

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

Complaint no.: 5247 of 2024

Date of decision:- 06.08.2025

1. Vipul Puri
2. Chaitanya Puri
Both R/o: - House no.-961, ACCO Road,
Sector-40, Gurugram.

Complainants

Versus

M/s. DSS Buildtech Pvt. Ltd.
Regd. office: 506, Floor-5th, Tiem Square Building,
Block-B, Sushant Lok-1, Gurugram.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Hemant Phogat (Advocate)

Harshit Batra (Advocate)

Complainants

Respondent

ORDER

1. The present complaint dated 12.11.2024 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short,

the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"The Melia", Sector-35, Sohna, Gurugram, Haryana.
2.	Area of the project	17.41 acres
3.	Nature of project	Group housing
4.	DTCP license no.	77 of 2013
5.	RERA registered	Registered Registration no. 288 of 2017 Dated-10.10.2017
6.	Allotment letter	05.02.2019 (As on page no. 63 of complaint)
7.	Unit No.	805, Tower no. S-2, Floor-8 th (As on page no. 22 of complaint)
8.	Unit Area	977 sq.ft [Carpet Area]

		(As on page no. 22 of complaint)
9.	Date of execution of agreement for sale	05.02.2019 (As on page no. 21 of complaint)
10.	Possession clause	<p>Clause-7 POSSESSION OF APARTMENT FOR RESIDENTIAL USAGE</p> <p>7.1 Schedule for possession of the said Apartment- The Promoter agrees and understands that timely delivery of possession of the Apartment to the Allottee(s) and the Common Area to the Association or the Competent Authority, as the case may be, as provided under Rule 2(1) (f) of Rules, is the essence of the Agreement. The Promoter assures to hand over possession of the Apartment on or before 25.10.2021 unless there is delay due to "force majeure", court orders, government policy/guidelines, decisions affecting the regular development of the real estate project.</p> <p>[Emphasis supplied]</p>
11.	Due date of possession	<p>25.04.2022</p> <p>[grace period of 6 months on account of Covid-19 is granted to the respondent]</p>

12.	Payment plan	At the time of booking- Rs.5,25,000/- Within 90 days of booking- Rs.10,50,000/- On offer of possession- Rs.49,57,522/-
13.	Total sale consideration	Rs.60,91,500/- (As per payment plan on page no. 54 of complaint)
14.	Total amount paid by the complainants	Rs.17,64,010/-
15.	Occupation certificate	04.07.2025
16.	Offer of possession	10.07.2025

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - I. That after going through advertisement published by respondents in the newspapers and as per the brochure /prospectus provided by respondents, the complainant applied for the allotment of a residential apartment / flat bearing no. 805, Tower-S-2 (Melia First Citizen), 8th Floor, having a carpet area of 977 sq. st., in the upcoming project named, "The Melia", situated at Village Mohamadpur Gujjar, Sector-35, Sohna, District Gurugram, Haryana for a total price of Rs.67,21,532/- and the allottee has paid a sum of Rs.17,64,010/- in timely manner as per the payment schedule of Agreement for Sale.
 - II. The respondent is in right to exclusively develop, construct residential project, transfer or alienate the apartment/ flat and to carry out sale

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deed, agreement to sell, conveyance deeds, letters of allotments etc. vide collaboration agreement with the project Land Owners.

- III. That the complainants have abided by the terms and conditions of the agreement and have paid all their installments in a timely manner as and when demanded by the respondents and no default was ever made on the part of the complainants.
- IV. That as per Clause-7.1 of the Buyer's Agreement, the respondent was under legal obligation to handover the possession of the Apartment/ Flat to the complainants on or before 25.10.2021.
- V. That the respondent has delayed the project and the complainants after the lapse of promised date of possession i.e. 25.10.2021 visited the project site and found that the construction work of the project was way beyond from completion. The complainants contacted the officials of the respondent to know about the status of the project and the completion date but no satisfactory answer was given to the complainants.
- VI. That the project is still not completed as on October, 2024 and the respondent has failed to provide any satisfactory date for completion of the project to the complainants and the complainants are being forced to run from pillar to post for getting the possession of the apartment/flat.
- VII. That the complainants have requested the respondent to pay them the delayed possession charges as the complainants are residing in a rented accommodation and due to the delay in the project they are suffering from financial crunch but the respondents completely ignored the just and genuine demands of the complainants.
- VIII. That the respondents failed to fulfil their own commitment to complete the project and handover the possession of the flat/apartment to the

complainants on the promised date despite of the fact where the complainants have abided by the terms and conditions of the agreement for sale and without any fault on their part the complainants are forced to suffer financial and mental harassment.

