

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

Complaint no. :	112 of 2021
First date of hearing:	19.03.2021
Date of decision:	06.07.2022

1. Isha
2. Nitin Gambhir
3. Sarita Rani Gambhir

R/o: - Hno. 362/01, Ward no. 8, Luna Walki, Dabwali
District Sirsa, Haryana-125104

Complainants

Versus

Ansal Housing Limited

Address: - 606, 6th floor, Indra Prakash 21,
Barakhamba Road, New Delhi-110001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Mr. Riju Mani Talukdar (Advocate)
Ms. Meena Hooda (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 18.01.2021 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.

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	Estella, Sector-103, Gurugram
2.	Project area	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid up to 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
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)
7.	Unit no.	P-1101 [annexure C2, pg. 29 of complaint]
8.	Unit measuring	2600 sq. ft. [super area]
9.	Date of execution of buyer's agreement	18.12.2012 [annexure C2, pg. 25 of complaint]
10.	Possession clause	30. <i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later</i>



		<p><i>subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."</i></p> <p>(Emphasis supplied) [page 36 of complaint]</p>
11.	Due date of possession	18.06.2016 [Note: Due date calculated from date of execution of agreement as the date of commencement of construction is not known. Grace period allowed being unqualified]
12.	Delay in handing over of possession till the date of this order i.e., 06.07.2022	6 years 18 days
13.	Basic sale consideration as per BBA dated 18.12.2012	₹ 88,40,000/- [pg. 29 of complaint]
14.	Total sale consideration as per call notice dated 23.09.2016	₹ 98,46,795/- [annexure C3, pg. 46 of complaint]
15.	Amount paid by the complainant as per call notice dated 23.09.2016	₹ 98,48,244/- [annexure C3, pg. 46 of complaint]
16.	Occupation certificate	Not yet obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in their complaint:
- a. That the complainants herein are law abiding citizen of India and are residing at the above-mentioned address. That the complainants herein applied for booking of a unit in the project named "Estella" of the respondents' company which they failed to deliver within the prescribed time limit and hence the complainants have preferred the present complaint for the possession along with delayed interest.
 - b. That the respondents herein are companies registered under the provisions of the companies act, 1956 and is engaged in housing construction having their registered office at New Delhi. The complainants are aggrieved as the respondents has failed to deliver the possession of the said apartment within the prescribed time limit.
 - c. That the respondents made several representations to the complainants with respect to their project named "Estella" situated at Sector 103 Gurgaon, Haryana. It is submitted that the respondents had made several claims regarding the project with the complainants to lure them into investing their hard-earned money in the project of the respondents.
 - d. That the complainants, after several representations and tall claims of the representatives of the respondents' company, applied for allotment in the project of the respondent and made a payment of Rs.11,02,500/- as the booking amount. That the reference of the booking amount paid to the respondent by the complainants is made in page no.5 of the builder buyer agreement.

- e. That as per the apartment buyer's agreement, the possession of the said apartment was due after 36 months of the date of execution of agreement. That as per the apartment buyer agreement, the due date of possession of the said unit is within 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all required sanctions and approvals necessary for commencement of construction whichever is later. That the respondent obtained the necessary approval on 28.11.2011 and the date of execution of builder buyer agreement is 18.12.2012. That as per the said clause, the due date of delivery of possession of the apartment is 18.12.2015. That there has been a delay of almost 5 years in delivery of possession.
- f. It is submitted that in contravention of the said clause the respondent company has failed to deliver the possession of the said unit till date, even after diligent payments being made by the complainant. That the complainant has paid a total amount of Rs. 1,02,96,505/- (Rupees One Crore Two Lakh Ninety-Six Thousand Five Hundred and Five Only) out of the total sale price of the unit of Rs. 1,03,25,000/- (Rupees One Crore Three Lakh Twenty-Five Thousand Only).
- g. That as per the payment plan opted by the complainants herein, the complainants have made a payment up to 96% of the total sale consideration of the apartment by 21.10.2016. It is pertinent to mention that the opposite party has failed miserably in delivering the possession of the apartment to the complainants even after receiving almost full consideration of the apartment.



- h. That the respondent had raised a demand of Rs.4,48,260.94/- from the complainants on 23.09.2016. That as per the demand letter raised by the opposite party the complainants had made a payment of Rs. 98,48,244.00/- in favour of the respondent.
- i. It is submitted that the respondent company drew and unfair and arbitrary which was totally one-sided, illegal, unfair, unjust and arbitrary. All the clauses regarding possession, compensation etc were drawn in their own favour and the complainant had no say in anything whatsoever. In the agreement, the complainant was denied fair scope of compensation, in case of delay of possession and was supposed to pay heavy penalty in case of delay in payment of instalments. The arbitrary and unfairness of the apartment buyer agreement can be derived from the perusal of clauses 35 and 41. That as per the terms and conditions the respondent company had the authority to impose an exorbitant rate of interest on the complainant to the tune of 25% p.a. Compounded quarterly on delayed payments and whereas, the respondent company was only liable to pay a meagre amount in case of delayed possession to the tune of Rs. 5/- per sq. Ft. Per month for the period of delay. It is requested that as the terms and conditions of the builder buyer agreement are unilateral, this hon'ble authority shall not take into consideration the terms and conditions of the agreement during the adjudication of the case.
- j. That respondent has failed to abide by their promise and failed to deliver the possession of the unit within the promised time. in such circumstances, it is only fair that the respondent be directed to deliver the immediate peaceful possession of the unit complete in

all aspects along with all the promised amenities and in a habitable condition to the satisfaction of complainant along with delay compensation @18% p.a. and other compensation.

C. Reliefs sought by the complainants

4. The complainants are seeking the following relief:
 - a. Direct the respondent to pay delay interest on paid amount of Rs. Rs. 1,02,96,505/- for every month of delay.
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. Notice to the promoter/respondent through speed post and through e-mail address (sect@ansals.com) was sent; the delivery report of which shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file a reply within stipulated time period. Since the respondent company's put in appearance through its counsel on 19.08.2021, 24.09.2021 & 30.03.2022. However, the respondent has failed to comply with the orders of the authority dated 30.03.2022, by not filing written reply within the time allowed, therefore, the defence of the respondent is struck off.

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. 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.

10. 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 complainants at a later stage.

F. Findings of the authority on relief sought by complainants

F. I Direct the respondent to pay delay interest on paid amount of Rs. 1,02,96,505/- for every month of delay.

11. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges. Clause 30 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

“30. The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit.”

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 the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The due date is calculated from date of agreement as the date of commencement is not known. The period of 36 months expired on 18.12.2015. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter 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.

14. 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.
15. 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., **06.07.2022** is 7.50%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.50%.
16. 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;"

17. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **9.50%** by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
18. 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 30 of the agreement executed between the parties on 18.12.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The due date is calculated from date of agreement as the date of commencement is not known. The period of 36 months expired on 18.12.2015. 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 18.06.2016. 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., 18.06.2016 till the actual handing over of possession of the unit, at prescribed rate



i.e., 9.50 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

19. 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., 9.50% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 18.06.2016 till the actual handing over the possession of the unit to the complainants.
- b. The arrears of such interest accrued from 18.06.2016 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 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., 9.50% 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.
- g. The cost imposed during the proceedings on either party be included in the decree sheet.
20. Complaint stands disposed of.
21. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.07.2022