

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

Complaint no. : 3810 of 2024
Complaint filed on : 23.08.2024
Date of Decision: 08.08.2025

Rajender Prasad

Address: B-4, Police Quarter, Paharganj, Swami Ram
Tirth, S.O Swami Ram Tirth Nagar, Central Delhi,
Delhi - 110055

Complainant

Versus

M/s Deluris Buildtech India Pvt. Ltd.

Regd. Office at: - D-64, Defence Colony, New Delhi -
110024

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Kanish Bangia (Advocate)

Ms. Ankur Berry (Advocate)

Complainant
Respondent

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 to the allottee as per the agreement for sale executed *inter se* them.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, 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	Zara Rossa, Village Bajghera, sector-112, Gururgram
2.	Nature of the project	Affordable group housing
3.	Project area	5.0 acres
4.	DTCP License no. and validity	07 of 2016 dated 28.06.2016
5.	RERA registered/not registered and validity	Registered vide no. 82 of 2017 dated 23.08.2017
6.	Unit no.	6, 6 th floor, tower-2 [Page 33 of complaint]
7.	Unit area admeasuring	539.30 sq. ft. [carpet area] 50 sq. ft. [balcony area] [Page 33 of complaint]
8.	Date of allotment	01.03.2018 [Page 28 of complaint]
9.	Date of Agreement to Sale	23.05.2018 [Page 30 of complaint]
10.	Environment Clearance	30.11.2017 [Page 33 of reply]
11.	Approval of building plan	11.11.2016 [Page 33 of complaint]
12.	Possession clause	7.POSSESSION OF THE SAID FLAT

		<p>7.1. Within 3-months from the date of issuance of Occupancy Certificate, the Promoter shall offer the possession of the Said Flat to the Allottee. Subject to the Force Majeure circumstances, receipt of Occupancy Certificate and Allottee having timely complied with all its obligation, formalities or documentation, as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Promoter shall offer possession of the Said Flat to the Allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later ("Commitment Period").</p> <p>[Page 51 of complaint]</p>
13.	Due date of possession	<p>30.05.2022</p> <p>Calculated from the date of environment clearance being later including grace period of 6 months due to covid-19</p>
14.	Total sale consideration	<p>Rs.21,82,200/-</p> <p>[Page 41 of complaint]</p>
15.	Amount paid by the complainant	<p>Rs. 22,61,306/-</p> <p>[as alleged by complainant]</p>
16.	Occupation certificate	<p>14.05.2024</p> <p>[Page 48 of reply]</p>
17.	Offer of possession	<p>19.05.2024</p> <p>[Page 82 of complaint]</p>

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That relying on the assurances and representations made by the respondent, the complainant made an initial payment of Rs. 1,09,110/- at the time of booking. The respondent subsequently issued an allotment letter dated 01.03.2018.
- II. That the respondent executed the agreement for sale on 23.05.2018. The respondent's project was being developed as per the affordable housing policy and it explicitly provides for the delivery of possession within 4 years from the confirmation of the layout plan or environmental clearance. The respondent has clearly failed to comply with these provisions and has not delivered possession within the timeframe stipulated in the agreement to sale.
- III. That the complainant continued to make timely payments in the hope of having the promised home constructed and the respondent repeatedly assured the complainant of the timely delivery of the apartment. Despite multiple assurances from the respondent to deliver the apartment within the stipulated time period, the respondent failed to fulfill these commitments.
- IV. That the respondent issued a receipt-cum-statement of accounts which clearly indicates that the complainant had made the full payment against the basic sale price leaving no outstanding balance. Additionally, the complainant had paid all applicable taxes, amounting to a total of Rs. 22,61,306/-.
- V. That the respondent in a deceptive manner issued a demand letter requesting payment of Rs.30,659/- towards user charges for operational costs of utility services and GMDA water charges, despite

the fact that possession of the apartment has not been handed over to the complainant. Furthermore, the respondent in the statement of accounts demanded various vague and illegal charges amounting to Rs.1,62,398/- from the complainant which clearly violates the principal and averments stated in Varun Gupta versus Emaar MGF Land Limited by the Hon'ble Authority.

