

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

Complaint no. : 2565 of 2025
Date of complaint : 27.05.2025
Date of decision : 31.10.2025

Yadvinder Singh Sidhu

Address: 221, 1st Floor, Deep Plaza Complex, Opp.
Civil Court, Gurugram-122001, Haryana

Complainant

Versus

M/s Ambience Projects and Infrastructure Pvt.
Ltd.

Office at: L-4, Green Park Extension, New Delhi-
110016

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sanjeev Kumar Sharma (Advocate)

Sh. Pankaj Bhatnagar (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 under the provisions 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 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:

Sr. No.	Particulars	Details
1.	Name of the project	"The Creacions" in Sector 22, Gurgaon.
2.	Nature of the project	Group Housing Colony
3.	Project area	14.87 acres
4.	RERA Registered/ not registered	Registered 318 of 2017 dated 17.10.2017 valid up to 31.03.2022 + 6month covid=30.09.2022 Extension no. 02 of 2023 dated 23.02.2023 valid upto 29.09.2023
5.	DTCP License No.	48 of 2012 dated 12.05.2012 valid upto 11.05.2018
	Name of licensee	Ambience Projects and Infrastructure Pvt. Ltd.
6.	Unit no.	1301, 13 th floor, Block B (Page no. 23 of complaint)
7.	Unit admeasuring	1380 sq. ft. (Page no. 23 of complaint)
8.	Application dated	17.06.2019 (page no. 22 of complaint)
9.	Date of apartment buyer agreement	08.11.2019 (Page no. 19 of complaint)



10.	Possession clause	<p>7. Possession Of the Unit:</p> <p>7.1 Schedule for possession of the Said Unit</p> <p>The Company and Allottee (s) agree and understand that timely payment of installments by the Allottee (s) as per Payment Plan and timely delivery of possession of the Unit along with parking (if applicable) to the Allottee(s) are the essence of the Agreement. The Company assures to handover possession of the Unit along with parking (if applicable) as per agreed terms and conditions on or before 31/03/2022, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is delay due to "force majeure", court orders, Government policy/guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority for the said project.....</p>
11.	Due date of delivery of possession	31.03.2022 (as per possession clause)
12.	Total sale consideration	Rs. 1, 54,17,150/- (As per payment plan at page 56 of the complaint)
13.	Total amount paid by the complainant	Rs. 1,55,55,151/- (As per payment confirmation letter at page no. 86 of complaint)
14.	Occupation certificate	22.12.2023

		(page no. 32 of reply)
15.	Offer of possession	11.01.2024 (page no. 22 of reply)

B. Facts of the complaint:

3. That the complainant had applied for booking a unit in the said project vide application form dated 17.06.2019. In lieu of the same, the respondent herein had allotted the unit bearing no. B-1301 having carpet area of 632.39 sq. ft. and super area of 1380 sq. ft. The total consideration value of the unit in question was Rs. 1,54,17,140/-.
4. That the unit no. was subsequently revised to unit bearing no. C-1301 in tower C, 13th floor. The parties entered into and executed the builder buyer agreement dated 08.11.2019.
5. That at the time of entering into the builder buyer agreement, the complainant had already paid more than 10% of the TCV an amount of Rs. 37,80,872/-. Thus, an amount of 24.5% of the TCV had already been paid by the complainant to the respondent prior to executing the BBA. Thus, the respondent has been brazenly violating provisions of the Real Estate (Regulation and Development) Act, 2016.
6. That the TCV includes parking charges and the same is evident from clause 1.2(iii) of the builder buyer agreement executed between the parties.
7. That as per the payment plan provided in the builder buyer agreement, 10% of the TCV had to be paid upon booking the unit. 15% of the TCV had to be paid within 75 days of booking the unit and the rest, i.e. 75% of the TCV + 100% stamp duty and other charges had to be paid on offer

