

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

Complaint no.: 2299 of 2024
Date of decision:- 12.03.2025

Vinod Sharma
R/o: - E-2366, Ansals Palam Vihar,
Gurugram.

Complainant

Versus

M/s. Ambience Projects and Infrastructure Pvt Ltd.
Regd. office: L-4, Green park extension,
New Delhi.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Kanika Rao (Advocate)

Complainant

Dharmender Sehrawat (Advocate)

Respondent

HARERA
GURUGRAM

ORDER

1. The present complaint has been filed by the complainant/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 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:

S.No.	Particulars	Details
1.	Name of project	"Ambience Creacions"
2.	Location of project	Sector-22, Gurugram
3.	Nature of project	Group Housing Colony
4.	RERA Registered	Registered Registration no. 318 of 2017 dated-17.10.2017
5.	DTCP License	License no. 48 of 2012 Dated: 12.05.2012
6.	Provisional allotment letter	29.06.2015
7.	Apartment Buyer's Agreement	22.06.2017 (As on page no. 62 of complaint)
8.	Unit no. [Earlier]	1401, Floor-14 th , Block-K (As on page no. 71 of complaint)

9.	Unit No. [Now]	1401, Tower-L (As on page no. 151 of complaint)
10.	Unit area	3090 sq.ft. [Super-Area] (As on page no. 71 of complaint)
11.	Possession Clause	Clause 11 (a) Schedule for possession of the said Apartment Within a period of sixty (60) months from the date of signing and execution of this Agreement
12.	Due date of possession	22.12.2022 [calculated 60 months from date of execution of agreement plus 6 months on account if Covid-19]
13.	Tri-partite agreement [with HDFC for an amount of Rs.2,40,00,000/-]	24.12.2017 (As on page no. 22 of reply)
14.	Total Sale Consideration	Rs.3,21,47,200/- (As on page no. 144 of complaint)
15.	Amount paid	Rs.2,18,93,744/-
16.	Occupation certificate	18.10.2023

		(As per the data available on the site of TCP)
17.	Offer of possession	20.01.2024 (As on page no. 50 of complaint)

B. Facts of the complaint:**3. The complainant made the following submissions in the complaint:**

- I. That in 2015, the respondent through its marketing executives and advertisements approached the complainant with an offer to invest and buy a flat in the proposed project namely "Ambience Creacions" located in Sector-22, Gurugram. The complainant while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of the respondent to book the residential flat in the project.
- II. That the complainant booked a residential flat bearing K-1401 of 3 BHK on 14th Floor having super area of 3090 sq. ft. for total sale consideration of Rs.3,21,47,200/-. Accordingly, the complainant paid Rs.25,00,000/- on 02.05.2015 as booking amount.
- III. That as per the terms and condition, the complainant has to pay an amount of Rs.86,02,560/- within two months of booking. The complainant made a payment of Rs.25,00,000/- at the time of booking and the pending amount was to be paid through the bank loan. However, without issuing the Apartment Buyer Agreement, the respondent issued "First Demand Letter" dated 15.06.2015 to the complainant demanding an amount of Rs.63,77,842/-.

- IV. That in response to the demand letter dated 15.06.2015, the complainant issued email dated 26.06.2015 requesting the respondent to provide all necessary documents required for home loan. No reply has been received from the respondents against the mentioned email. However, the complainant received a provisional allotment letter dated 29.06.2015 along with the Tentative Interest Free Flexi Plan.
- V. That the respondent issued another reminder/demand letter dated 05.08.2015 to the complainant directing him to pay an amount of Rs.63,77,842 without providing any response to the email dated 26.06.2015 and calls of the complainant. The complainant multiple times requested to the respondent to execute the Apartment Buyer Agreement so that he can apply for home loan as the total amount for the apartment is huge and the complainant have no means to pay that amount own his own, but the respondent did not pay any attention to that.
- VI. In December 2016, the complainant received two sets of Apartment Buyer Agreement for his signatures. It is pertinent to mention that the apartment agreement was already signed by the complainant at the time of booking. On 21.12.2016, the complainant again submitted the signed documents in the respondent's office along with a letter dated 19.12.2016. In the letter it is clearly mentioned that the complainant need to submit all the documents in the bank so that the payment instalment be disbursed through bank.
- VII. That thereafter the respondent kept on delaying the execution of the Apartment Buyer's agreement on one pretext or other. The complainants had to run pillar to post to get the Apartment Buyer's Agreement executed from the respondent and the respondent did not sign it despite various requests of the complainants without giving any satisfactory

reason for such inordinate delay and finally after inordinate and unexplained delay of around 2 year. The respondent executed the Apartment Buyer's Agreement on 22.06.2017 for the apartment.

- VIII. That on 26.06.2017, the complainant received an e-mail stating that the Allotment Letter and the Apartment Buyer's Agreement is ready with them and directed the complainant to collect the same. In July, the complainant collected the Apartment Buyer's Agreement from the respondent's office. However, on 19.08.2017 the respondent issued a demand letter of Rs.1,68,93,744/-
- IX. The complainant had purchased the said property on loan through a tripartite agreement between the parties. The agreement was executed after the execution of Apartment Buyer's Agreement by the respondent. The complainant was deeply shocked upon receiving the show cause notices dated 22.09.2017 and 09.10.2017, wherein the respondent demanded an amount of Rs.1,73,19,275. It is imperative to mention that in the said notices, the respondent arbitrarily imposed an interest of Rs.2,24,804/-. In response to the show cause, the complainant sent an email to the respondent on 12.10.2017, informing them that the notice had been forwarded to the concerned branch of HDFC Bank, and the installment would be disbursed from the bank.
- X. The instalment of Rs.1,68,93,744/- was paid through the bank. The respondent issued a receipt bearing no. 215 dated 04.01.2018. The complainants as on today has paid Rs.2,18,93,744/- towards the sale consideration as on today to the respondent as demanded by it from the complainant time to time. As per the clause - 11(a) of the said agreement, the respondent had agreed and promised to complete the

- construction of the said flat and deliver its possession within a period of 60 months from the date of the signing and execution of this agreement.
- XI. That the respondent arbitrarily changed the block name from K to L. Following this alteration, they notified the complainant via a letter dated 13.12.2019, stating that the block number had been changed, and henceforth, the unit number shall be L-1401.
- XII. That as per the RERA registration norms, the respondent was required to complete the project by 31.03.2022. Due to the impact of Covid-19, an extension of six months was granted, extending the validity until 31.09.2022. Subsequently, the respondent applied for another extension, which was granted by the Authority, extending the deadline to 29.09.2023. It is pertinent to mention that as of the present date, the project remains incomplete.
- XIII. That in the demand notice dated 20.01.2024 the respondent sent a demand letter and raised the demand of its arrears in which the respondent specifically mentioned that they will sending the "Offer of Possession". It is pertinent to mention that the due date of possession was 60 months from the date of the signing and execution of the agreement along with a grace period of 6 months i.e., 22.12.2022. However, the respondent has breached the terms and failed to fulfil its obligations and has not delivered possession of said flat even after the delay of 17 months.
- XIV. That the cause of action accrued in favor of the complainant and against the respondent on 02.05.2015, when the complainant had booked the said unit and it further arose when the respondent failed /neglected to deliver the said flat on the agreed date. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent has still not

handed over the possession of said flat to the complainant and also not paid the interest for causing delay in delivery of possession of said flat as agreed.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent to pay delay penalty at the prescribed rate on account of delay of 17 months (at the time of filing of complaint) on the amount of Rs.2,18,93,744/- paid towards the sale consideration of the said flat by the complainants from the date of payment till the date of delivery of possession.
- ii. Direct the respondent to complete the construction of the flat in the timelines as directed by this Authority.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions.