- VI. That the respondent issued an offer of possession dated 19.05.2024, raising illegal and baseless demands that were neither included nor disclosed at the time of signing the agreement to sale.
- VII. That respondent provided false and incorrect statements and assurances in respect of said unit and the complainant have thereby lost their hard earned money facing humiliation and harassment, physical as well as mental in the hands of respondent and therefore the respondent are liable to compensate the losses caused to the complainant due to the fraudulent and unfair trade practice on the part of respondent as per Section 12 of the RERA, 2016 and rules thereunder.
- VIII. That the respondent acted in a very deficient, unfair, wrongful, fraudulent manner by not handing over the possession the said unit to the complainant. Respondent is therefore, liable to pay the damages and compensation for the monetary loss and harassment suffered by the complainant due to the aforesaid illegal and wrongful acts of respondent.
- IX. That the respondent is guilty of deficiency in service, unfair trade practice, giving incorrect and false statement and assurance and making false commitments and promises while selling the said unit to the

complainant within the purview of provisions of the RERA 2016 and applicable rules.

C. Relief sought by the complainant:

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

- I. Direct the respondent to handover the possession of the unit with the amenities and specifications.
- II. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant.
- III. Direct the respondent not to charge anything which is not the part of the payment plan as agreed.
- IV. Direct the respondent to get the conveyance deed registered without raising any demands in favor of the complainant.
- V. Direct the respondent to provide the exact layout plan of the said unit.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds:

- I. That the present complaint is not maintainable or tenable in the eyes of law. The subject matter of the claim does not fall within the jurisdiction of this Ld. Authority.
- II. That the present complaint has been filed against the affordable group housing project namely, Zara Rossa, situated in the revenue estate of Village Bajghera, Sector-112, Gurugram, Haryana. The building plans were approved dated 17.06.2017. Further the environmental clearance for construction of the affordable group housing colony was received on dated 30.11.2017.

- III. That the complainant after being aware of the residential project of the respondent filed application no. 1381 and deposited the booking amount on terms of the Affordable Housing Policy, 2013. Thereafter the draw of lot was conducted on 23.02.2018 and the complainant were duly allotted apartment no. 6 on 6th floor, tower-2, having carpet area 539.3 sq. ft. and balcony area of 50 sq. ft. vide allotment letter dated 01.03.2018. Further in terms of the apartment buyer's agreement the total sale consideration for the said unit was agreed as Rs. 21,82,200/- plus GST, charges for water, gas and other utilities, cess, duties, etc.,
- IV. That further as per BBA any change/modification in the taxes/charges/fees/levies/etc, the Allottee was liable to make the payment. Further as per clause 1.2 of the BBA, charges (for connection and usage) for water, gas and other utilities were to be communicated at the time of offer of possession as the same could not have been quantified at earlier stage. Further though the total sale consideration was escalation free but enhancements due to taxes, levies, cess, duties, charges including development charges, etc., collected by competent authority were referred as additional charges and allottee were liable to pay.
- V. That the possession clause though defined by the affordable housing policy was to be within 4 years from approval of building plans or grant of environment clearance, whichever is later.
- VI. That the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as Covid-19. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having

completion date on or after 25.02.2020, on account of force majeure condition due to the outbreak of Covid-19 pandemic.

- VII. That the respondent was committed to complete the development of the project. The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which adversely affected various industrial, construction and business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- VIII. That due to unforeseen circumstances and causes beyond the control of the respondent, the development of the project got came to stand-still. That such delay was not intentional. The respondent was bound to adhere with the order and notifications of the various authorities as well as of courts such as order of NGT, Delhi pollution control committee, Environment Pollution (prevention & Control Authority) etc.
- IX. Further the possession of the subject unit was to be delivered within 4 years from obtaining approval or building plans or environmental clearance, which ever was later. That the renewed building plans were received on 11.01.2024 and the possession was offered on 19.05.2024. Further the period during covid-19 restriction and notification if counted there was no delay in completion of project. Further it is to be noted that the respondent duly applied for occupation certificate on 25.11.2022 and again on 13.07.2023, however the DTCP, Haryana finally issued the OC dated 14.05.2024.

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 submission made by the parties.

