

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

Complaint no. :	643 of 2019
Date of filing complaint:	20.02.2019
First date of hearing:	05.12.2019
Date of decision :	03.02.2022

Akanksha Sharma R/o: House No.972, Sector-15, Part 2 Gurugram, Haryana	Complainant
Versus	
1. M/s Maxworth Infrastructure Private Limited R/o: F 30-31, First floor, MGF megacity mall, M.G Road, Gurugram-122002	Respondent
2. Murliwala Realcon Private Limited R/o: 10 th floor, Tower 9, Building B, DLF Cyber City, Phase 3, Gurugram-122002	

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainant
Sh. Shankar Wig (Advocate)	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 provision of the Act or the rules and regulations made there under or to the allottee 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:

S.No.	Heads	Information
1.	Project name and location	"City Residency", Sector 10 A, Gurgaon
2.	Project area	2 acres
3.	Nature of the project	Residential complex
4.	license status	DULP/TP/A2/2013/47344 Issued by urban local bodies department, Haryana
5.	RERA Registered/ not registered	Registered At Panchkula 252 of 2017 dated 09.10.2017
	RERA Registration valid up to	08.10.2021
6.	Unit no.	704,7 th floor, block B [Annexure P1 at page no. 23 of the complaint]
7.	Unit measuring (super area)	1200 sq. ft. [Annexure P1 at page no. 23 of the complaint]
8.	Date of allotment letter	N/A
9.	Date of execution of builder buyer agreement	06.08.2014 [Annexure P1 at page no. 21 of the

		complaint]
10.	Date of commencement of construction	15.12.2014 As per demand letter till start of foundation at page no. 41 of the complaint and no other document for the start of construction of the tower of the allotted unit is available in the file.
11.	Due date of delivery of possession <i>Clause 14: within 36/3 months /years from the date of commencement of construction of that particular tower where buyer(s) unit is located (with a grace period of 6 months) subject to force majeure events.</i>	15.12.2017 [Calculated from the demand letter dated 15.12.2014]
12.	Total sale consideration	Rs.47,95,000/- [Page no 44 of the complaint]
13.	Total amount paid by the complainant	Rs.47,60,000/- As per ledger account 01.04.2010 to 31.03.2019 at page no. 48 of the complaint
14.	Payment plan	Construction linked payment plan [Page 39 of the complaint]
15.	Offer of possession	Not offered
16.	Occupation Certificate	Not obtained
17.	Delay in delivery of possession till the date of decision i.e. 03.02.2022	4 years, 1 month, 19 days

B. Facts of the complaint:

3. That the complainant always wants to buy of her own independent flat and that was the right time to own it for self-use. complainant get to know about City Residency project situated at Sector - 10A Gurugram promoted by a reputed Maxworth

Infrastructures Private Limited and Murliwala Realcon Private Limited i.e. the respondent's parties.

4. That the complainant along with her family members visited the project site. The location was excellent, and they consulted the local representative of the developer. The local representative of developer allures the complainant with special characteristics of finishing of flat and assured that physical possession of flat will be handover within 36 months as construction of tower has been already started.
5. That on 04.08.2014, complainant / petitioner booked a 2 BHK Flat admeasuring 1200 sq. ft. bearing Flat No. B - 704 in project "City Residences", situated at Sector - 10A, Gurgaon and issued a cheque of Rs. 3,70,000/- as booking amount along with application form. The flat was purchased under the construction Lnk Payment Plan (Plan is annexed on page no. 19 of Builder Buyer Agreement). The total sale consideration of flat was 47,95,000/-
6. That on 06.08.2014, a pre-printed flat buyer agreement was executed between complainant and respondents on 06.08.2014. As per clause no. 14 of flat buyer agreement, respondents have to handover the possession of the apartment "within 36/3 months /years from the date commencement of construction of that particular tower where buyer(s) unit is located (with a grace period of 6 months)". The construction was commenced much prior to booking and execution of flat buyer agreement; therefore, due date of possession was by 06.08.2017.