- IX. The cause of action accrued in favour of the complainants and against the respondent, when the complainants booked the said apartment / flat space and it further arose when the respondent failed to complete the project and handover the possession on or before the committed date i.e. 25.10.2021 and pay the Delay Possession Charges to the complainants. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):-
- Direct the respondent to pay the Delayed Possession Charges till Offer of Possession and handing over of physical possession of the said apartment / flat along-with prevailing interest as per the provisions of the Act.
 - Direct the respondent not to charge any amount which is not part of agreement for sale.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions.
- That the respondent is developing a residential group housing complex approximately over 17.418754 acres of land situated in village Mohamadpur Gujjar, Sector 35, Sohna, Gurugram (Haryana), privately named as "The Melia".

- II. That the said project of the respondent is duly registered under the Real Estate (Regulation and Development) Act, 2016, and the Haryana Real Estate (Regulation and Development) Rules, 2017 vide HRERA Registration No. 288 of 2017 dated 10.10.2017. Pertinent to note that the respondent had applied for extension of RERA Registration Certificate before the Authority, and the same is extended dated 28.11.2022 and is valid up to 25.04.2024
- III. That the complainants have approached the respondent for booking apartment / flat bearing no. 805, Tower- S-2, 8 Floor, measuring 977 sq. ft. carpet area, in the upcoming project named "The Melia", Village Mohamadpur Gujjar, Sector-35, Sohna, District Gurugram, Haryana, for a total price of Rs.67,21,532.
- IV. That a residential Unit No. S-802, situated on the Eighth Floor of Tower-S in the above-mentioned project, was allotted to Complainants/Allottees vide Allotment Letter dated 05.02.2019. A copy of the Allotment Letter dated 05.02.2019 has already been annexed with the Complaint as Annexure - C3.
- V. That on 05.02.2019., Buyers Agreement was executed between the parties with free will and without any undue coercion or undue influence, therefore, the same is binding upon the parties thereto. ***(Refer Annexure C/1 @ page 34 of the complaint)***. Further, Clause 7.1 of the Buyer's Agreement states that the Promoter commits to handing over possession of the Apartment by 25.10.2021, unless delayed due to force majeure, court orders, or government actions affecting project development. In such cases, the Allottee agrees to an extension of the possession deadline. The relevant clause 7.1 is reproduced hereunder for ready reference:

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The Promoter assures to hand over possession of the Apartment on or before 25.10.2021 unless there is a delay due to "force majeure", court orders, government policy/guidelines, or decisions affecting the regular development of the real estate project. If the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment.

VI. It is to be noted that the construction was banned for 163 days in the state of Haryana, details of which are provided hereinafter.

Dated	Authority	Order	Days
16.11.2021- 21.11.2021	CAQM Direction	All the construction activity in the entire NCR to remain closed	06 days
24.11.2021- 20.12.2021	Supreme Court Writ Petition (C) No. 1135/2020 r/w CAQM Direction	Ban imposed by Supreme Court on construction activities	26 days
23.03.2020 to 19.04.2020	Ministry of Home Affairs	Ban imposed by MHA due to covid 19 pandemic	27 days
01.01.2020 to 10.02.2020	Newspaper Report	Ban imposed by on construction activities	40 days
04.11.2019 to 16.12.2019	Supreme court in CWP No. 13029/1985	All the construction activity in the entire NCR to remain closed	42 days
01.11.2018 to 10.11.2018	EPCA	All the construction activity in the entire NCR to remain closed	10 days
24.12.2018 to 26.12.2018	Environment pollution control authority	Construction activities in Delhi, Gurugram, Ghaziabad and Noida to remain closed till 26.12.2018	03 days
09.11.2017 to 17.11.2017	OA 21/2014 NGT	All the construction (Structural) activity in the entire NCR is hereby prohibited till the next date of hearing	09 days

Therefore, the period of handing over of possession should be further extended by 343 days.

- VII. That the Fire Clearance/NOC was obtained by the respondent on 09.02.2016, and the same was submitted to DTCP Haryana. It is pertinent to mention that Section 15 of the Haryana Fire Safety Act, 2009, makes it mandatory for a Builder/Developer to obtain the approval of the Fire Fighting Scheme conforming to the National Building Code of India and obtain a No Objection Certificate (NOC) before commencement of construction.
- VIII. That on 20.09.2016, the respondent received the Environmental Clearance from the State Environment Impact Assessment Authority (SEIAA). It is pertinent to mention that Clause 1 of the Environment Clearance stipulates that the Developer has to obtain "Consent to Establish" from the Haryana State Pollution Control Board under the Air and Water Act, and a copy shall be submitted to the SEIAA before the start of any construction works at the site.
- IX. Thereafter, in terms of the provisions of the Environmental Clearance dated 20.09.2016, the respondent applied for the 'Consent to Establish' from the Haryana State Pollution Control Board, and was granted the same on 12.11.2016. It is submitted that 'Consent to Establish' is, in fact, the last approval necessary prior to commencement of construction work.
- X. That the complainants have till date paid only Rs.17,63,010/- as per the Applicant Ledger. In spite of a stay of construction by the National Green Tribunal at several instances, the construction work of the said

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project is complete, and the internal and external development work of the said project is going on with full swing.