E. Jurisdiction of the authority

7. The contention of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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 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 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 objections raised by respondent.**F.I Objections regarding force majeure**

11. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the environment pollution (Prevention and Control) Authority, NGT, Delhi as well as competent authorities and major spread of Covid-19 across worldwide. The Authority observes that as per clause 1(iv) of the affordable housing policy, 2013 the possession of the unit was to be handed over within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. The date of building plan is 11.11.2016 and date of environment clearance was 30.11.2017. The due date is calculated from the date of environment clearance being later which comes out to be 30.11.2021. 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 30.05.2022. 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 Authorities 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 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 complainant(s):

- G.I Direct the respondent to handover the possession of the unit with the amenities and specifications.**
- G.II Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant.**

12. In the present complaint, the complainant 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

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."*

(Emphasis supplied)

13. Clause 7 of the buyer's agreement provides for handing over of possession and is reproduced below:

7. Possession

"7.1 Within 3-months from the date of issuance of Occupancy Certificate, the Promoter shall offer the possession of the Said Flat to the Allottee. Subject to the Force Majeure circumstances, receipt of Occupancy Certificate and Allottee having timely complied with all its obligation, formalities or documentation, as prescribed by the Promoter in terms of this Agreement and not being in default

*under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Promoter shall offer possession of the Said Flat to the Allottee **within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later ("Commitment Period").***
(Emphasis supplied)

14. **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.

15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 08.08.2025 is **8.90%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.90%**. [Note: During proceedings dated 08.08.2025 the rate of interest was inadvertently mentioned as 11.10% instead of 10.90%].

17. 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;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.90%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
19. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 7.1 of the agreement executed between the parties on 23.05.2018 the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plans or receipt of environmental clearance, whichever is later. The date of approval of building plan is 11.11.2016 and the date of environment clearance is 30.11.2017. Therefore, the due date of handing over possession is calculated from the date of environment clearance being later which comes out to be 30.11.2021 further a grace period of 6 months is allowed

due to Covid-19. Hence, the due date of possession comes out to be 30.05.2022. The respondent has obtained the occupation certificate of the project by the competent authority on 14.05.2024 and subsequently offered the possession of the unit on 19.05.2024. 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 handover the physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations within the stipulated period.

20. 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 14.05.2024. The respondent offered the possession of the unit in question to the complainant only on 19.05.2024, 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 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit.
21. Accordingly, 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., 30.05.2022 till offer of possession (19.05.2024) after obtaining occupation certificate plus two months i.e., 19.07.2024 or actual handing

over of possession, whichever is earlier at prescribed rate i.e., 10.90 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

22. The complainant in the present complaint is seeking relief for the possession of the unit. The Authority observes that the respondent has obtained the occupation certificate from the competent authority on 14.05.2024 and thereafter possession of the said unit was offered on 19.05.2024. The complainant is directed to pay outstanding dues, if any remains as per the buyer's agreement, after adjustment of delay possession charges and thereafter the respondent shall handover the possession of the allotted unit within next 30 days.

G.III Direct the respondent not to charge anything which is not the part of the payment plan as agreed.

23. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.

G.IV Direct the respondent to get the conveyance deed registered without raising any demands in favor of the complainant.

24. That as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas, as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
25. The possession of the subject unit has already been offered to the complainant after obtaining occupation certificate on 14.05.2024. Therefore, the respondent/builder is directed to get the conveyance deed of the allotted apartment executed 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 three months from the date of this order.

G.V Direct the respondent to provide the exact layout plan of the said unit.

26. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent/promoter is directed to provide the area calculation relating to super area, loading and carpet area to the complainant.

H.Directions of the Authority:

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.90% p.a. for every month of delay from the due date of possession i.e., 30.05.2022 till offer of possession after obtaining occupation certificate plus two months or actual handing over of possession, whichever is earlier as per section 18(1) of the Act read with rule 15 of the rules.
 - ii. The complainant is directed to pay outstanding dues, if any remains as per the buyer's agreement, after adjustment of delay possession

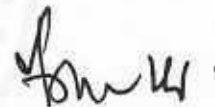
charges and thereafter the respondent shall handover the possession of the allotted unit within next 30 days.

- iii. 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.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.90% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant, which is not the part of the buyer's agreement.

28. Complaint stands disposed of.

29. File be consigned to registry.

Dated: 08.08.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram