BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**414 of 2020**
First date of hearing	**:**	**16.04.2020**
Date of decision	**:**	**25.01.2022**

Mapsko Builders Pvt. Ltd.
Address:- Baani the address, 6th floor, No.1, Golf Course Road, Sector-56, Gurugram-122011

Complainant

Versus

Manish Dalal
Address:- House no. 71, C/14, Kirpal Nagar, Rohtak, Haryana-124001

Respondent

CORAM:
Dr. K.K Khandelwal — **Chairman**
Shri V.K Goyal — **Member**

APPEARANCE
Ms. Shriya Takkar — Advocate for the complainant
None — Advocate for the respondent

EX-PARTE ORDER

1. The present complaint dated 18.02.2020 has been filed by the complainant/promoter 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 19(6) (7) and (10) of the Act.

A. Project and unit related details

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

S.No.	Heads	Information
1.	Name and location of the project	"Mapsko Mount Ville" Sector-78-79, Gurugram
2.	Nature of the project	Group housing complex
3.	Project Area	16.369 acres
4.	RERA registration status	Registration no. 328 of 2017 dated 23.10.2017 to 30.11.2019 **Extension no. 08 of 2019 dated 23.12.2017 valid till 30.08.2020**
5.	DTCP license no.	38 of 2012 dated 22.04.2012 valid upto 21.04.2020
6.	Name of licensee	Mapsko Builders
7.	Date of allotment	04.09.2013 (Annexure A-9 on page no. 71 of complaint)
8.	Apartment/unit no.	1601, 15th floor, Tower-C (Annexure A-10 on page no. 75 of complaint)
9.	Date of builder buyer agreement	16.09.2013 (Annexure A-10 on page no. 73 of the complaint)

10.	Total sale consideration	Rs. 88,55,713/- (As per Invoice dated 04.06.2020 issued by the complainant on page 11 of addition documents of complaint)
11.	Amount paid by the respondent	Rs. 26,58,533/- (As per Invoice dated 04.06.2020 issued by the complainant on page 11 of addition documents of complaint)
12.	Outstanding amount	Rs. 61,99,839/- (As per Invoice dated 04.06.2020 issued by the complainant on page 11 of addition documents of complaint)
13.	Due date of possession	16.03.2018 (Calculated from the date of execution of agreement including the grace period of 6 months)
14.	Occupation certificate	03.06.2020 (Annexure A/35 of additional documents of complaint on page no. 5)
15.	Offer of possession	04.06.2020

		(Annexure A/36 of additional documents of complaint on page no. 8)
16.	Grace period utilization	Grace period is allowed as per clause 18 b as force majeure conditions existed due to NGT orders.
17.	Possession clause – 18	**Construction & force majeure conditions** **a.** *That the Promoter shall endeavor to complete the construction of the said Flat within a period of* ***48 months from the date of signing of this Agreement with the Buyer or within an extended period of six months subject to force majeure conditions*** *as mentioned in Clause (b) hereunder or subject to any other reasons beyond the control of the Promoter. No claim by way of damages/compensation shall lie against the Promoter in case of delay in handing over the possession beyond 54 months from the date of signing of this Agreement, except Charges ₹ 5 per sq. ft. per month will be payable by the Promoter to the Original Allottee only till the handing over the possession, further no said charges will be payable by the Promoter to the Original Allottee whose payment not received as per time frame mentioned in this agreement.*

		b. That the Promoter shall not be held responsible or liable for not performing of its obligations or undertaking mentioned in this Agreement if such performance is prevented, delayed or hindered by act of God, fire, flood, explosion, war, riot, terrorist-acts, earth quake, court orders, Government orders, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labour unions or any other cause (whether similar or dissimilar to the foregoing) not within the reasonable control of the Promoter. [Page 71 of complaint]

B. Facts of the complaint

3. The complainant has submitted that the respondent approached the complainant/developer through their real estate agent M/s Property Junction Realtors Pvt. Ltd. for booking of a flat in the Mapsko Mount Ville. The respondent through the aforesaid real estate agent submitted an application form dated 25.09.2012 which was duly signed by the respondent and included the indicative terms and conditions of the allotment. All the terms and conditions

including the cost of the flat, size/super area of the flat etc. were clearly mentioned in the said application along with other terms and conditions. That the respondent opted for the Installment (construction) linked payment plan. That the complainant has raised various demands due on completion of floor wise slab, but no payments were made by the allottee.

4. That vide demand letter dated 26.09.2019 the complainant raised the demand due on completion of internal plaster. The same was payable on or before 06.10.2019 however no payment thereof was made by the allottee. That vide demand letter dated 09.11.2019 the complainant raised the demand due on completion of brick work. The same was payable within 20 days however no payment thereof was made by the allottee.