- of possession. The complainant has duly and timely made payments to the respondent in accordance with the payment plan.
8. That the builder buyer agreement prescribes for the possession date to be on or before 31.03.2022 as per clause 7.1. Furthermore, as per clause 1.2(v) of the builder buyer agreement any charges relating to club membership are only to be paid, if the complainant chooses to opt for the same. The club membership and its charges are optional and at the discretion of the complainant and the respondent cannot force the complainant to opt for the same.
 9. Furthermore, while the clauses of the builder buyer agreement expressly state that the TCV includes parking charges, the respondent herein is attempting to extract an additional Rs. 4,00,000/- from the complainant herein under the garb of "parking charges" which fall under the TCV.
 10. The respondent issued demand letter dated 21.09.2024 to the complainant, demanding the complainant clear dues to the tune of Rs. 29,06,862/-. This demand letter clearly shows the additional Rs. 4,00,000/- being demanded over and above the TCV for parking, which is included in the TCV as per the builder buyer agreement. Thus, the respondent started creating demands out of thin air and unilaterally.
 11. That the promoter/respondent has not made true and actual demand as per the builder buyer agreement and the payment plan therein. The respondent has been imposing unilaterally upon the complainant club membership charges amounting to Rs. 15,00,000/- as a precondition to be met, before handing over possession of the unit to the complainant.

12. That the complainant has paid an amount of Rs. 1,55,55,151/- out of the TCV amounting to Rs. 1,54,17,140/-. Thus, the complainant has paid Rs. 1,38,011/- more than the TCV. These figures have been verified by the respondent vide statement of account dated 10.01.2025.
13. That the respondent is not handing over the unit in question to the complainant even after having received the full payment of the unit and then some. There is also delay in offering and handing over possession, and the respondent has cunningly not adjusted any dues payable to the complainant on account of such delayed possession.
14. That the respondent is under an obligation under Section 18 of the RERA Act, 2016 to pay monthly interest for every month of delay till handing over of possession from the due date of possession as per the BBA. In the present case, the unit was to be handed over by 31.03.2022, but the demand letter signalling formalities and payments to be completed for handing over possession, was only sent on 21.09.2024, i.e. after a delay of approx. 41 months/3.5 years.
- C. Relief sought by the complainant:**
15. The complainant sought following relief(s).
- I. Handover the actual, legal, physical and vacant possession of the unit.**
 - II. Interest for delay possession charges till the actual handover of the unit in question.**
 - III. Direct the respondent to not charge anything contrary to the terms and conditions of the BBA such as:**
 - **Parking Charges of Rs. 4,00,000/- which is already covered in the TCV, that has been paid in full by the complainant.**

- **Club Membership Charges of Rs. 15,00,000/- which is optional only as per the BBA, and the complainant wishes to not opt for the same.**

16. 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.

17. That the complainant applied for allotment of a flat in 'Ambience Creacions', project of the respondent. That apartment buyer's agreement dated 08.11.2019 was executed between the parties. The apartment no. B-1301 which was later renumbered as C-1301 block - C, 13th floor, Ambience Creacions, Sector 22, Gurugram was allotted to the complainant. The agreed cost of the unit was Rs. 1,55,55,150/- which included cost of the flat as Rs. 1,54,17,150/- and interest free non-refundable security deposit (IFMSD) amounting to Rs.1,38,000/- inclusive of GST and other taxes. The said cost was to be paid in tranches.
18. That upon the offer of possession, the complainant was obligated to pay 75 % of the due amount. Offer of possession was given vide letter dated 11.01.2024 demanding Rs. 87,20,587/-. However, this payment was made on 30.03.2024 by complainant with delay of more than 2 months, further deviating from the agreed payment schedule.
19. That the balance cost of the unit shall be deposited by the complainant / buyer as per the payment plan as may be demanded by the respondent within the time and manner specified therein. It was also agreed

between the parties that the physical possession of the said unit will be delivered to the complainant only upon complete payment of the total cost (together with interest for delayed payment) of the unit on submission of relevant documents.

