

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

Complaint no.: 5406 of 2022
Date of filing : 28.07.2022
Date of decision : 11.02.2025

Rajeshwari Devi

R/o: #154E5/B, Gate Wali Gali, Shakti Nagar, Rewari,
Haryana-123401

Complainant

Versus

Aster Infrahome Private Limited

Regd. office: # 24A, Ground Floor, Vipul Agora
Complex, Mehrauli-Gurugram Road, Gurugram,
Haryana

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:

Shri. Shushil Yadav (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 to the allottees 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, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Green Court", Sector-90, Gurugram
2.	Project type	Affordable group housing project
3.	Date of agreement of sale	02.06.2016 [As per page no. 17 of the complaint]
4.	Unit no.	1407 on 14 th floor, tower K [As per page no. 20 of the complaint]
5.	Unit area admeasuring	Carpet area- 590 sq. ft. Balcony area- 100 sq. ft. [As per page no. 20 of the complaint]
6.	Possession clause	As per AHP, 2013 <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 period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date.")</i>
7.	Building plan approvals	22.10.2014

		[As per complaint no. 3244 of 2021 titled as Deep Chand Vs Aster Infrahome Private Limited]
8.	Environment clearance dated	22.01.2016 (As stated by the respondent on page no. 2 of the reply)
9.	Due date of possession	22.01.2020 [Calculated from date of environment clearance i.e.; 22.01.2016 being later] <i>*The due date of possession has been inadvertently mentioned as 22.07.2020 in in the proceedings dated 11.02.2025 instead of 22.01.2020. The same is corrected herein above.</i>
10.	Payment plan	Time linked payment plan
11.	Total sale consideration	Rs. 24,10,000/- [As per page no. 21 of the complaint]
12.	Amount paid	Rs. 25,15,261/- [As alleged by the complainant on page no. 08 of the complaint]
13.	Occupation certificate	17.11.2022 [As per submission of additional document by the respondent]
14.	Offer of possession	06.06.2022 (page 6 as per the additional documents filed by the respondent)
15.	Offer of possession after taking OC	14.05.2024 [as per the documents placed on record by the complainant in the court vide hearing dated 21.05.2024]
16.	Possession certificate	18.05.2024

B. Facts of the complaint

3. The complainants have made the following submissions: -

- a. That the respondents gave advertisement in various leading newspapers about their forthcoming project named "Green Court" Village Hayatpur Sector 90, Gurgaon promising various

advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondents in the aforementioned advertisements, complainant booked an apartment/flat measuring 690 sq. ft. in aforesaid project of the respondents for total sale consideration is ₹24,10,000/-.

- b. The complainant made payment of ₹25,15,261/-/- to the respondents vide different cheques on different dates, the details of which are as annexed.
- c. That flat buyer's agreement was executed on dated 02.06.2016 and as per FBA the respondents had allotted a unit/flat bearing no. 1407 in tower no. K having super area of 690 sq. ft. to the complainant. That as per para no.8(a) of the agreement, the respondent had agreed to deliver the possession of the flat within 4 years from sanctioning of building plan i.e., 22.10.2014.
- d. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainant. It appears that respondents have played fraud upon the complainant. The only intention of the respondents was to take payments for the flat without completing the work and not handing over the possession on time.

- e. The respondent's mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving of more than 100% approximately payments on time for all the demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondents have failed to deliver the possession of the allotted flat to the complainant within stipulated period.
- f. That it could be seen that the construction of the block in which the complainant flat was booked with a promise by the respondents to deliver the flat by 21.10.2018 but was not completed within time for the reasons best known to the respondents; which clearly shows that ulterior motive of the respondents was to extract money from the innocent people fraudulently.
- g. That due to this omission on the part of the respondents the complainant has been suffering from disruption on his living arrangement, mental torture, and agony and also continues to incur severe financial losses. This could have been avoided if the respondents had given possession of the flat on time. That as per clause 8(b) of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ ₹5/- per sq. ft. per month of the super area of the flat. It is however, pertinent to mention here that a clause of compensation at such a nominal rate of ₹5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the

possession of the flat even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of ₹5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges @ 18% per annum interest on delayed payment.

