

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

Complaint no.:	4071 of 2021
First date of hearing:	12.11.2021
Date of decision:	06.07.2022

1. Sarabjeet Singh Sethi

2. Ravneet Kaur

Both RR/o M-219, Ground Floor, Orchid Island, Sector
51, Gurugram

Complainants

Versus

M/s Ansal Housing Ltd.

Office address: 15 GF, Indraprakash, 21, Barkhamba
Road, New Delhi- 110001.

Respondent

CORAM:

Dr. K.K. Khandelwal

Shri Vijay Kumar Goyal

Chairman

Member

APPEARANCE:

Shri Gulab Singh Jarodia (Advocate)

Shri Amandeep Kadyan (Advocate)

Complainants

Respondent

ORDER

1. The present complaint dated 11.10.2021 has been filed by the complainants/allottees 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 as provided under the provision of the Act, or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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:

Sno.	Heads	Information
1.	Project name and location	"Ansal Hub", Sector-83, Gurugram
2.	Project area	2.46875 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	87 of 2009 dated 30.12.2009 valid up to 29.12.2013
5.	Name of licensee	Smt. Mina Devi
6.	RERA registration details	Not registered
7.	Unit no.	214 [pg.29 of complaint]
8.	Unit measuring	467 sq. ft. [pg. 29 of complaint]
9.	Date of allotment letter	18.07.2014 [pg. 29 of complaint]
10.	Date of sanction of building plans	11.09.2013
11.	Possession clause	26. <i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of</i>



		<p><i>energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."</i></p> <p><i>(emphasis supplied)</i></p> <p><i>[pg. 36 of complaint]</i></p>
12.	Due date of possession	<p>18.07.2017</p> <p>[Note: Due date calculated from date of allotment letter i.e., 18.07.2014 being later.]</p>
13.	Delay in handing over of possession till the date of this order i.e., 06.07.2022	4 years 11 months 18 days
14.	Basic sale consideration as per allotment letter dated 18.07.2014	<p>Rs. 28,17,060.75/-</p> <p>[pg. 29 of complaint]</p>
15.	Amount paid by the complainant as alleged by the complainant at pg. 15 of complaint	Rs.32,02,736/-
16.	Occupation certificate	Not yet obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have pleaded the complaint on the following facts:
 - a. That the complainants were in a dire need of a commercial shop in Gurgaon for their own business purpose as they have been running a rental shop at Gurgaon for the past couples of years. That after visiting various places in Gurgaon in search of a good commercial

unit, the complainants came into contact with the respondents company officials, where it was informed to the complainants that the respondent's company is planning to build a commercial hub in Sector 83, Gurgaon and ongoing through the attractive brochure, the payment plan and assurance given by the officials of the respondent's company regarding constructing of various projects in Gurgaon and other Districts of Haryana within the stipulated period and the reputation of the respondent's company, the complainants decided to have an accommodation in the respondent's company project.

- b. That accordingly the complainants booked a unit/shop at the respondent company project i.e., 'ANSAL HUB' in Sector-83, Gurugram and on payment of Rs.26,82,915/- basic sales price, the complainants were allotted a unit/shop bearing no. 0214 on Second Floor, ANSAL HUB having an area measuring 467 sq. ft. approximately @ Rs.5745/- per sq. ft.
- c. That apart from issuing a receipt bearing no. receipt no. 458554 dated 21.03.2011, receipt no. 466039 dated 19.05.2011, receipt no. 474859 dated 28.08.2011, receipt no. 496169 dated 03.03.2012, receipt no. 560290 dated 29.11.2013, receipt no. 560291 dated 29.11.2013, receipt no. 560293 dated 29.11.2013, receipt no. 579416 dated 29.05.2014, receipt no. 579414 dated 29.05.2014, receipt no. 581121 dated 16.06.2014, receipt no. 581122 dated 16.06.2014, receipt no. 598270 dated 22.12.2014, receipt no. 602994 dated 21.02.2015, receipt no. 602996 dated 21.02.2015, receipt no. 599257 dated 03.01.2015, receipt no. 619451 dated 27.11.2015, receipt no. 625112 dated 05.03.2016, receipt no. 629382 dated 04.06.2016, receipt no. 629384 dated 04.06.2016,



receipt no. 631783 dated 21.07.2016, receipt no. 632966 dated 20.08.2016, receipt no. 633451 dated 03.09.2016, receipt no. 633452 dated 03.09.2016, receipt no. 633454 dated 03.09.2016, receipt no. 636197 dated 02.12.2016, receipt no. 641800 dated 06.04.2017, receipt no. 641799 dated 06.04.2017, receipt no. 658470 dated 02.03.2019 carrying the details of unit allotted.