20. In terms of the ABA, the possession was tentatively agreed to be delivered to the complainant on or before 31.03.2022 subject to the receipt of the entire payment of the sale consideration and other charges as stated above. It was therein specifically noted that any delay occasioned by promoter due to force majeure events affecting the development / construction of the project shall be exempted and that the promoter shall be entitled to the extension of the time for offering possession of the unit.
21. It may be noted that the project development during the crucial period between the years 2020 and 2022 were severely hampered on account of COVID -19 related restrictions and lockdowns, which amounts to force majeure events and the promoter was entitled to an extension of time for offering possession in terms of the ABA.
22. That due to pollution conditions, State Government stopped construction activities on various occasions, which caused delay in completion of Project in time.
23. On account of the force majeure events during the period 2020 and 2022, the Promoter time and again approached the HRERA Authorities seeking extension of the project deadline / registration certificate. Accordingly, the HRERA taking note of the COVID -19 / force majeure events, and other related concerns of the promoter, extended the timelines for project completion from time to time between 2020 and 2023.

24. Despite the delays caused by the force majeure events, which were beyond the control of promoter, the promoter completed the development and construction of the project as per the agreed sanction plans, respondent applied for occupation certificate on 05.09.2022 and received the occupation certificate from the Directorate of Town and Country Planning of Haryana in respect to the project on 22.12.2023.
25. In terms of the ABA, after receiving the occupation certificate as above, the promoter offered possession of the unit to the complainant by letter dated 11.01.2024. By the said letter, the promoter formally issued its "Offer of Possession" of the unit and also communicated the particulars of the payments due from the complainant to be paid to the promoter for receiving physical possession of the unit. As per the mutual discussion between the complainant and the respondent, the complainant had agreed to obtain club membership as part of the amenities associated with unit. In furtherance thereof, respondent issued a demand letter dated 18.03.2025 directing the complainant to deposit of Rs. 15,00,000/- (Excluding GST) towards club membership on or before the physical handover of the unit.
26. That as per clause 10 of allotment letter dated 21.09.2019, it was expressly agreed by the complainant that club membership charges shall be payable at the time of possession, at the applicable rates. The said clause forms an integral part of the contractual terms accepted by the complainant at the time of booking of unit.
27. That admittedly the parking charges amounting to Rs. 4,00,000/- were duly included within the total cost value (TCV) of the apartment as specified in the apartment buyer agreement. No separate or additional amount towards parking has ever been demanded by the respondent.

28. That the possession was offered vide letter dated 11.01.2024 against payment of all dues, completion of formalities but the allottee failed to pay interest for delayed payment and other charges and did not file any document required for taking possession of flat. The complainant is required to pay a sum of Rs. 1,77,808/- being interest on delayed payment Rs. 2,48,400/- on account of holding charges and club membership charges of Rs. 15,000,00/- plus applicable G.S.T as demanded vide letter dated 18.03.2025.
29. That the complainant failed to discharge his obligation in respect of the payment of the remaining dues. The complainant was fully aware that upon the promoter providing offer of possession, the complainant was required to remit the balance due payments and others charges including holding charges and interest for delayed payment.
30. That the complainant was required to take possession of the allotted unit within 30 days from the date of offer of possession, subject to payment of the dues, execution of necessary indemnities, undertakings, and other requisite documents. The complainant, however, failed to comply with this essential condition and due payment which disentitles them of any right to claim physical possession. The complainant cannot take advantage of his own wrong.
31. That the respondent obtained the occupation certificate for the project and, in compliance with the apartment buyer agreement ("ABA"), issued an offer of possession to the complainant on 11.01.2024. In view of the conditions mentioned in allotment letter dated 21.09.2019 duly agreed by the complainant that club membership was part of the amenities associated with the unit, a demand letter dated 18.03.2025 was issued requesting payment of Rs. 15,00,000/- towards club

membership prior to the physical handover of the unit. The said demand is in consonance with the agreed terms and is fully justified.

32. That admittedly the parking charges amounting to Rs. 4,00,000/- were duly included within the total cost value of the apartment as specified in the apartment buyer agreement. No separate or additional amount towards parking has ever been demanded by the respondent.
33. 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 those undisputed documents and submissions made by the complainant.

E. Jurisdiction of the authority

34. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

35. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

36. 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.

37. 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 objection raised by the respondent

F.I Objections regarding force majeure.

38. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit on or before 31.03.2022. Therefore, the due date of subject unit comes out to be 31.03.2022. The plea of the respondent company regarding Covid 19 is devoid of merit as the covid came in 2020. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.**G. I Handover the actual, legal, physical and vacant possession of the unit.**

39. The respondent company has obtained the occupation certificate on 22.12.2023 and subsequently offered the possession on 11.01.2024 but till date not handed over the possession of the unit. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority

G.II Interest for delay possession charges till the actual handover of the unit in question.

40. In the present complaint, the complainant intends 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

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."*

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

7. 1 Schedule for possession of the Said Apartment

The Company and Allottee (s) agree and understand that timely payment of installments by the Allottee (s) as per Payment Plan and timely delivery of possession of the Unit along with parking (if applicable) to the Allottee(s) are the essence of the Agreement. The Company assures to handover possession of the Unit along with parking (if applicable) as per agreed terms and conditions on or before 31/03/2022, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is delay due to "force majeure", court orders, Government policy/guidelines, decisions, refusal or withdrawal or cancellation or

withholding of grant of any necessary approvals by any authority for the said project.."

42. **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.

43. 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.
44. 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., 31.10.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
45. 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;"*

46. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to it in case of delayed possession charges.

47. 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 of the agreement executed between the parties on 08.11.2019, the possession of the subject apartment was to be delivered on or before 31.03.2022. Therefore, the due date of handing over possession was 31.03.2022. The occupation certificate for the project was received on 22.12.2023 and possession was offered on 11.01.2024. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement.

48. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. 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., 31.03.2022 till the offer of possession (11.01.2024) plus two months 11.03.2024 at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.III Direct the respondent to not charge anything contrary to the terms and conditions of the BBA such as:

- **Parking Charges of Rs. 4,00,000/- which is already covered in the TCV, that has been paid in full by the complainant.**

49. The Authority observes that the builder shall not charge anything beyond builder buyer agreement. Clause 1(iii) of the agreement dated 08.11.2019 states that "*The Total Price of the Unit alongwith parking usage (if applicable)*" therefore, the said amount is inclusive in the total sale consideration and the respondent is not liable to charge beyond that total sale consideration for parking charges.

- **Club Membership Charges of Rs. 15,00,000/- which is optional only as per the BBA, and the complainant wishes to not opt for the same.**

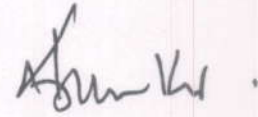
50. The Authority observes that the builder shall not charge anything beyond builder buyer agreement. Clause 1(ii)(v) of the agreement dated 08.11.2019 states that "*The Allottee has understood and agreed that in addition to the Total Price, following other charges and deposits*

shall be payable by the Allottee(s): (a) Club Membership charges, if the Allottee opts for the facility and takes membership of the Club at the time of Application for club membership. Therefore, the said amount is payable only if the allottee/complainant opts for the club membership.

H. Directions of the authority

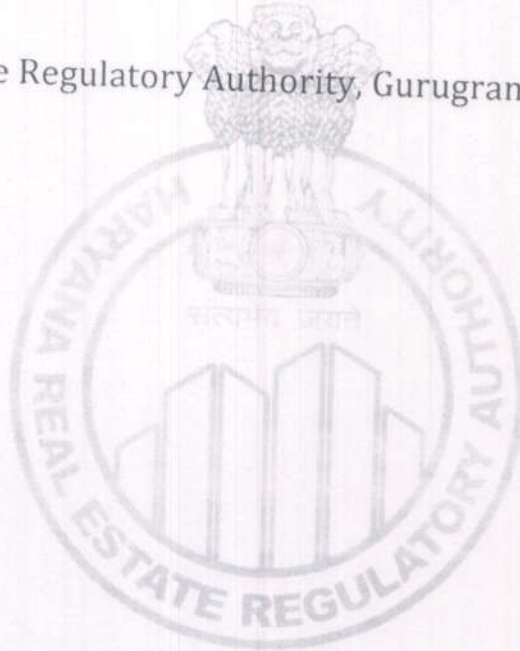
51. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
 - ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 31.03.2022 till the offer of possession plus two months i.e., 11.03.2024 at the prescribed rate 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order as per rule 16(2) of the rules.
52. Complaint stands disposed of.
53. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 31.10.2025



HARERA
GURUGRAM