- h. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the flat is actually delivered to the complainant.
- i. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainants but respondents has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief:
 - a. Direct the respondent to pay interest at the prescribed rate of interest for delay in handing over of possession.

D. Reply filed by the respondent:

5. The respondent has contested the complaint on the following grounds:
- a. That the respondent company is registered under the companies act 1956 and having its registered office at 21-22, ground floor, Vipul Agora complex, Mehrauli, Gurgaon, Haryana. That the respondent was given the permission to develop the said project dated 07.07.2014 from DTCP, Haryana under Haryana Affordable Housing Policy 2013 and thereafter started developing the said project and followed the time schedule as mentioned in the builder buyer agreement entered into with number of allottees of the said project after taking start date of construction 06.07.2016 and date of the delivery of the project is 02.09.2021 as stated in the order of RERA.
 - b. That it is denied that the respondent has deliberately and wilfully indulged in undue enrichment, be cheating the complainant besides not delivering the legitimate and rightful possession of the flat in time. It is also important to mention here that the respondent has not mislead the complainant by suppressing the material information at all times.
 - c. That it is denied that the respondent has deliberately and wilfully indulged in undue enrichment, be cheating the complainant besides not delivering the legitimate and rightful possession of the flat in time. It is also important to mention here that the respondent has not mislead the complainant by suppressing the material information at all times.

- d. That it is relevant to mention here that from November 2019 onwards things started moving out of control of the respondent. Many force majeure events, situations and circumstances occurred that made the construction at site impossible for a considerable period of time. Such events and circumstances included inter-alia, repeated bans on construction activities by EPCA, NGT and Hon'ble Supreme Court of India.
 - e. The respondent has filed additional documents wherein it is stated that they have received the occupation certificate on 07.11.2022 and the possession was also offered to the complainant on 06.06.2022.
 - f. That it is important to mention here that respondent has also filed an application under section 151 of Code of Civil Procedure, 1908 to confirm date of possession as July 2021 which was passed vide order dated 19.12.2022 in the Hon'ble court of Smt. Sakshi Saini, Learned Civil Judge, Gurugram.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainants.
7. Written submissions filed by both the parties are taken on record and considered by the authority while deliberating upon the relief sought 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.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

"Section 11(4)(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;

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder."

11. So, in view of the provisions of the Act of 2016 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 regarding relief sought by the complainant.

F.I. Direct the respondent to pay interest at the prescribed rate of interest for delay in handing over of possession.

12. In the present complaint, the complainants intend 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.

13. As per Affordable Group Housing Policy, 2013 the possession of the subject unit was to be handed over within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. Relevant clause is reproduced hereinbelow:

*"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 period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later** (hereinafter referred to as the "Commencement Date.")"*

14. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this



agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his **dominant** position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

15. The promoter has proposed to hand over the possession of the apartment within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. Due date of possession calculated from the date of environment clearance i.e., 22.01.2016 being later. Accordingly, the due date of possession comes out to be 22.01.2020.
16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. 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."

17. 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.
18. 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., 11.02.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
19. 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;"

20. 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 complainants in case of delayed possession charges
21. 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 possession clause as per Affordable Group Housing Policy, 2013 the possession of the subject apartment was to be delivered within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. Due date of possession calculated from the date of environment clearance i.e., 22.01.2016 being later. Therefore, the due date of possession comes out to be 22.01.2020. The respondent has offered the possession of the subject apartment on 06.06.2022 prior to obtaining occupation certificate from the competent Authority on 17.11.2022. Accordingly, the said offer of possession is invalid in the eyes of law. Section 19(10) of the Act obligates the allottee to take possession of the 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. Therefore, in the interest of natural justice, he should be

given 2 months' time from the date of occupation certificate. Therefore, 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 is established. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till the date of receipt of occupation certificate plus two months i.e., 17.01.2023, at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.


G. Directions of the Authority

22. Hence, the authority hereby passes this order and issue 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):
- a. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 22.01.2020 till the date of receipt of occupation certificate plus two months i.e., 17.01.2023. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
 - b. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10%

by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- c. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
23. Complaint stands disposed of.
24. File be consigned to registry.

V.I. 
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.02.2025