

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

Complaint no. :	3410 of 2020
First date of hearing:	29.01.2021
Date of decision:	24.09.2021

1. Sachin Gupta
2. Swasti Bansal
Both RR/o: - House No. 32, Vivekananda Puri,
First Floor, Sarai Rohilla, New Delhi-

Complainants

Versus

M/s Anant Raj Industries limited
Office: CP1 Sector- 8 IMT Manesar
Dist.- Gurugram, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Shri Ashok Mittal (Advocate)
Ms. Aparna Gupta (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 20.10.2020 has been filed by the complainants/allottees in Form CRA 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 allottees as per the agreement for sale executed inter se them.

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A. Project and unit related details

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

S.No.	Heads	Information
1.	Project name and location	"Maceo" Sector- 91, Mewka Village, Gurugram
2.	Project area	15.575 Acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	71 of 2008 dated 25.03.2008 valid till 24.03.2025
5.	Name of licensee	Jubilant Software Service ltd.
6.	HRERA registered/ not registered [extension granted vide no.- 09 of 2019, dated:25.11.2019 Valid till:17.08.2020 (Validity of registration has expired)]	63 of 2017 dated 18.08.2017 [Valid up to 17.08.2019]
7.	Occupation certificate granted on	28.11.2019 [page -13 of reply]
8.	Unit no.	Apartment no.- E-901, Tower E, 9 th Floor

		[Page no.- 34 of Respondent]
9.	Unit measuring	1708 sq. ft. [Page no-34 of complaint]
10.	Date of execution of buyer's agreement	29.08.2012 [Page 26 of complaint]
11.	Payment plan	Construction linked payment plan
12.	Total consideration as per statement of account dated 29.11.2019	Rs. 62,84,730/- [Page 21 of reply]
13.	Total amount paid by the complainants as per statement of account dated 29.11.2019	Rs. 56,68,055/- [Page 21 of reply]
14.	Due date of delivery of possession as per clause 7(1) of the said agreement i.e., 36 months from the date of execution of this agreement. + 6 months grace period. [Page 38 of complaint]	29.08.2015 (Calculated from date of execution of agreement i.e., 29.08.2012) [Note: Grace period is not allowed]

15.	Date of offer of possession to the complainants	30.11.2019 [Page 16 of reply]
16.	Delay in handing over possession from due date of possession i.e., 29.08.2015 till 30.01.2020 i.e., date of offer of possession plus 2 months.	4 years 5 months and 1 day

B. Facts of the complaint

3. The complainants have made the following submissions in their complaint:
- That as per allotment letter dated 19th January 2012, the complainants are allotted apartment no. E-901, tower E, 9th Floor, with a super area of 1708 sq. feet @ Rs. 2644/- per sq. feet and wherein the complainants paid booking amount of Rs. 5,12,875/- (five lakh twelve thousand eight hundred seventy-five only).
 - The complainants submitted that as per agreement dated 29th August 2012 the basic sales price of the apartment was Rs.45,15,952/- along with EDC of Rs. 340/- per sq. ft. amounting to Rs.5,80,720/- covered one car park in the common area of Rs. 2,50,000/-, PLC of @ Rs. 150 per sq. ft., and club membership charges of Rs.75,000/- total amounting to Rs.57,63,272/-.
 - The complainants submitted that they made regular payments as demanded by the promoter and paid the interest on any delays in paying the instalment. As per the statement of accounts issued by

the promoter dated 06.02.2019 Rs. 45,27,158.62/- were paid till 14.03.2019.

- d. The complainants submitted that it is pertinent to mention here that as per the builder buyer agreement the possession of the unit in question was to be handed over within 36 months from the date of the said agreement with a grace period of 180 days as provided under clause 7.1 of the agreement i.e., possession of the unit in question was to be handed over lastly by February 2016 however at that time the construction of the project was far from completion.
- e. The complainants submitted that the respondent has wrongly and illegally claimed reserve car parking slot charges amounting to an exorbitant amount of Rs.2,50,000/-. The reserve car parking charge is part of common area for which the builder cannot seek any cost from the complainants.
- f. The complainants submitted that the club membership charges amounting to Rs. 75,000/- are charged by way of undue influence with the respondent being in dominant position and misusing the position to coerce the complainants to pay the same. Generally, such charges are optional in nature as such luxurious amenities cannot be forced upon the buyer.