7. That on 15.12.2014, the respondents raised a demand of Rs. 17,67,094/- against the construction stage "DPC level" and on 02.07.2015, the respondents raised a demand of Rs. 11,40,187/- against the construction stage "6th Floor roof slab". That on 17.12.2015, the complainant issued three cheque of Rs. 4,30,000/- , Rs. 4,40,000/- and Rs. 4,50,000/- against the demand of respondents.
8. That thereafter complainant continues to pay instalment as per demand raised by respondent and as per construction stages of payment plan. Till date 02.07.2018 complainant has paid Rs. 47,60,000/- i.e. 99% of total sale consideration.
9. That on 02.02.2019, the respondent issued a statement of account which show that till date respondents demanded Rs. 45,70,511/- and complainant paid Rs. 47,60,000/- with closing credit balance of Rs. 1,89,489/-
10. That as per the payment schedule of the builder buyer agreement, complainant has already paid the more than 99% amount i.e. Rs. 47,60,000/- along with car parking and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject flat for a long time, she raised her grievance to respondent. Though complainant was always ready and willing to pay the remaining instalments provided that there is progress in the construction of flat.
11. That since August 2017, complainant and her father regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted flats, but all in vain,

in spite of several visits by the complainant. The complainant never been able to understand/know the actual status of construction. Though towers seem to be built up but there was no desirable progress observed on finishing and landscaping work.

12. That the complainant had purchased the flat with intention that after purchase, she will live in her own flat. That it was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat along like basement and surface parking, landscaped lawns, club/ Pool, etc. as shown in brochure at the time of sale, would be handed over to the complainant as soon as construction work is complete i.e. by August, 2017. Thereafter respondent assured to complainant that physical possession of flat will be handover by February 2018, but respondent failed to honour his /her promises.
13. That due to above acts of the respondent and of the terms and conditions of the builder buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice. It is pertinent to mention here that respondent never told the actual reason behind delay in completion of project and handing over the possession of flat.
14. It is highly pertinent to mention here that respondents have given 08.10.2021 as due date of completion of project while registering the project in Hon'ble Haryana Real Estate Regulatory Authority, Panchkula vide Regd. No. 252 of 2017 dated 09.10.2017.

15. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others. It is prima facie clear on the part of the respondent which makes them liable to answer this Hon'ble Authority. It is highly pertinent to mention here that now a day's many builders are being prosecuted by court of law for siphon off the funds and scraping the project mischievously.
16. That for the first-time cause of action for the present complaint arose in or around 2014 when the Buyer Agreement containing unfair and unreasonable terms was, for the first time, forced upon the Allottees. Thereafter cause of action arose in August 2017, when the Respondent Party failed to handover the possession of flat as per the Buyer Agreement. Further the cause of action again arose on various occasions, including on a) February, 2018; b) March. 2018; c) June, 2018, d) November, 2018; e) December, 2018, and on many time till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till the handing over of possession.

D. Reply by respondent

4. That it is submitted that the present complaint is nothing but an abuse of process of law and the complainant possesses ulterior motives in filing the complaint.
5. That it is submitted that the complainant had booked two flats and as per the terms of the agreement signed by the complainant, he was also bound to make scheduled payments in a timely manner.
6. That the complainant made the full payment with respect to one flat and paid only 20% of the sale consideration for the second flat despite various reminders sent by the respondent to him.
7. That it is submitted that as per the terms of the agreement both the parties have certain obligations and as per the delay clause, as incorporated in the agreement, both the parties would be liable to pay penal interest in the event of delay of fulfilling their respective obligations i.e. payment of sale consideration by the complainant.
8. That it is submitted that whilst the complainant is claiming interest and other charges: from the respondent for the failure to handover possession of the flat which has been fully paid for to him, the complainant is conveniently forgetting that he is also under an obligation to pay penal interest to the respondent for the flat on which only 20% of the sale consideration has been paid.