5. That it is pertinent to mention here that as per the agreed terms and conditions the complainant was supposed to handover the flat to the respondents within 48 months from the date of execution of the flat buyer's agreement plus 6 months grace period, however further subject to force majeure conditions. That in the intervening period when the construction and development was under progress there were various instances and scenarios when the development and construction work had to be put on hold due to reasons beyond the control of the complainant. The parties have

agreed that if the delay is on account of force majeure conditions, the developer shall not be liable for performing its obligations. That the project got delayed and proposed possession timelines could not be completed on account of following reasons among others as stated below:

i. In the year, 2012 on the directions of the hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. Reference in this regard may be had to the judgment of ***"Deepak Kumar v. State of Haryana, (2012) 4 SCC 629"***. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce in the NCR as well as areas around it. Further, developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various stay orders of hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. That the National Green Tribunal

in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna Riverbed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed above continued, despite which all efforts were made, and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. That the above said restrictions clearly fall within the parameter "reasons beyond the control of the promoter" as described under of Clause 18 (b) of the flat buyer agreement.

ii. That on 19th February 2013 the office of the executive engineer, HUDA Division No. II, Gurgaon vide memo No. 3008-3181 had issued instruction to all developers to lift tertiary treated effluent for construction purpose for sewerage treatment plant Behrampur. Due to this instruction, the company faced the problem of water

supply for a period of several months as adequate treated water was not available at Behrampur.

iii. Orders passed by hon'ble High Court of Punjab and Haryana wherein the hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available sewerage treatment plants. However, there was lack of number of sewage treatment plants which led to scarcity of water and further delayed the project. That in addition to this, labour rejected to work using the STP water over their health issues because of the pungent and foul smell coming from the STP water as the water from the S.T.Ps of the state/corporations had not undergone proper territory treatment as per prescribed norms.

iv. Further, no-construction notice was issued by the hon'ble National Green Tribunal for period of several weeks resulting in a cascading effect. That in the year 2017,2018 and 2019 there was a blanket ban on construction and allied activities during the months of October and November, which caused massive interruption in construction work. There being a shutdown of construction for at least a few months approximately each year. Thus since 2017 the Promoter has suffered months of stoppage of construction work till 2019.

v. That due to the above-mentioned factors stoppage of construction work done by the Judicial/Quasi-Judicial authorities played havoc with the pace of construction as once the construction in a large-scale project is stalled it takes months after it is permitted to start for mobilizing the materials, machinery and labour. Once the construction is stopped the labour becomes free and after some time when the construction is re-started it is a tough task to mobilize labour again as by that time, they either shift to other places/cities or leave for their hometown and the **labour shortage occurs**. That after the blanket ban on construction was lifted, the cold climatic conditions in the month of December to February have also been a major contributing factor in shortage of labour, consequently hindering the construction of the project. That cold weather impacts workers/labourers beyond normal conditions and results in the absenteeism of labour from work. This is entirely beyond the control of the project developers as many or most of the labourers refuse to work in extreme cold weather conditions. It is submitted that, in current scenario where innumerable projects are under construction all the developers in the NCR region including the complainant suffer from the shortage of labour due to cold weather conditions. That the projects of not only the complainant

but also of all the other developers have been suffering due to such shortage of labour and has resulted in delays in the projects beyond the control of any of the developers. That in addition it is stated that all this further resulted in increasing the cost of construction to a considerable extent. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labourers at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects. That the said fact of labour shortage shall be substantiated by way of newspaper articles elaborating on the above-mentioned issues hampering the construction projects in NCR. That this was certainly never foreseen or imagined by the complainant while scheduling the construction activities. It is submitted that even today, in current scenario where innumerable projects are under construction all the developers in the NCR region including the complainant are suffering from the after-effects of labour shortage. That the said shortage of labour clearly falls within the parameter reasons beyond the control of the promoter as described under of Clause 18 (b) of the flat buyer agreement .

vi. That the Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions as per directions passed by the hon'ble Supreme Court/Hon'ble High Courts and Hon'ble National Green Tribunal, which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.

vii. That shortage of bricks in region has been continuing ever since and the complainant had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project. Apart from this, Brick Klins remained closed for a considerable period of time because of change in technology in firing to Zig Zag method etc., which again restricted the supply of Bricks.

viii. That crusher which is used as a mixture along with cement for casting pillars and beams was also not available in the adequate quantity as is required since mining department imposed serious restrictions against crusher from the stone of Aravalli region. That this acute

shortage of crusher not only delayed the project of the complainant but also shoot up the prices of crusher by more than hundred percent causing huge losses to complainant.

