

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

Complaint no. :	2596 of 2021
First date of hearing :	04.08.2021
Date of decision:	11.03.2022

Jagjit Kaur Kohli
R/o: - T-44, Ground Floor, Rajouri Garden,
New Delhi- 110027

Complainant

Versus

M/s Anant Raj Industries limited
Office: CP-1 Sector- 8 IMT Manesar
Dist.- Gurugram, Haryana-122051

Respondent**CORAM:**

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member****APPEARANCE:**

Shri Harshit Goyal (Advocate)
Ms. Aparna Gupta (Advocate)

Complainant
Respondent**ORDER**

1. The present complaint dated 02.07.2021 has been filed by the complainant/allottee 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.

A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Maceo" Sector- 91, Meoka 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	28.11.2019
8.	Unit no.	Apartment no.- D-704, Tower D, 7 th Floor [Page no.- 23 of complaint]

9.	Unit measuring	1862 sq. ft. super area [Page no-23 of complaint]
10.	Date of execution of buyer's agreement	16.02.2013 [page 15 of complaint]
11.	Date of execution of conveyance deed	05.11.2020 [page 53 of complaint]
12.	Payment plan	Construction linked payment plan
13.	Total consideration as per builder buyer's agreement dated 16.02.2013	₹ 69,90,960/-
14.	Total amount paid by the complainant as per conveyance deed at page 53 of complaint	₹ 62,65,000/-
15.	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 29 of complaint]	16.08.2016 (Calculated from date of execution of agreement i.e., 16.02.2013) [Note: Grace period is allowed]

16.	Date of offer of possession to the complainant	30.11.2019 [annexure C3, page 87 of complaint]
17.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per the cheque dated 17.03.2020 at page 39 of reply	₹ 1,31,158/- ₹ 6,59,301/- 18/03/2020 25.5.2020
18.	Delay in handing over possession from due date of possession i.e., 16.08.2016 till 27.01.2020 i.e., date of OC plus 2 months.	3 years 5 months and 11 days

B. Facts of the complaint

3. The complainant has made the following submissions in their complaint:
 - a. That the respondent company i.e., M/s Anant Raj Limited is a real estate developer and launched the real estate project in question "Maceo" in the year 2012. That the project in question is "Maceo" situated at Sector 91, Gurugram being developed by the respondent company is a residential group housing colony comprised of 2, 3 and 4 BHK apartments and amenities of Club with Swimming Pool, Gymnasium and Heath Center, Yoga and

- Meditation Atrium, Billiards, Steam Sauna Rooms, CCTV controlled system and many more features duly prescribed in the brochure.
- b. An apartment buyer agreement was duly executed between the complainant and the respondent on 16.02.2013 in respect of the booked unit bearing no **D-704** on 7th floor of tower D having super area of **1862 sq. ft** situated at real estate project namely "**Maceo**" situated at sector 91, Gurugram.
 - c. The conveyance deed of the booked residential unit was registered on 05.11.2020 bearing registration no 2426 and book no 1 with the concerned sub registrar office without delivery of physical possession of the booked unit. As per clause 7.1 of the apartment buyer agreement dated 16.02.2013 duly executed with the complainant and the respondent company, you were liable to complete construction and handover physical possession of the booked unit within a period of 36 months from the date of execution of apartment buyer agreement along with a grace period of 6 months. Therefore, the due date of delivery of possession was 16.08.2016. However, the respondent company have failed to deliver the physical possession of the booked unit with completed construction works till date.
 - d. The possession letter dated 30.11.2019 issued by the respondent company is illegal and unlawful as the booked unit construction works were not completed and was not ready for possession on the date of offer of possession i.e., 30.11.2019. The same can be referred from email dated 09.10.2020 issued by Mr. Parag Sharma working as CRM Manager in your organization. The email dated

09.10.2020 states as "This is regards to the readiness of your unit D704 at Maceo, we would like to confirm you that the unit will be ready for possession tentatively by 22nd Oct'2020. We will keep you posted on the same". No communication in respect of the readiness of the booked unit has been received till date.

