1 of the agreement, the respondent undertook to hand over possession of the unit to the complainants within a period of 36 months from the date of execution of the agreement along with a grace period of 180

days. Thus, the due date of possession comes out to be 14.11.2015.

15. In the present complaint, the complainants intend to continue with the project and are seeking possession and 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."

16. Clause 7.1 of the Apartment Buyer Agreement provides for handing over of possession and is reproduced below:

**Clause 7.1**

The Developer based on its present and estimates and subject to all just exceptions, proposes to complete construction/development of the said project and handover the possession of the said Apartment to the Allottee **Within a period of 36 months from the date of execution of this agreement unless there shall be any delay or failure due to force majeure.** The Allottee(s) understands and agrees that the developer shall be entitled for **a grace period of 180 days after the expiry of the aforesaid 36 months.** The Developer after completing the construction shall apply and obtain the occupation certificate in respect of the residential apartment(s) from the concerned authority. However, in case any condition arises that is beyond the control of the company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition.

17. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months from date of execution of apartment along with grace period of 180 days which comes out to be 14.11.2015. Since in the present matter the allotment letter incorporates unqualified reason for grace period/extended period of 180 days in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 180 days shall be allowed to the promoter at this stage.
18. **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."
19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on

date i.e., 05.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7.1 of the agreement executed between the parties on 14.05.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution. Due date of possession is calculated from the date of execution of apartment buyer's agreement i.e., 14.05.2012. The period of 36 months expired on



- 14.05.2015. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 14.11.2015. The respondent has offered the possession of the subject apartment to the complainant on 26.11.2022, which is delayed than the due date of possession of the unit. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
24. Vide proceedings dated 08.01.2025, both the parties were directed to file written submissions within a period of 4 weeks, if they so desire. The counsel for the respondent has filed an application on 14.02.2025 seeking an opportunity to present arguments in the present matter as on the last date of hearing i.e., 08.01.2025, the counsel for the respondent was unable to present arguments as he had three matters listed on the same date in different courts. As a result, the counsel was unable to attend and present arguments.
25. In compliance of the order dated 08.01.2025, the counsel for the complainants have filed written submissions on 20.02.2025. As per the written submissions, the complainants have submitted that the final possession of the unit has been given to the complainants on 02.02.2025. Thus, no directions with respect to possession are required anymore.
26. The non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. from the due date of possession 14.11.2015 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or

actual handover, whichever is earlier, as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act, after deducting the amount already paid by the respondent on account of delay interest, if any.

**G.III. Direct the respondent to allow the complainants to inspect the unit before taking the possession.**

27. The complainants have by way of written submissions submitted that the possession of the unit has already been taken by them on 02.02.2025, thus no direction with respect to the above mentioned relief needs to be effectuated at this stage.

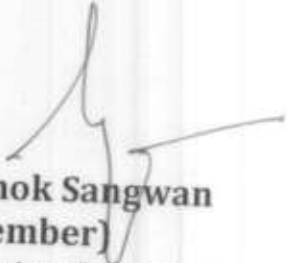
**G.IV Direct the respondent not to charge holding charges and maintenance charges till the actual handing over of possession of the unit.**

28. The complainants have submitted that the respondent be directed to not charge holding charges and maintenance charges till the actual handing over of possession of the unit. The respondent shall not charge anything from the complainants which is not part of agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of the agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

29. As regarding maintenance charges , the Authority have already held in **Varun Gupta vs Emaar MGF land Limited in Cr No. 4031 of 2019 and Ors.,** that the respondent can charge maintenance charges from the date of offer of possession of the unit to the complainants after receiving the Occupation Certificate from the competent authorities. The respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within one month of the order.

**H. Directions of the authority**

30. 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 the interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 14.11.2015 till offer of possession plus two months or actual handing over of possession after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules, after deducting the amount already paid by the respondent on account of delayed interest charges, if any.
  - ii. The respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within one month of the order.
  - iii. The respondent shall not charge anything from the complainant which is not the part of the agreement.
31. Complaint stands disposed of.
32. File be consigned to registry.

  
**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 05.03.2025