ix. That in addition the current Govt. has on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued. That in addition to the above, demonetization affected the buyer's in arranging/ managing funds which resulted in delayed payments/ defaults on the part of the Buyers. That due to lack/ delayed payments, the project was also affected since it was difficult for the Complainant also to arrange funds during the stress in the market during the said demonetization period.

x. That in addition to above all the projects in Delhi NCR region are also affected by the blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects. That such stay orders are passed every year either by hon'ble Supreme Court, NGT or/and other pollution boards, competent courts, Environment Pollution (Prevention &

Control) authority established under Bhure Lal Committee, which in turn affect the project. That to name few of the orders which affected the construction activity are as follows: (i) Order dated 10.11.2016 and 09.11.2017 passed by the hon'ble National Green Tribunal, (ii) Notification/ orders passed by the Pollution control board dated14.06.2018, 29.10.2018 and (iii) Letter dated 01.11.2019 of EPCA along with orders dated 04.11.2019, 06.11.2019 and 25.11.2019 of the hon'ble Supreme Court of India.

6. That it is all important to bring out and highlight here that on account of non-payment of instalments/dues this construction linked allotment by the respondents and other similar allottees, which amount had accumulated to approximately Rs.62.21 crores plus interest, the complainant in order to continue with the construction had to take an additional loan to the tune of Rs.72 crores from PNB HFL. This additional loan taken on account of non-payment of dues by the allottees had made the petitioner developer suffer an amount of Rs.5.63 crores of interest burden alone on the aforesaid borrowing. It appears that it has become a trend amongst the allottees nowadays to first not to pay of the instalments due or considerably delay the payment of the same and later on knock the doors of the various courts seeking refund of the amount along with compensation or delayed possession

compensation, thus taking advantage of their own wrongs, whereas the developer comes under severe resource crunch leading to delays in construction or/and increase in the cost of construction thereof putting the entire project in jeopardy. The crux of the matter which emerges from the aforesaid submission is that had the respondents as well as other similarly situated persons paid of their instalments in time, the petitioner developer would not have borrowed additional Rs.72 crores, rather it would have paid off a part of the earlier loan taken reducing the interest liability on the company as well as continuity with the construction at full pace. By failing to deposit the instalments on time the respondents have violated their contractual commitment and are estopped from raising any plea of delay in construction. RERA having been enacted by the legislature with the motive of balancing the rights and liabilities of both the developer as well as the allottees, the present petition is liable to be allowed as prayed for by this hon'ble authority.

7. That despite the aforementioned circumstances, the complainant completed the construction of the project diligently, without imposing any cost implications of the aforementioned circumstances on the allottees. That respondents are in breach of their contractual obligations as they have failed to make timely payments. However, despite the failure to make the timely payment, the complainant has

constructed the said flat/project. Upon completion of the construction the complainant applied for the grant of Occupation Certificate for the said tower on 18.10.2019 with the competent authorities.

8. That it is submitted that the construction of the project stands completed, and the Occupation Certificate has been applied on 18.10.2019. It is relevant to add here that the complainant has at the request of the allottees raised certain demands at a later stage so as to give time to its allottees to make payments and clear their dues. Since the construction in the last quarter was extensive and because of which the allottees were burdened with continuous demands on a frequent note, therefore these demands were delayed at the request of different allottees so that they could get some time to make the payments.

9. That from the perusal of the above it can be stated that the respondent has failed to make payments despite several reminders, such an action gives a cause of action in favour of the complainant to file the present complaint under section 19 of the Act seeking interest as prayed for in the present complaint. In addition, since section 32 also protect the promoters, the balance lies in allowing the present complaint by directing the respondent to make the payment as per the terms and conditions of the flat buyer's agreement executed between the parties along with interest thereupon.

10. That the all the demands have been raised in accordance with the payment plan opted by the respondent on the completion of the relevant construction milestones, however, the respondent has defaulted in making timely payments despite sending reminder notices.

11. That the complainant is also entitled to the interest on the payments due, which were delayed by the respondent- as per the provisions of the Real Estate (Regulation and Development) Act, 2016.

12. That the hon'ble High Court of Bombay in the matter titled **Neelkamal Realtors Suburban Pvt. Ltd. and Anr vs. Union of India** has already held that RERA strikes the balance between the promoter and allottees, the relevant paragraph is reproduced herein below:

> *In the case of Cellular Operators Association of India and ors. vs. Telecom Regulatory Authority of India and ors. (Supra), the Supreme Court held that there cannot be any dispute in respect of settled principles governing provisions of Articles 14, 19(1)(g) read with Article 19(6). But a proper balance between the freedom guaranteed and the social control permitted by Article 19(6) must be struck in all cases. **We find that RERA strikes balance between rights and obligations of promoter and Allottees. It is a beneficial legislation in the larger public interest occupying the field of regulatory nature which was absent in their country so far.***

13. That the cause of action to file the present case is still continuing as respondent continue to fail to make timely payments as per the terms and conditions of the flat buyer's agreement and the payment plan opted by the respondent.