- e. As per Rule 15, Part V of the Haryana Real Estate Regulation and Development Rules, 2017, the rate of interest payable by the promoter to the allottee is the State Bank of India highest marginal cost of lending rate plus 2% per annum. However, the delayed possession charges paid by the respondent company in the present case in not in accordance with same and are unjustified and unreasonable in nature.
- f. As per site plan attached with apartment buyer agreement dated 16.02.2013, the main entry to the project in question i.e., "Maceo" was marked and promised to be placed on 24 m wide central avenue road adjacent to project in question i.e., "Maceo". However, you had illegally shifted the main entry to 18 m existing road adjacent to the project in question i.e., "Maceo". without the consent to allottees. This has resulted into severe downfall in the financial value of the booked units. No penalty for same has been provided till date.
- g. That the complainant had invested their hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent at the time of booking in order to allure the complainant. However, the respondent has failed to abide all the obligations of him stated orally and under the

apartment buyer agreement duly executed between both the present parties.

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:

- a. To direct the respondent to pay delay possession charges at the prescribed rate of interest (SBI MCLR PLUS 2% PER ANNUM) to the complainant for the period of delay in delivery of possession of the booked unit i.e., from due date of delivery of possession 16.08.2016 to the date of delivery of actual possession with completed construction works after deduction of amount already paid to the complainant.
- b. To direct the respondent to deliver lawful and valid possession and handover keys of the booked unit to the complainant with completed construction works and in a habitable condition.
- c. To direct the respondent to pay penalty to the complainant for illegal shifting of Main Entry to the project in question "Maceo".

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. It is further respectfully submitted that the project "Maceo" had to undergo unforeseen and adverse circumstances causing the work progress of the project "Maceo" to be hampered and delayed because of which the possession of the flat/ apartment could not

be handed over within the stipulated period. It is pertinent to mention that the progress of the project was affected due to circumstances which were beyond the control of the respondent and the same are covered under the force majeure conditions stipulated in clause 19 of the buyer agreement. The delays were caused on account of 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. On account of the aforementioned reasons, the progress of the work of the respondent was abruptly hampered. It is further submitted that all these events led to suspension and stoppage of works on several occasions which also resulted in labourers and contractors abandoning work. As a result of various directions from the authorities at different occasions, regarding water shortage and pollution control etc., coupled with labourers and contractors abandoning the works; the respondent had to run from pillar to post in order to find new contractors and labourers, thus affecting the progress of the project.

- b. Without prejudice, it is most respectfully submitted that overcoming the aforesaid force majeure conditions, the respondent had completed the construction of the said project in 2019 and received the occupation certificate on 28.11.2019, subsequent to which the possession was offered on 30.11.2019. Further, the respondent preferred an email dated 31.01.2020, wherein the respondent mentioned the documents required to be furnished by the complainant before handing over of possession. The said email

clearly stated that pursuant to conciliation of all such documents and payments, the finishing work of the unit shall start, and the possession will be handed over within 90 days thereof. In reply to the said email, the complainant sent an email dated 11.02.2020, wherein the complainant has mentioned that the complainant is yet to receive a cheque in lieu of delayed possession charges payable by the respondent, thereby evidencing that the parties had communicated about the delayed possession charges previously and no objection was raised in this regard by the complainant.

- c. Subsequently, due to the nationwide lockdown declared by the government of India in lieu of the widespread of Covid-19 virus, the finishing work of the said project came to a halt as the labourers and workers had returned to their native places. Moreover, such period was declared as 'force majeure' by the government of India, in lieu of which the respondent was unable to do the finishing works in the unit. However, despite such a difficult situation the finishing works in the said unit were complete by October 2020, which was duly communicated by the respondent to the complainant vide email dated 09.10.2020.
- d. It is pertinent to mention here that the respondent has already paid an amount of Rs.6,59,301/- to the complainant towards delayed possession charges in accordance with the apartment buyers' agreement, and hence, nothing more is left to be paid on behalf of either of the parties.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

8. 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

9. 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

10. 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)

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.

