

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

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| Complaint no. : | 3904 of 2021 |
| First date of hearing: | 12.11.2021 |
| Date of decision: | 06.07.2022 |

Somesh Aggarwal

R/o: - C-704, Shi Balaji Apartment, Plot-37, Sector 6,
Dwarka, New Delhi

Complainant

Versus

Ansul 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. Amandeep Kadyan (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 11.10.2021 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 | 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. | 0-1103 [annexure C2, pg. 32 of complaint] |
| 8. | Unit measuring | 1725 sq. ft. [super area] |
| 9. | Date of execution of buyer's agreement | 06.03.2013 [annexure C2, pg. 28 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 subject to timely payment of all dues</i> |

| | | |
|-----|--|---|
| | | <p>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."</p> <p>(Emphasis supplied)</p> <p>[page 39 of complaint]</p> |
| 11. | Due date of possession | <p>06.09.2016</p> <p>[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]</p> |
| 12. | Delay in handing over of possession till the date of this order i.e., 06.07.2022 | 5 years 10 days |
| 13. | Basic sale consideration as per BBA dated 06.03.2013 | <p>₹ 59,77,125/-</p> <p>[pg. 32 of complaint]</p> |
| 14. | Amount paid by the complainant | <p>₹ 70,11,561/-</p> <p>[as alleged by the complainant at pg. 8 of complaint]</p> |
| 15. | Occupation certificate | Not yet obtained |
| 16. | Offer of possession | Not offered |

B. Facts of the complaint

3. The complainant has made the following submissions in their complaint:

- a. That the complainant is a law-abiding citizen of India and residing at c-704 ShiBalaji apartment, plot-37, sector-6 Dwarka new delhi-



110075. The complainant is an allottee of a residential flat in the project of the respondent, namely, "Estella" at sector-103, Gurugram.
- b. That the Ansal housing limited, formerly Ansal housing & construction limited, is a company incorporated under the Companies Act, 1956 is having its registered office at 606, 6th floor, Indra Prakash 21, Barakhamba road, New Delhi - 110001. The company is engaged in the business of group housing construction, commercial construction and other real estate activities.
- c. That in 2010-2011, the respondent had launched the group housing project by the name of "Estella", situated at sector 103, Gurugram. The respondent promoted the said project with extensive and aggressive print and electronic media advertisements and through various agents and sale representatives. the respondent left no stone unturned in depicting the grandeur of the project which included colourful brochures and other printed media. the respondent through its online website as well as through its representatives, painted a grand image in the mind of the buyers which inevitably lured the buyers into booking a flat in the aforesaid project. the respondent created a rosy picture of the project and misrepresented various information/facts about the project to lure buyers into investing in the project.
- d. That the complainant was looking for a residential apartment in the Delhi NCR and during such time, the representatives of respondent approached him and informed about the project and boasted about the project and made various false and incorrect representations about the construction and delivery of possession. the



representatives assured the complainant that respondent had obtained all the requisite sanctions and approvals from all competent authorities for starting constructions at the project site and the construction at the project site shall start soon and the possession will be delivered in promised time. the complainant was impressed by the highlights of the project and the representations made by the agents of the respondent and decided to book an apartment in the aforesaid project. having trusted the representations made by the respondent and investing a huge amount of hard-earned money in the project, the complainant is now aggrieved as none of the promises made by respondent have fulfilled. those false representations and promises were made only to lure the innocent buyers such as the complainant into investing with their hard-earned money for their dream house.

- e. That in early 2011, i.e., 21.07.2011 the complainant made an application for allotment of a residential apartment in the project and paid the requisite booking amount that is Rs.25,00,000/- vide cheque no. 055431 dated 15.03.2011 drawn on union bank of India at the time of booking, the complainant opted for cash down payment plan of total consideration under which the respondent was supposed to demand instalments from the complainant at different stages as per the payment plan.
- f. That on 06.03.2013, the respondent executed a builder buyers' agreement with the complainant. it is submitted that the agreement drawn by the respondent was unfair, arbitrary and one-sided agreement with all the provisions favouring them and nothing for the complainant. 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 clauses 23, 24 & 35. as per the clause 23 & 24, the respondent had the right to terminate the agreement and forfeit the earnest money in case of delay in payment of instalments and had the right to accept the delay payment with an interest @ 24% p.a. whereas as per the clause 35, in the case of delay in completion of the project, the complainant was entitled to get a compensation @ Rs. 5/- per sq. ft. every month of delay beyond 36+6 months.

- g. That as per clause 30 of the flat buyer's agreement dated 06.03.2013; the possession of the apartment was to be delivered within 36 months from the date of execution of the buyer's agreement within a grace period of 6 months in addition to 36 months. the flat buyer's agreement was executed on 06.03.2013 and therefore, the respondent was supposed to hand over the possession by 06.03.2016 (i.e., 36 months from date of execution of flat buyer's agreement) or by 06.09.2016 with 6 months grace period. however, the respondent miserably failed to complete the apartment and offer possession within the prescribed date of 06.03.2016 or 06.09.2016.
- h. That the complainant has paid a total sum of **Rs.70,11,561.45/-**. The final amount of Rs.70,11,561.45/- includes late payment charges of Rs. 1,00,000/- plus vat charges of Rs.53,862/- for the unit which is more than the total consideration of Rs. 69,05,875/-.

