

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

Complaint no. : 3202 of 2024  
Date of complaint : 24.07.2024  
Date of order : 23.07.2025

1. Karambeer,  
2. Richa,  
**Both R/o:** - H. No. 1710, Sector 14-P,  
Hissar, Haryana-125001.

**Complainants**

**Versus**

M/s Pareena Infrastructures Pvt. Ltd.  
**Regd. Office at:** - Flat no.2, Palm Apartment,  
Plot no.13-B, Sector-6, Dwarka, New Delhi-110075.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Dushyant Yadav (Advocate)  
Prashant Sheoran (Advocate)

**Complainants  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, 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 and location of the project	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Allotment letter	15.07.2015 (page 17 of complaint)
7.	Unit allotted	703, Tower-5, 7 <sup>th</sup> Floor (page 26 of complaint)
8.	Unit admeasuring area	1245 sq. ft. (super area) (page 26 of complaint)
9.	Date of builder buyer agreement	09.09.2015 (page 20 of complaint)
10.	Possession clause	<b>13. Completion of Project</b> "That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later...." (page 33 of complaint)
11.	Date of start of construction	26.04.2016 (Date of start of excavation) (page 16 of reply)

12.	Due date of possession	26.10.2020 [Calculated as per possession clause + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
13.	Total sale consideration	Rs.88,18,005/- (as per page 49 of complaint)
14.	Total amount paid by the complainant	Rs.78,81,479/- (as per page 82 of complaint)
15.	Occupation certificate	03.06.2024 (as per page 13 of reply)
16.	Offer of possession	05.06.2024 (page 86 of complaint)

### B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants were allotted a flat bearing no. 703, 7<sup>th</sup> Floor, Tower-5 in project of the respondent named Micasa, Sector-68 Gurugram vide allotment letter dated 15.07.2015. Thereafter, an apartment buyer's agreement dated 09.09.2015 regarding the said allotment was executed between the parties for a total sale consideration of Rs.88,18,005/- against which they have paid a sum of Rs.78,81,479/- including taxes till date.
- II. That as per the agreement, the possession of the above said flat shall be handed over within 48 months and the same got expired on 08.09.2019.
- III. That the complainants are unable to disburse further payment raised by the respondent as the project crossed the date of final possession with amenities. Thus, the complainants are requesting to provide the compensation and interest on the amount paid as per the provisions of RERA Act.

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

4. The complainants have sought following relief(s):
- I. Direct the respondent to handover possession of the unit and to pay delay possession charges as per the Act.
  - II. Direct the respondent to pay an amount of Rs.50,000/- towards legal expenses.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent contested the complaint by way of reply dated 04.12.2024 on the following grounds: -
- i. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "MICASA" at Sector 68, Gurugram.
  - ii. That the respondent has already completed the concerned unit and after obtaining occupation certificate from the competent authority, the respondent vide letter dated 05.06.2024, offered possession of the same to the complainants.
  - iii. That the construction of the said project was hampered due to non-payment of instalments by the allottees on time and also due to the events and conditions which were beyond the control of the respondent, which have materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

- a) Delay in construction due to various orders/restrictions passed by National Green Tribunal, Delhi and other competent authorities for protecting the environment of the country.
  - b) Ban on construction due to various court orders as well as government guidelines.
  - c) The major outbreak of Covid-19.
- iv. That the complainants have concealed the fact that as per the BBA, the date for handing over of possession was to be calculated from the date of start of construction.
7. 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 those undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

The authority has complete territorial and 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 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;

**Section 34-Functions of the Authority:**

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

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.

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

**F.I Objection regarding force majeure conditions.**

11. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, ban on construction by the orders of Hon'ble Supreme Court, non-payment of instalment by different allottee of the project and major spread of Covid-19 across worldwide. The Authority observes that as per clause 13 of the agreement, the possession of the apartment was to be handed over within 4 years from the date of start of construction or execution of buyer's agreement, whichever is later. Therefore, the due date of possession is being calculated from the date of start of excavation i.e. 26.04.2014, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession was 26.10.2020. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the



same are disallowed as the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be granted any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainants.**

**G.I Direct the respondent to handover possession of the unit and to pay delay possession charges as per the Act.**

12. In the present complaint, the complainants intend to continue with the project and are 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***

***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."*

13. Clause 13 of the buyer's agreement provides for handing over of possession and is reproduced below:

*"13. That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located within 4 years of the start of construction or execution of this agreement, whichever is later..."*  
(Emphasis supplied)

14. The respondent/promoter has proposed to handover possession of the subject apartment within a period of 4 years from the date of start of construction or execution of buyer's agreement, whichever is later. Therefore, the due date of possession is being calculated from the date

of start of excavation i.e. 26.04.2014, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 26.10.2020.

15. **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.*

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., 23.07.2025 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(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;"*

20. Therefore, interest on the delayed 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 them in case of delay possession charges.
16. On consideration of documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13 of the agreement executed between the parties on 09.09.2015, the possession of the subject apartment was to be delivered by 26.10.2020. The occupation certificate was granted by the concerned authority on 03.06.2024 and thereafter, the possession of the subject flat was offered to the complainants vide letter dated 05.06.2024. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 09.09.2015 to hand over the possession within the stipulated period.

17. 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 03.06.2024. The respondent offered the possession of the unit in question to the complainants only on 05.06.2024, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (05.06.2024) which comes out to be 05.08.2024.
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 complainants are entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 26.10.2020 till the expiry of 2 months from the date of offer of possession (05.06.2024) which comes out to be 05.08.2024 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act.

**G. II Cost of litigation expenses.**

22. The complainants are seeking above mentioned relief w.r.t. litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

**H. Directions of the authority**

24. 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):
- 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 from due date of possession i.e., 26.10.2020 till the expiry of 2 months from the date of offer of possession (05.06.2024) i.e., upto 05.08.2024 only.
  - The respondent is directed to supply a copy of the updated statement of account after adjusting the delayed possession charges within a period of 15 days to the complainants.

- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days from the date of receipt of updated statement of account.
  - iv. The respondent is directed to handover possession of the unit/flat in question to the complainants in terms of Section 17(1) of the Act, 2016 and the complainants are also obligated to take physical possession of the allotted unit under Section 19(10) of the Act, 2016.
  - v. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement.
  - vi. 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 delay possession charges as per section 2(za) of the Act.
  - vii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
25. Complaint stands disposed of.
26. File be consigned to registry.

  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2025