11. 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 of the authority on relief sought by complainant

F. I To direct the respondent to pay delay possession charges at the prescribed rate of interest (SBI MCLR PLUS 2% PER ANNUM) to the complainant for the period of delay in delivery of possession of the booked unit i.e., from the due date of delivery of possession 16.08.2016 to the date of delivery of actual possession with completed construction works after deduction of amount already paid to the complainant.

12. 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."

13. 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."

14. At the outset, it is relevant to comment on the pre-set possession clause of the agreement where in 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 16.02.2016. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. After expansively referring to the facts and documents placed on record by the promoter company for force majeure reasons the authority, allows the grace period of 180 days.

15. **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.

16. 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., **11.03.2022** is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.
17. 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;

18. Therefore, interest on the delay payment 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.
19. 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 16.02.2013, 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 16.02.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 16.08.2016. 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., 16.08.2016 till the offer of the possession 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. 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 respondent offered the possession of the unit on 30.11.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Moreover, the complainant in its complaint is alleging that even after the execution of the conveyance deed dated 05.11.2020 the respondent company has not yet actually handed over the physical possession of the unit. Although, the respondent has offered the possession of the unit

on 30.11.2019 but have not handed over the physical possession of the unit also, in its email dated 09.10.2020 the respondent has expressly written that the unit will be ready for possession by 22.10.2020. The complainant has never raised the plea that the OC has been granted by the competent authority without unit being habitable and there may be additional requirement or different specifications which might have been required by the allottee and to complete those additional things this time has been taken by the promoter to handover possession. Keeping in view that OC has been granted on 28.11.2019 and no objections raised regarding its validity, accordingly, delayed possession charges are to be considered from the due date of possession i.e., 16.08.2016 up to date of occupation certificate 28.11.2019 plus two months i.e., up to 27.01.2020. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of OC. This 2 month of reasonable time is being given to the complainant/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., 16.08.2016 till the expiry of 2 months from the date of OC (28.11.2019) which comes out to be 27.01.2020. Accordingly, it is the failure of the promoter/respondent to fulfil its obligations, responsibilities as per the buyer's agreement dated 16.02.2013 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.

20. Also the amount so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

F.II To direct the respondent to deliver lawful and valid possession and handover keys of the booked unit to the complainant with completed construction works and in a habitable condition.

19. The respondent has already offered possession of the subject unit to the allottee on 30.11.2019 after receipt of occupation certificate dated 28.11.2019 from the concerned authority. Moreover, the conveyance deed has also been executed between the parties therefore, the complainant is directed to take the possession of the said unit within 2 months from the date of this order.

F.III To direct the respondent to pay penalty to the complainant for illegal shifting of main entry to the project in question "Maceo"

20. The respondent in its reply stated that the state government was liable to acquire the land for the 24-meter road to be handed over to the respondent, however the same has not been done yet, in lieu of which a civil writ petition no. 13938/2018 was preferred before the hon'ble high court of Punjab and Haryana which is pending. As a means to handover the possession to allottees on urgent basis the respondent shifted the main entry temporarily and as the said petition will be disposed of the entry as proposed shall be made available by the

respondent. Since the matter is pending, therefore the authority cannot deliberate upon this issue at present and the issue is sine die until the outcome of the civil writ petition no. 13938/2018.


G. Directions of the authority

21. 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):

- a. 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., 16.08.2016 till the expiry of 2 months from the date of OC i.e., 27.01.2020.
- b. The arrears of such interest accrued from 16.08.2016 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.
- c. The conveyance deed has also been executed between the parties therefore, the complainant is directed to take the possession of the said unit within 2 months from the date of this order.
- d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. 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. Also the amount so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- f. 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.
- g. 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.
22. Complaint stands disposed of.
23. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.03.2022