The same can be calculated from the receipts issued by the respondents.

- i. That the respondent was contractually obligated to deliver possession by 06.03.2016 but they miserably failed and there is a delay of more than 5 years 6 months in possession. further, the complainant opted for a construction linked payment plan for payment of total consideration of the apartment and the respondent were supposed to demand instalments from the complainant upon start/completion of particular milestone as provided in the plan. The complainant kept their end of the bargain and paid the instalments as and when fallen due or demanded by the respondent. but the respondent had illegally demanded instalments as per the payment plan from the complainant without actually reaching the milestones in the actual site of construction. such acts of the respondent clearly fall under the definition of restrictive and unfair trade practice.
- j. The actual date for offering possession was 06.03.2016; however, there is a delay of more than 5 years 6 months in delivering the possession. that during all these delayed periods, the respondent has not paid any delayed compensation to the complainant. thus, in the present the circumstances, the complainant is left with no other option to file the present complaint for directing the respondent to deliver immediate peaceful possession of the unit complete in all aspects to the complainant and with all the amenities and facilities as promised and charged for and also pay compensation for delay.
- k. That as per the principal of parity and the provisions of the Act (as per definition of interest in section 2(za)), it will be justified if the

complainant is compensated by the respondent for the delay in handing over the possession at the same rate at which they would have charged interest from the complainant if they had delayed payments/instalments i.e., 24% per annum. in case this hon'ble authority does not found it fit to grant interest @24% per annum, the hon'ble authority may direct the respondent to compensate the complainant at a fair and just interest rate this authority may deem fit under facts and circumstances of the matter.

1. That in view of the above-mentioned facts and circumstances it is only appropriate that this hon'ble authority may be pleased to hold that the respondent was obligated to deliver possession by 06.03.2016 but they have failed to deliver the possession of the unit to the complainant by 06.03.2016 or even within grace period of 06.09.2016. also, they have even failed to deliver till today i.e., September 2021 (after 5 years 6 months).

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:
 - a. Direct the respondent to deliver immediate possession of the flat along with all the promised amenities & facilities as per the specifications mentioned in the flat buyer's agreement and to the satisfaction of the complainant.
 - b. Direct the respondent to pay compensation for delay in delivery of possession in the form of interest at prescribed rate on the amount paid by the complainants from the promised date of delivery of 06.03.2016 till actual handing over of possession.
 - c. Direct the respondent not to include any other charges which are not part of BBA in final demand letter.



- d. Direct the respondent to clear all dues of HSIDC and other government authority before handing over the possession of the apartment to the complainant.
 - e. Compensation for following unfair trade practices.
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 Sh. Amandeep Kadyan on 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 deliver immediate possession of the flat along with all the promised amenities & facilities as per the specifications mentioned in the flat buyer's agreement and to the satisfaction of the complainant.

11. The respondent is legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is unsatisfied that even after the lapse of more than 5 years from the due date of possession the respondent has failed to apply for OC to the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC.

F.II. Direct the respondent to pay compensation for delay in delivery of possession in the form of interest at prescribed rate on the amount paid by the complainants from the promised date of delivery of 06.03.2016 till actual handing over of possession.

12. In the present complaint, the complainant intends 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."

13. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds



of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 36 months from date of 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 authority calculated the due date of construction from date of agreement as date of commencement of construction is not known. The period of 36 months expired on 06.03.2016. 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.

14. **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.

15. 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., **06.07.2022** is 7.50%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.50%.
17. The definition of term 'interest' as defined under section 2(z) 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 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.
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 30 of the agreement executed between the parties on 06.03.2013, the possession of the subject apartment was to be delivered within 36 months from 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 authority calculated the due date of construction from date of agreement as date of commencement of construction is not known. The period of 36 months expired on 06.03.2016. 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 06.09.2016. 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., 06.09.2016 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.

F.III. Direct the respondent not to include any other charges which are not part of BBA in final demand letter.

20. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

F.IV. Direct the respondent to clear all dues of HSIDC and other government authority before handing over the possession of the apartment to the complainant.

21. No specific details have been given. Although the promoter is duty bound to clear all the government dues, if any.

F.V. Compensation for following unfair trade practices.

22. The complainant is claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement /rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the

complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G. Directions of the authority

23. 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., 06.09.2016 till the actual handing over the possession of the unit to the complainants.
- b. The arrears of such interest accrued from 06.09.2016 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.
24. Complaint stands disposed of.
25. File be consigned to registry.

V.1-3
(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.07.2022