XI. That on 17.08.2023, vide application before the DTCP, the respondent has also applied for the Occupation Certificate for towers A, D, E & F of the said project. Thereafter, the respondent was granted an Occupation Certificate on 10.12.2024 by the DTCP, Haryana. Further, vide application dated 11.10.2024, the respondent has also applied for the OC for towers B, C, G, S1, and S2.

XII. That since the commencement of the development of the project, the respondent has been sending regular updates regarding the progress of the project to all the buyers including the complainants and also the customer care department of the respondent is in regular touch with the buyers for providing them assistance and updates on the progress of the project.

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.1 Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate

Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

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

F. Findings on objections raised by the respondent:

F.1 Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed imposing ban on the construction activities, Environment

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Pollution (Prevention & Control) Authority, Environment Pollution (prevention & Control Authority)-EPCA, Orders of Hon'ble Supreme Court, due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the allotment letter was issued by the respondent to the complainants on 05.02.2019. The 'Agreement For Sale' was executed between the parties on 05.02.2019. As per clause 7 of the Agreement for sale dated 05.02.2019, the due date of possession comes out to be 25.10.2021. 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. The respondent is seeking the benefit of Covid-19, and in lieu of the notification of the Authority dated 26.05.2020, the benefit of the same is granted to the respondent. Thus, the due date comes out to be 25.04.2022 i.e., 25.10.2021 plus 6 months grace period on account of Covid-19. The respondent have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, but these were for a short period of time. The event of demonetization was in accordance with government policy and

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guidelines. Therefore, the Authority is of the view that the outbreak of demonetization cannot be used as an excuse for non-performance of a contract.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to give physical possession of the fully developed/constructed unit with all amenities without any pre-conditions.

G.II Direct the respondent to execute the conveyance deed for the complainant's unit.

G.III. Direct the respondent to pay delayed possession interest at the prescribed rate from the due date of possession i.e., 11.11.2020 till the actual date of possession (complete in all respects with all amenities)

14. In the present complaint, the complainants booked a unit in the project of the respondent namely "The Melia" situated at Sector-35, Village-Sohna, Gurugram. The allotment was made in favour of the complainants on 05.02.2019 and thereafter, the Agreement For Sale was executed between the complainants and the respondent on 05.02.2019. As per Clause 7 of the agreement dated 05.02.2019, the respondent had to hand over possession of the unit to the complainants on or before 25.10.2021. Also, a period of six months in granted to the respondent in lieu of the notification of the Authority dated 26.05.2020 due to the Covid-19 outbreak. Thus, the due date of possession comes out to be 25.04.2022.

15. The complainants intend to continue with the project and are seeking possession and delay possession charges along with interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter,

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interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

16. Clause 7 of the Agreement dated 05.02.2019 provides for due date of possession and is reproduced below:

Clause 7

*7.1 Schedule for possession of the said Apartment-
The Promoter agrees and understands that timely delivery of possession of the Apartment to the Allottee(s) and the Common Area to the Association or the Competent Authority, as the case may be, as provided under Rule 2(!) (f) of Rules, is the essence of the Agreement. The Promoter assures to hand over possession of the Apartment **on or before 25.10.2021** unless there is delay due to "force majeure", court orders, governmental policy/guidelines, decisions affecting the regular development of the real estate project.*

[Emphasis supplied]

17. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit on or before 25.10.2021. The grace period of six months shall be allowed to the promoter on account of Covid-19.
18. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 06.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. Vide proceedings dated 06.08.2025, the same was inadvertently mentioned as 11.10%.
21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7 of the Agreement dated 05.02.2019, the possession of the subject apartment was to be delivered by 25.10.2021. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 25.04.2022. The respondent has obtained the Occupation Certificate from the competent authorities on 04.07.2025 and thereafter offered the possession of the subject apartment to the complainants on 10.07.2025, which is delayed than the due date of possession of the unit. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within stipulated period.
24. 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., 10.90% p.a. from the due date of possession 25.04.2022 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.

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25. The respondent is directed to handover possession of the unit to the complainants within 30 days of this order. Also, in terms of Clause 17(1) of the Act, 2016, the respondent is directed to execute registered Conveyance Deed in favour of the complainant within a period of 60 days from this date and the complainants are directed to pay the registration charges, stamp duty, requisite fees, as applicable.

H. Directions of the authority

26. 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 share an updated statement of accounts after adjusting the delayed possession charges with the complainants within a period of 15 days of this order and the complainants shall make the balance payments within 30 days of receiving the updated SOA.
 - ii. The respondent is directed to handover physical possession of the unit to the complainants within 30 days of this order.
 - iii. The respondent is directed to pay the interest at the prescribed rate i.e., 10.90% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 25.04.2022 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.
 - iv. The respondent is directed to execute conveyance deed in favour of the complainants in terms of section 17(1) of the Act of 2016 on

payment of stamp duty and registration charges as applicable, within 60 days of the order.

v. The respondent shall not charge anything from the complainants which is not the part of the agreement.

41. Complaint stands disposed of.

42. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 06.08.2025



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GURUGRAM