9. That it is submitted that the delay in completing the project is attributable to the coronavirus pandemic and was beyond the control of the respondent.
10. That the respondent has completed the project now and has applied for occupancy certificate to the competent authority That it is submitted that the issuance of occupancy certificate is likely to take some time as necessary approvals are to be given by the Government authority.
11. That it is submitted that the respondent would hand over the possession of the aforesaid flats to the complainant on or before 31.12.2022 subject to receipt of balance sale consideration along with penal interest and other charges.
12. That it is submitted that the respondent would also pay the charges to the complainant for delay caused by the respondent in delivering the possession to the complainant even though the delay in completing the project cannot be attributed to him.
13. 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:

14. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

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 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.

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

F. Findings on the objections raised by the respondent:

F. I. Objection regarding Timely payments:

The respondent has alleged that the complainant having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. Further the above-mentioned contention is supported by the builder buyer agreement executed between both the parties. Clause 3 provides that the buyer shall make all payments in time without any reminders from the developer and further agrees that the payments on due dates as set out in annexure shall be made in time and manner specified.

But the respondent cannot take advantage of this objection of timely payments being himself at wrong firstly by still not obtaining the occupation certificate and offering the possession of the unit despite being delay of 4 years, 1 month, 19 days and the complainant has already paid 90% of the total sale consideration till date. Therefore, the respondent itself failed to complete its contractual and statutory obligations. Moreover, there is no document on file to support the contentions of the respondent regarding delay in timely payments.

G. Findings regarding relief sought by the complainant:

G.1 Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till the handing over of possession.

Admissibility of delay possession charges:

15. 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

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. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant 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 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.
17. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc.

between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

18. The authority has gone through the possession clause of the agreement. 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 the complainant not being in default under any provisions of this agreements and in 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 apartment buyer's 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.

19. **Admissibility of grace period:** The respondent promoter has proposed to handover the possession of the unit within 36/3 months /years from the date of commencement of construction of that particular tower where buyer(s) unit is located (with a grace period of 6 months) subject to force majeure events. The grace period of 6 months is disallowed as no substantial evidence/documents have been placed on record to corroborate that any such event, circumstances, condition has occurred which may have hampered the construction work. Therefore, the due date of possession comes out to be 15.12.2017.
20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, 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.

21. 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.
22. 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., 03.02.2022 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
23. 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;”*

Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.

24. 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 14 of the buyer's agreement executed between the parties on 06.08.2014. The developer proposes to hand over the possession of the apartment within 36/3 months /years from the date of commencement of construction (with a grace period of 6 months) subject to force majeure events. The date of commencement of construction of the project is 15.12.2014 as per demand letter till start of foundation and no other document for the start of construction of the tower of the allotted unit is available in the file and six months of grace period is disallowed so the possession of the booked unit was to

be delivered on or before 15.12.2017. 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 complainant as per the terms and conditions of the buyer's agreement dated 06.08.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 06.08.2014 to hand over the possession within the stipulated period.

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 respondent has not been applied for the occupation certificate and same has not been received yet from the competent authority Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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. 15.12.2017 till the date of actual handing over of the possession or offer of possession plus two months after obtaining occupation certificate whichever is earlier.

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 complainant is entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of possession i.e. 15.12.2017 till the date of actual handing over of the possession or offer of possession plus two months after obtaining occupation certificate 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 of 2016.

H. Directions of the authority:

25. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. 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 complainant from due date of possession i.e. 15.12.2017 till the date of actual handing over of the possession or offer of possession plus two months after obtaining occupation certificate whichever is earlier.
- ii. The arrears of such interest accrued from 15.12.2017 till the date of order by the authority shall be paid by the promoter to the allottees 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 allottees before 10th of the subsequent month as per rule 16(2) of the rules.



- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the complainant/allottee 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 allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.
26. Complaint stands disposed of.
27. File be consigned to registry.

V.K. Goyal
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dr. KK Khandelwal
(Dr. KK Khandelwal)
Chairman

Dated: 03.02.2022