

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

Complaint no. : 4920 of 2024
Date of complaint : 10.10.2024
Date of decision : 31.10.2025

Sanjeev Sethi

Address: H. No. D-033, Raheja Atlantis, Sector-31,
Gurugram - 122001

Complainant

Versus

1. M/s Ambience Projects and Infrastructure Pvt.
Ltd.

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

2. HDFC Bank Limited

Address: The Capital Court, Olof Palme Marg,
Munirka, New Delhi - 110067

Respondents**CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Ms. Daggar Malhotra (Advocate)

Sh. Dharmender Sehrawat (Advocate)

**Complainant
Respondent no. 1****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.	L-702, 7 th Floor, Tower L (Page no. 27 of complaint)
7.	Unit admeasuring	3090 sq. ft. of super area (Page no. 27 of complaint)
8.	Allotment	12.03.2020 (page no. 20 of complaint)

9.	Date of apartment buyer agreement	19.03.2021 (Page no. 23 of complaint)
10.	Possession clause	7. Possession of the Unit 7.1 Schedule for possession of the said Unit- 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.....
11.	Due date of delivery of possession	31.03.2022 (as per possession clause)
12.	Tripartite agreement	13.02.2024 (page no. 127 of complaint)
13.	Total sale consideration	Rs. 3,20,37,096/- (As per agreement at page 60 of the complaint)
14.	Total amount paid by the complainant	Rs. 1,86,10,532/- (page no. 16 of complaint)

15.	Occupation certificate	22.12.2023 (page no. 19 of addendum to reply)
16.	Offer of possession	02.01.2024 (page no. 86 of complaint)

B. Facts of the complaint:

3. That the complainant vide application dated 05.10.2016 applied for booking of residential apartment in tower K in respondent no.1's project namely - "The Creacions," located in Sector 22, Gurugram. That, vide letter dated 13.12.2019 respondent no.1 informed about the change in name of Tower K to Tower L and re-confirmed the booking of the unit L-702 in favour of the complainant. Respondent no. 1 vide allotment letter dated 12.03.2020, further reiterated and confirmed the allotment of unit bearing number L-702 in Tower L in favour of the complainant.
4. That complainant and respondent no.1 entered into an apartment buyers' agreement dated 19.03.2021 for unit/flat/apartment no. 702 on the 7th floor in block L, having super area of 3090 sq. ft. at a total sales price of Rs.3,20,37,096/-.
5. That, as per clause 7 of the apartment buyers' agreement, respondent no.1 was to complete construction and handover the possession of the completed unit by 31.03.2022. Therefore, the due date of possession is 31.03.2022. That, the project was nowhere near completion before outbreak covid and was already delayed so, the respondent no. 1 is not entitled to grace period for the same. There has been a delay of approx. 2 years in completion of construction as offer of possession has been made by the respondent no. 1 vide letter dated 02.01.2024 received by

the complainant only later on 05.01.2024. That, vide said letter dated 02.01.2024, respondent no.1 has sought payment of Rs.2,34,31,768/- in two parts: 75% at present and remaining 25% before actual handover of possession. That, on receipt of said letter, the complainant promptly responded to the same stating that he was not in India on account of his profession at the time, requested for an extension in payment deadline and further specifically informed respondent no.1 vide email dated 18.01.2024 that the said unit is incomplete and none of the amenities including not limited to elevators, parks, gym, club etc were all absent/ in incomplete stage at that time.

6. That the price of the unit was agreed to be escalation-free in terms of clause 1.3 of the ABA and therefore it is not comprehensible as to how respondent no.1 has charged EDC/IDC again without any explanation for the same. Further, none of the promised amenities are ready even after 10 months after the date of offer of possession pointing at the fact that the offer of possession vide demand letter dated 02.01.2024 is in invalid offer of possession.
7. That, on account of such urgency created by respondent no.1 for the above payment even though knowing that the unit, tower, amenities were all in incomplete state and such offer of possession was invalid, the complainant was compelled to take a loan from respondent no.2 for an amount of Rs. 1crore vide tripartite agreement . Accordingly, till date, the complainant has paid a total of Rs.1,86,10,532/- to respondent no.1 and all payments demanded by the respondent no. 1, even during Covid, have been paid timely by the complainant.