Further cause of action also arose when despite repeated follow ups by the complainant and the complainant having performed their contractual obligations the respondent withheld his contractual obligations.

C. Relief sought by the complainant

14. The complainant has filed the present complaint for seeking following reliefs:

    i. To direct the respondent to clear their outstanding dues along with delayed interest as per section 19 of the Act.

15. The authority issued a notice dated 12.09.2020 of the complaint to the respondent by speed post and also on the given email address at **er.manish.dalal@gmail.com.** The delivery reports have been placed in the file. Thereafter, on 18.05.2021, 30.07.2021 the authority is directed to the respondent to file reply within 15 days with an advance copy to the complainant. Despite services through notices the respondent has preferred neither to put in appearance not file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.

D. Jurisdiction of the authority

16. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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 completed territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

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 and duties of allottee as per section 19(6),(7) and(10) leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Finding on the relief sought by the complainant

17. Relief sought by the complainant:

i. To direct the respondent to clear their outstanding dues along with delayed interest as per section 19 of the Act.

18. The complainant submitted that the respondent/allottee has failed to abide by the terms of booking application form as well as the terms of builder buyer's agreement by not making the payments in timely manner as per the payment plan opted by him. Further cause of action also arose when despite repeated follow-ups by the complainant and the complainant having performed its contractual obligations, the respondent/allottee withheld to perform his contractual obligation. The respondent/allottee shall make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) of the Act to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6).

19. As per clause 12 of the booking application form which was subsequently incorporated in clause 14 of the buyer's agreement, the respondent/allottee was liable to pay the Installment as per payment plan opted by him. Clause 12 of the booking application form and clause 14 of the buyer's agreement are reproduced as under:

Clause 12. I/We agreed that the time shall be the essence in respect of payment on or before the due date of total sale price and other amounts payable by me/us as per the payment plan opted by me/us

and/or as demanded by the company from time to time. I/We have to bear interest @ 21% p.a. on the defaulted amount for the delayed period, if the company does not cancel the Registration/Provisional allotment of the said flat.

Clause 14. That the timely payments of due instalments as specified in the opted payment plan are the essence of this agreement. It shall be incumbent on the Buyer to comply with all the terms of payment and it shall obligatory for the Promoter to serve any demand notice/reminder to the Buyer. In case the Installment(s) dues as specified in payment plan are delayed, the Buyer shall be liable to pay ***the interest @ 21% p.a.****, payable on outstanding amounts from the due date of payment till the date of credit in the promoter's account and further all the payment(s) made by the buyer(s), the Promoter shall be authorised to adjust the amount first towards the interest due on Installment(s) and then towards the principal amount of Installment(s).*

.....

20. The respondent/allottee shall make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Proviso to section 19(6) and 19(7) reads as under.

"Section 19: - Right and duties of allottees.-

.....

19(6) states that every allottee, who has entered into an agreement for sale to take an apartment, plot

*or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.*

19(7) states that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoters, in 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;"

22. As per demand notice dated 07.04.2018 on page no. 112 of complaint, the complainant requested to the respondent to

clear his outstanding dues along with interest @ 21% on delayed payment. The authority is of the view that the interest rate charged by the complainant/promoter on the delayed payment is one-sided and arbitrary. Therefore, interest on the delay payments from the allottee shall be charged at the prescribed rate i.e. 9.30% by promoter. 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., 25.01.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

23. The respondent/allottee shall make the requisite payments and take the possession of the subject apartment as per the provisions of section 19(6), (7) and (10) of the Act, within a period of 30 days from the date of this order failing which the complainant shall be free to proceed with cancellation of the subject unit allotted to the respondent/allottee as per the terms of the buyer's agreement and as per provisions of law. While calculating dues payable by the allottee the provisions of proviso to section 18(1) of the Act 2016 be kept in view by the promoter.

F. **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) of the Act:

    i. The respondent/allottee shall make the requisite payments and take the possession of the subject apartment as per the provisions of section 19(6), (7) and (10) of the Act, within a period of 30 days.

    ii. Interest on the delay payments from the respondent shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter.

    iii. The complainant/promoter shall not charge anything from the respondent/allottee which is not the part of the agreement.

25. Complaint stands disposed of.

26. File be consigned to registry.

(V.K. Goyal)
Member

(Dr. K.K Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 25.01.2022