- d. That on depositing the amount as per the payment plan opted by the complainant's time to time, a buyer's agreement was executed between the complainants and the respondent company on 18.07.2014.
- e. That as per one of the terms and conditions of the said buyer's agreement dated 18.07.2014, it was agreed and settled that the possession of the said unit shall be handed over to the complainants within a stipulated period of 36 months from the date of sanctioning of the building plans or execution of floor buyer's agreement whichever is later (commitment period). It was further agreed and settled that the respondent company shall additionally be entitled to a period of 180 days (grace period) after the expiry of said commitment period to allow for filing and pursuing the occupancy certificate etc. from DTCP under the Act in respect of the entire colony.
- f. That the complainants without making any kind of delay always deposited the amount as per the payment plan opted by the complainants immediately on receipt of letters from the respondent company and in total the complainants paid an amount of **Rs.32,02,736 ps.** (Rs. Thirty-two lacs two thousand seven hundred and thirty-six only) which has also been admitted and acknowledged by way of above-mentioned receipts. Hence, the

complainants have already paid almost the whole basic sale price of the above said unit which is **Rs. 28,17,060.75/-** (including basic price + PLC) as mentioned in allotment letter/BBA dated 18.07.2014.

- g. That on account of not constructing the above said unit within the stipulated period of 36 months and even after taking grace period of 180 days (6 months), the complainants kept on requesting the respondent company's officials to complete the construction of the said unit as early as possible and handover the possession of the above said unit to the complainants by narrating the respondents the bonafide and genuine reasons that the complainants were left with no alternative but to continue to run a commercial shop by paying huge amount of rent per month to the owner/landlord being no fault at all on the part of the complainants and despite being invested huge amount in the respondents company.
- h. That on account of not completing the construction of the above said unit allotted to the complainants within the stipulated period of 36 months and thereafter further taking 180 days of grace period, the complainants have incurred huge monetary loss besides having sleepless night for the past more than 3 years 9 months. The complainants have been burdened by the respondents by paying penal rate of interest to the bank, monthly rent to the shop owner and the complainants has also suffered with great harassment and humiliation. The act and conduct of the respondents have also snatched the mental peace of the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:

- a. Direct the respondent to pay the delayed interest on the amount received by the respondent from the complainants in respect of unit no. SF-214, 2nd floor, having tentative area of 467 sq. ft. in the project ANSAL HUB 83, Sector-83, Gurugram, Haryana.
 - b. Costs of escalation may kindly be wave/delete of favour of complainants as per section 18 and other relevant provision of HRERA.
 - c. To pass the order to refund the illegal amount taken by the respondent from the complainants.
 - d. To direct the respondent to pay the litigation charges of Rs. 2,00,000/- to the complainants.
 - e. Any other relief/order or direction, which this hon'ble authority may, deems fit and proper considering the facts and circumstances of the present complaint.
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 by the respondent

6. Notice to the promoter/respondent through speed post and through e-mail address (customerconnect@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 Advocate, on 30.03.2022. Further, the counsel for the respondent requested for adjournment to file written reply and the same was allowed with a

specific direction to file the same within 2 weeks with an advance copy to the complainant. 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.

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

E. Jurisdiction of the authority

8. 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. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants



F.I. Direct the respondent to pay the delayed interest on the amount received by the respondent from the complainants in respect of unit no. SF-214, 2nd Floor, having tentative area of 467 sq. ft. in the project ANSAL HUB 83, Sector-83, Gurugram, Haryana.

11. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges at prescribed rate of interest on the amount paid. Clause 26 of the allotment letter (in short, allotment) provides for handing over of possession and is reproduced below: -

"26 The developer shall offer possession of the unit any time within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter whichever is later, subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy, labour equipments facilities material or supplies, failure of transportation, strike, lock outs, action of labour union. Any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any court/tribunal and/or authorities, delay in grant of part/full completion (occupancy) certificate by the government and or any other public or competent authority or intervention of statutory authorities, or any other reasons beyond the control of developer. The allottees shall not be entitled to any compensation on the ground of delay in offering possession due to reason beyond the control of the developer."

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 allottees that even a single default by the allottees in fulfilling

formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoter are just to evade the liability towards timely delivery of subject unit and to deprive the allottees 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 allottees is left with no option but to sign on the dotted lines.

13. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottees 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 the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

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 marginal cost of lending rate +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 26 of the allotment letter executed between the parties on 18.07.2014, the possession of the subject apartment was to be delivered within 36 months from the date of



execution of allotment or sanction of building plans whichever is later. The due date is calculated from the date of allotment letter i.e., 18.07.2014, being later. Accordingly, period of 36 months expired on 18.07.2017. Therefore, the due date of handing over possession is 18.07.2017. 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 18.07.2017 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.II. Waive of cost of escalation.

19. The complainants in their pleadings have failed to specify as what is the objection about cost of escalation. The builder may provide details and provisions of BBA to justify the cost of escalation, if any.

F.III. Refund the illegal amount taken by the respondent.

20. The complainants in their pleadings have failed to specify as what all charges are illegal and arbitrary. Therefore, the authority cannot deliberate on this relief.

F.IV. Grant cost of litigation of Rs. 2,00,000/- to the complainant.

21. The complainants are 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 complainants 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

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f):


- i. The respondent is directed to pay interest at the prescribed rate of 9.50% p.a. for every month of delay from the due date of possession i.e., 18.07.2017 till the actual handing over of possession.
- ii. The arrears of such interest accrued from 18.07.2017 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.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the 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 delayed possession charges as per section 2(za) of the Act.



- v. The respondent shall not charge anything from the complainants which is not the part of the agreement.
- vi. The cost imposed during the proceedings on either party be included in the decree sheet.
23. Complaint stands disposed of.
24. File be consigned to registry.

V.I - 
(Vijay Kumar Goyal)

Member


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.07.2022