8. There has been a delay of 21 months from the due date of possession on the part of respondent no.1. Accordingly, this present complaint is being filed by the complainant.

C. Relief sought by the complainant:

9. The complainant sought following relief(s).

i. **Direct the respondent no. 1 to handover of possession of the said unit vide a valid offer of possession with all the promises amenities in complete state.**

ii. **Direct the respondent no. 1 to pay interest/charges for delay on total paid amount @ prescribed rate of interest from 31.03.2022 i.e., the due date of possession as per apartment buyers' agreement, till the date of actual handing over of the physical possession of the flat to the complainant.**

10. On the date of hearing, the authority explained to the respondent no. 1/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 no. 1.

11. That the complainant repeatedly delayed making payments as per the flexi interest free payment plan opted by him and it was only upon multiple reminders that he would pay the due instalments.

12. That the respondent no. 1 is a law-abiding company. The project of the respondent no. 1 "The Creacions" situated at Sector 22 Gurgaon is a RERA, Haryana registered project, bearing registration no. 318 of 2017 dated 17.10.2017.

13. That there is no delay in completion of the project as alleged in the complaint. In view of Covid-19 and stoppage of construction work due

to pollution on numerous occasions the RERA was pleased to extend the period upto 24.09.2020 vide their letter dated 26.05.2020. This was further extended upto 30.06.2021 vide their letter dated 02.08.2021. RERA vide their letter dated 30.09.2023 RC/REP/HRERA/GGM/2017/318 further extended the period upto 29.09.2023. The project was completed well within this extended time and respondent no. 1 applied for occupation certificate vide their letter dated 05.09.2022. In view of the fact that the OC was not forthcoming due to administrative reasons at the level of authorities which was to grant OC, respondent no. 1 applied vide their letter dated 10.10.2023 for further extension of time but in the meantime, OC was granted on 22.12.2023 and hence, the project is completed well within the time granted by RERA. Thus, there is no delay on the part of the respondent no. 1 and this complaint is liable to be dismissed on this ground alone.

14. That the complainant themselves is defaulter as he has failed to make the payment of the balance amount even after the notice has been issued to him to pay the balance amount thus present complaint is liable to be dismissed, on this sole ground.
15. That the complainant had applied for allotment on 05.10.2016, provisional allotment letter was issued on 12.03.2020 and the apartment buyer agreement was executed on 19.03.2021.
16. That as per the payment plan opted by the complainant, he was supposed to pay Rs. 15,00,000/- at the time of application i.e. 05.10.2016, and 30% of the basic sale price within 1 months of booking i.e. by 05.11.2016. The complainant agreed to make payments as per schedule given in the payment plan.

17. That on 02.01.2024 an offer of possession was given to complainant requesting a payment of Rs. 1,75,73,826/- being 75% of total outstanding due amount of Rs. 2,34,31,826/-. This amount was required to be paid within 21 days from the date of demand letter.
18. That on receipt of the above-mentioned offer of possession/demand letter the complainant responded to the same and sent an email dated 04.01.2024 to respondent no. 1 stating that the complainant was not in Country and will be back in early February 2024 and demanded an extension for payment till 15 Feb.
19. That after subsequent discussion on payment terms over emails against the booking of the apartment no. L-702 whereby the complainant requested respondent no. 1 that he will make the payment in instalment against the demand letter 02.01.2024. accordingly, the set schedule of payment was given to the complainant vide reminder demand letter dated 22.02.2024 demanding a sum of Rs. 1,65,00,000/- which was complainant had to pay in two instalments Rs. 1 Crore has to be paid on or before 01.03.2024 and the amount of Rs. 65,00,000/- on or before 01.08.2024.
20. That complainant paid a sum of Rs. 1Crore on 28.02.0224. Thereafter payment of Rs. 65,00,000/- has not been made by the complainant towards the outstanding of due amount as per the payment schedule given by letter dated 22.02.2024. Instead of making payments the complainant preferred a complainant before HARERA on 01.10.2024 alleging delay in handing over of the possession.
21. That respondent no. 1 sent a demand letter dated 04.01.2025 stating that in reference to respondent no. 1 demand letter dated 02.01.2024 calling upon to make a payment of Rs. 1,75,73,826/- against which the