- I. That the respondent is a law-abiding company. The project of the respondent "The Creacions" situated at Sector 22 Gurgaon is a RERA, Haryana registered project, bearing registration no. 318 of 2017 dated 17.10.2017.
- II. That at the outset it is stated that there is no delay in completion of the project as alleged in the complaint. In view of Covid-19 and stoppage of construction work due to pollution on numerous occasions, the Authority was pleased to extend the period upto 24.09.2020 vide letter dated 26.05.2020. This was further extended upto 30.06.2021 vide letter dated 02.08.2021. The Authority vide their letter dated 30.09.2023 RC/REP/HRERA/GGM/2017/318 further extended the period upto 29.09.2023. The project was completed well within this extended time

and the respondent applied for the Occupation certificate vide their letter dated 05.09.2022. In view of the fact that the Occupation Certificate was not forthcoming due to administrative reasons, the respondent applied for further extension of time but in the meantime, The Occupation Certificate was granted on 22.12.2023 and hence, the project is completed well within the time granted by the Authority. Thus, there is no delay on the part of the respondent and this complaint is liable to be dismissed on this ground alone.

- III. That the complainant is defaulter as he failed to make the payment of the balance amount even after the notice has been issued to him to pay the balance amount. The complainant had applied for allotment on 02.05.2015, provisional allotment letter was issued on 07.12.2015 and the Apartment Buyer Agreement was ready to be signed on 01.09.2016. However, it was the complainant who neglected and delayed the execution of the agreement.
- IV. That as per the payment plan opted by the complainant, he was supposed to pay Rs.25,00,000/- at the time of application i.e. 02.05.2015, and 30% of the basic sale price within 2 months of booking i.e. by 02.07.2015. However, the complainant delayed the payment of the second instalment and the respondent had to issue multiple demand letters and reminders dated 15.06.2015, 05.08.2015, 13.08.2015, 07.12.2015 whereafter, the complainant only paid Rs.25,00,000/- on 07.12.2015 and not the entire outstanding amount.
- V. Accordingly, the respondent sent another reminder on 10.08.2016 and it was because of late payment of part outstanding dues and non-payment of the remaining outstanding dues that the payment plan was revised and he was allowed to pay the outstanding dues within 18 months from booking vide Agreement dated 01.09.2016 and was repeatedly asked to

- execute the agreement and take his copy from the office of the respondent.
- VI. Pertinently, the complainant again neglected to abide by the revised payment terms and accordingly the payment terms were again revised for convenience of the complainant on 07.03.2017 and the complainant was again requested to execute and collect the agreement.
- VII. Notably, the respondent had diligently provided NOC to the HDFC Bank as the complainant wanted to secure a home loan by mortgaging his allotted flat and had even sent the Tripartite Agreement draft on 07.03.2017.
- VIII. The apartment buyer agreement was only executed by the complainant on 22.06.2017 on account of his own delays and latches. The respondent thereafter issued another demand letter dated 19.08.2017 for payment of outstanding dues amounting to Rs.1,68,93,744/-, reminder letter dated 07.09.2017, show-cause notice dated 22.09.2017, final show cause notice dated 09.10.2017 along with penalty for delayed payment @ 24% p.a. that the complainant blatantly refused to pay.
- IX. Thereafter, the respondent even waived off the delay payment penalty interest and sent another demand letter dated 28.12.2017 to enable the complainant to mortgage the allotted flat with HDFC Bank and only then on 29.12.2017, the complainant paid 1,68,93,744/- without any delay penalty. Pertinently, no other amount has been paid by the complainant since December 2017 till date. As on date, the complainant has paid Rs.2,18,93,744/- out of the total consideration amount of Rs.3,13,38,200/-.
- X. That on 20.01.2024, the complainant was offered possession upon payment of the balance consideration amount of Rs.1,26,15,183/- with

further provision of making 75% of the balance consideration amount within 21 days and the remaining 25% on or before the handover. However, instead of taking over possession, the complainant filed the present complaint on 27.05.2024

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.1 Direct the respondent to delay penalty at the prescribed rate of interest on account of delay of 17 months (At the time of filing this complaint) on the amount of RS.2,18,93,744/- paid towards the ale consideration of the said unit by the complainant from the date of payment till the date of delivery of possession.