C. Reliefs sought by the complainants

4. The complainants are seeking the following relief:
 - a. Direct the respondent to make payment of interest accrued on amount collected by the respondent from the complainants, on account of delayed offer for possession and which interest should

- be @18% p.a. from the date as and when the amount was received by the respondent from the complainants.
- b. Direct the respondent to pay interest amount on account of delay of possession accrued from the date of expiry of 36 months after the date of allotment letter/booking amount instead of date of buyer's agreement.
 - c. Direct the respondent to obtain insurance if not obtained as per section 16 of RERA Act, 2016 before handing over the possession of common area to the association of allottees.
 - d. Any common area car parking including basement car park, which is not garage, if sold then the money collected on such account shall be refunded along with interest.
 - e. That the club membership charges be made optional with the same being a luxury.
 - f. Direct the respondent to pay litigation cost @ Rs. 5 lacs to the complainants.
 - g. That orders may be passed against the respondent in terms of section 59 of the Act, 2016 for the failure on part of respondent to register itself with this hon'ble authority under the RERA Act, 2016.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 filed by the respondent

6. The respondent has contested the complaint on the following grounds:
- a. That all approvals and license granted to the respondent for constructing the project in question are a matter of record and it

- was only on the basis of approvals and license, the housing project was constructed which has reached its final construction stage in which occupancy certificate has been granted and possession has been offered including for the tower "E" in which the complainants has booked flat/unit.
- b. That as per the apartment buyer agreement, the respondent had proposed to handover possession of the flat/unit within 36 months plus 180 days in total from the date of execution of the agreement subject to any delay due to force majeure. The project "Maceo" had to undergo unforeseen and adverse circumstances causing the work progress of the project "Maceo" being hampered and delayed because of which the possession of the flat/ apartment could not be handed over within the stipulated period. The progress of the project was affected due to circumstances which were beyond the control of the respondent and the same is covered under the force majeure clause 19 of the buyer agreement. The delays were caused on account orders passed by the Hon'ble National Green Tribunal and the State Pollution Control Board which issued various directions to builders to take additional precautions and steps to curtail pollution. It is further submitted that all these events led to suspension and stoppage of works on several occasions which also resulted in laborers and contractors abandoning work. Hence, the respondent is not liable for the delay in handing over possession of the flat/ apartment of the complainants.
- c. That the respondent has time and again informed the complainants about the progress of the project. The respondent recently informed the complainants that despite respondent facing several

hindrances which were beyond the control of respondent, the project is completed and the occupancy certificate for tower "E" has been received on 28.11.2019. The flat/unit of the complainants is completed, and possession has been offered by way of possession cum demand letter dated 30.11.2019 to the complainants. The complainants have already been intimated about the same and accordingly, the instant complaint is not maintainable.

- d. That it is pertinent to mention that the terms and conditions of the builder buyer agreement were carefully perused and upon agreeing to the same, the complainants signed the agreement wherein complainants had agreed to the car parking charges as well as club membership. Hence, the dispute/contention on the terms and condition at this stage is merely an afterthought to harass the respondent by dragging it to the court for illegally extracting money. The charges were as per the agreed schedule (clause 1.1, clause 15, and clause 5.2) under the agreement.
- e. That the respondent values its patrons and has regularly catered to the queries. The respondent has time and again informed the complainants about the progress of the project and also that the possession of the flat/unit can be taken and at that time, the delay possession charges, if any, will be paid to the complainants. However, the complainants have till date failed to take possession of his flat/unit and solely to extract money from the respondent on the ground of delay possession has filed the instant complaint.
- f. That is entitled to compensation, if any, as per para 1 and 2, for delayed possession under clause 7.7 of the agreement as per which compensation will be given to the allottees at the time of execution

of conveyance deed. Further, even the RERA act does not permit compensatory rate of interest beyond prescribed rate which is much less than 18%.

- g. That as per section 16(1) the benefit of insurance is to be transferred at the time of promoter entering into an agreement for sale with the allottees. However, no such clause was specified in the agreement. Further, it is pertinent to mention that the terms and conditions of the builder buyer agreement were carefully perused and upon agreeing to the same, the complainants signed the agreement.
- h. The respondent submitted that the complainants ought to have referred the disputes, if any, to the arbitration in view of clause 35 of the apartment buyer agreement executed between the complainants and respondent. The complainants and the respondent have specifically and categorically agreed that in the event of disputes, claim and /or differences shall be referred to a sole arbitrator appointed by respondent.

E. Jurisdiction of the authority

7. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed 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. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings of the authority on relief sought by complainants

F. I Direct the respondent to make payment of interest accrued on amount collected by the respondent from the complainants, on account of delayed offer for possession and which interest should be @18% p.a. from the date as and when the amount was received by the respondent from the complainants

10. In the present complaint, the complainants intend 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."

11. Clause 7.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"7.1. POSSESSION

The Developer based on its present plans and estimates and subject to all just exceptions, proposes to complete construction/development of the Said Project and handover the possession of the Said Apartment to the Allottee(s) within a period 36 months from date of execution of this agreement unless there shall be any delay or failure due to force majeure. The allottees understands and agrees that the Developer shall be entitled to a grace period of 180 (one hundred and eighty) days after the expiry of the aforesaid 36 (thirty-six) months. The Developer after completing the construction shall apply and obtain the Occupation Certificate in respect of the residential apartment(s) from the concerned authority(ies). However, in case any condition arises that is beyond the control of the company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition."

12. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the

agreement and the allottee is left with no option but to sign on the dotted lines.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 36 months from date of agreement. The period of 36 months expired on 29.08.2015. Since in the present matter the BBA incorporates qualified reason for grace period/extended period in the possession clause for obtaining occupation certificate subject to force majeure. The force majeure reasons provided by the promoter, are not taken into consideration by the authority the construction of the project is not yet completed and the promoter had not applied for occupation certificate in the competent authority within the stipulated time and as such, the grace period of six months is disallowed by the authority at this stage.

13. **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.

The legislature in its wisdom in the subordinate legislation under 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.

14. 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., **24.09.2021** is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.

15. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default.

The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottees, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default;

(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

16. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **9.30%** by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

17. 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 7.1 of the agreement executed between the parties on 29.08.2012, the possession of the

subject apartment was to be delivered within 36 months from the date of execution of agreement. The period of 36 months expired on 29.08.2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 29.08.2015. The respondent has offered the possession of the subject apartment on 30.11.2019. 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. 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., 29.08.2015 till the offer of the possession plus two months i.e., 30.01.2020, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.II Any common area car parking including basement car park, which is not garage, if sold then the money collected on such account shall be refunded along with interest

17. The complainants have contended that the respondent has wrongly and illegally claimed reserved car parking slot charges amounting to an exorbitant amount of Rs.2,50,000/-. The reserve car parking charge is a part of common area for which the builder cannot seek any cost from the complainants.
18. It is pertinent to mention that clause 15.2 of the buyer agreement executed between both the parties refers to car parking.

The allottee undertakes to park its vehicle only in allotted parking spaces forming part of the said apartment, not anywhere else in the project. The allottee agrees that all such reserved car parking spaces

allotted to the occupants of the project along with unallotted car parking spaces remaining the ownership of company/conforming parties are not part of the common area of the project and shall not form the part of the common area for the purpose of declaration filed by the company under the apartment act.

19. As far as issue regarding parking is concerned, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act. However as far as issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area.

F.III That the club membership charges be made optional with the same being a luxury

20. That the complainants submitted that the club member charges amounting to Rs.75,000/- are charged by way of undue influence of the respondent being in dominant position and misusing the position to coerce the complainants to pay the same. Generally, such charges are optional in nature as such luxurious amenities cannot be forced upon the buyer.
21. It is pertinent to mention that clause 5.2 of the buyer agreement executed between both the parties refers to club charges.

"The allottee(s) undertakes to pay mandatorily all the applicable club charges/club membership fees for the club facilities. The amount shall be payable as and when demanded by the company and the allottee(s) shall be required to sign the necessary documents for the membership of the club"

22. The authority is of the view that if the club has come into existence and the same is operational or is likely to become operational soon i.e. within reasonable period of around six months, the demand raised by

the respondent for the said amenity shall be discharged by the complainants as per the terms and conditions stipulated in the agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club membership registration charges from the members only after completion of the club.

23. On consideration of the documents available on record and submissions made by both the parties, 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 7.1 of the buyer's agreement executed between the parties on 29.08.2012, possession of the booked unit was to be delivered within a period of 36 months from the date of execution of agreement plus 6 months grace period. Therefore, the due date of handing over possession comes out to be 29.08.2015. The responded has not obtained occupation certificate within stipulated time as the occupation certificate has been received by the respondent on 28.11.2019 and the possession of the subject unit was offered to the complainants on 30.11.2019. Therefore, grace period is not allowed. Hence, the due date of possession comes out to be 29.08.2015 and the complainants are entitled to delay possession charges from due date of possession i.e., 29.08.2015 till offer of possession plus two months i.e., 30.01.2020. The authority is of the considered view that there is delay on the part of the respondent to offer of physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 29.08.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and



responsibilities as per the buyer's agreement dated 29.08.2012 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 physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 29.08.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 29.08.2012 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e., 9.30% p.a. w.e.f. 29.08.2015 till 30.01.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules. 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 28.11.2019. However, the complainants offered the possession of the unit on 30.11.2019, so it can be said that the respondent came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the respondent/allottee keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in

habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 29.08.2015 till the expiry of 2 months from the date of offer of possession (30.11.2019) which comes out to be 30.01.2020. Accordingly, it is the failure of the promoter/respondent to fulfil its obligations, responsibilities as per the buyer's agreement dated 29.08.2012 to give the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 19(6), 19(7) and 19(10) of the Act on the part of the respondent is established.

G. Directions of the authority

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to pay the interest at the prescribed rate i.e., 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 29.08.2015 till the expiry of 2 months from the date of offer of possession i.e., 30.01.2020.
 - The arrears of such interest accrued from 29.08.2015 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.

- c. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- d. The rate of interest chargeable from the complainants /allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- e. If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.
- f. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
25. Complaint stands disposed of.
26. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021

Judgement uploaded on 21.12.2021.