complainant have not made a payment in respect of the aforesaid apartment.

22. That thereafter as per mail dated 22.02.2024 sent by the complainant to respondent no. 1 and on their request respondent no. 1 sent the demand letter dated 22.02.2024 calling upon to make a payment of Rs. 1,65,00,000/- against which the complainant has made a payment of Rs. 1 Crore on 28.02.2024 in respect of the aforesaid apartment. There is still an outstating payment of Rs. 65,00,000/- pending against the aforesaid apartment for which the Complainant are advised to release the said amount within 5 days from the date of issue of this letter i.e. 04.01.2025.
23. That as per letter dated 04.01.2025 if respondent no. 1 do not receive the aforesaid outstating within 5 days the provisional allotment of the above stated residential apartment shall stand cancelled and in that eventuality the respondent no. 1 shall be at liberty to deal with the said stated residential apartment in the manner as it deems fit and proper.
24. The present complaint was filed on 10.10.2024. The authority observes that vide proceedings dated 31.01.2025, 23.05.2025, 22.08.2025, 26.09.2025, 24.10.2025, 31.10.2025 none on behalf of respondent no. 2 appeared, not filed the reply of the complaint in the registry of the Authority till date. Despite multiple opportunities for filing reply it failed to comply with the orders of the authority. It shows that the respondent no. 2 was intentionally delaying the procedure of the Authority by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondent no. 2 have nothing to say in the present matter and accordingly the authority struck of the defence of the respondent no. 2.

25. 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

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

E.I Territorial jurisdiction

27. 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

28. 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.

29. 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 no. 1

F.I Objections regarding force majeure.

30. The respondent no. 1-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 no. 1-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 no. 1 company regarding Covid 19 is devoid of merit as the covid came in 2020. Thus, the promoter respondent no. 1 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 Direct the respondent no. 1 to handover of possession of the said unit vide a valid offer of possession with all the promises amenities in complete state.

31. The respondent no. 1 company has obtained the occupation certificate on 22.12.2023 and subsequently offered the possession on 02.01.2024 but till date not handed over the possession of the unit. The respondent no. 1 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 Direct the respondent no. 1 to pay interest/charges for delay on total paid amount @ prescribed rate of interest from 31.03.2022 i.e., the due date of possession as per apartment buyers' agreement, till the date of actual handing over of the physical possession of the flat to the complainant.

32. 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."*

33. 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."

34. **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.

35. 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.
36. 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%**.
37. 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;"*


38. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent no. 1/ promoter which is the same as is being granted to it in case of delayed possession charges.
39. 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 no. 1 is in contravention of the provisions of the Act. By virtue of clause 7 of the agreement executed between the parties on 19.03.2021, 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 02.01.2024. The respondent no. 1 has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent no. 1/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 no. 1 to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement.
40. 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 no. 1 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 (02.01.2024) plus two months 02.03.2024 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.

H. Directions of the authority

41. 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 no. 1 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 no. 1 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 no. 1 from the due date of possession 31.03.2022 till the offer of possession plus two months i.e., 02.03.2024 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 no. 1/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(z a) 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 no. 1 is directed to pay arrears of interest accrued within 90 days from the date of order as per rule 16(2) of the rules.
42. Complaint stands disposed of.
43. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.10.2025