11. In the present complaint, the complainant intends to continue with the project and is 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.'*

12. Clause 11 (a) of the Apartment Buyer's Agreement provides for handing over of possession and is reproduced below:

Clause 11(a),

Schedule for possession of the said Apartment

*The Company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the Said Apartment/Said Building **within a period of sixty (60) months from the date of signing and execution of this Agreement** unless delay or failure is due to Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement.*

13. **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."

14. 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.
15. 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., 12.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
16. 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;"

17. Therefore, interest on the delay payments from the complainant 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.
18. 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 11(a) of the Buyer's Agreement executed between the parties on 22.06.2017, the possession of the subject apartment was to be delivered within 60 months from the date of execution of this agreement. Due date of possession is calculated from the date of execution of agreement i.e., 22.06.2017. The period of 60 months expired on 22.06.2022. The Authority through notification no. 9/3-2020 dated 26.05.2020, had already provided a six months extension for projects with completion dates on or after 25.05.2020, due to force majeure conditions caused by the Covid-19 pandemic. Since this extension has already been accounted for, any further delay beyond the specified period is unjustified. Therefore, the due date of handing over possession was 22.12.2022. The respondent has offered the possession of the subject unit to the complainant on 20.01.2024 after receiving the occupation certificate from the concerned authorities on 18.10.2023, which is much 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.
19. The complainant has requested that delayed possession charges be granted till the unit is officially handed over, as it is not yet ready for occupancy.

The Authority after taking into consideration the documents and the submissions made by the complainant, is of the view that the Occupation Certificate in respect of the subject unit has been granted to the respondent by the competent authorities on 18.10.2023, which construes that the unit is fit for occupation.

20. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within two months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 18.10.2023. The respondent offered the possession of the unit in question to the complainant on 20.01.2024, 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 two months time from the date of offer of possession. These two months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he 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.
21. 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., 11.10% p.a. from the due date of possession 22.12.2022 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. The respondent is

directed to handover physical possession of the unit to the complainant within a period of 30 days from the date of this order.

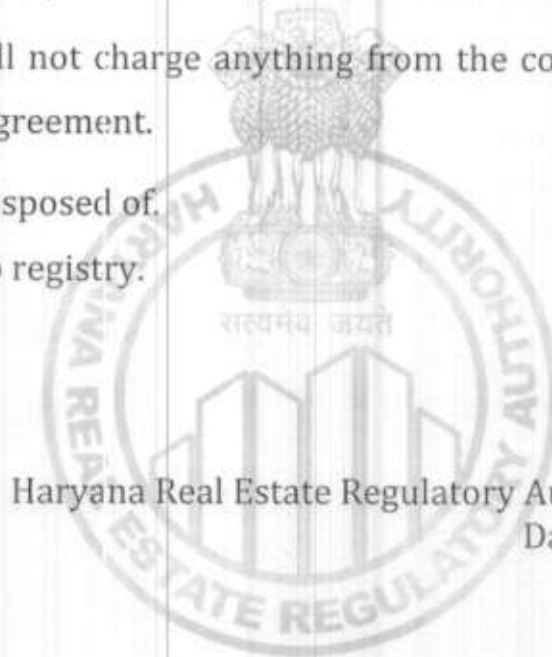
F.II. Direct the respondent to complete the construction of the said unit in the timelines as directed by the Authority.

22. The respondent has already obtained occupation certificate from the concerned authorities on 18.10.2023 and offered possession of the unit to the complainant on 20.01.2024. The Authority is of the view that the unit is deemed to be fit for occupation when the Occupation Certificate is granted in respect of the unit. Thus, no directions needs to be effectuated in this regard.

H. Directions of the authority

23. 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., 22.12.2022 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.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent is directed to handover possession of the unit within 30 days of this order, if not already handed over.

- iv. The rate of interest chargeable from the allottee/complainant by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent is directed to execute the conveyance deed in favor of the complainants within a period of sixty months from the date of this order.
- vi. The respondent shall not charge anything from the complainant which is not the part of the agreement.
24. Complaint stands disposed of.
25. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.03.2025

HARERA
GURUGRAM