

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

Complaint no. :	4271 of 2021
First date of hearing:	12.11.2021
Date of decision:	06.07.2022

Aishwarya Tiwari

**R/o:** - H.no. 804, KT-14, Jaypee Greens, Wish Town,  
Sector-128, Noida-201304

**Complainant**

Versus

Ansal Housing Limited

**Address:-** 606, 6<sup>th</sup> floor, Indra Prakash 21,  
Barakhamba Road, New Delhi-110001

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Mr. Sukhbir Yadav (Advocate)  
Mr. Amandeep Kadyan (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 27.10.2021 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. N.	Particulars	Details
1.	Name of the project	Ansal Heights,86
2.	Project location	Sector 86, Gurugram, Haryana
3.	Project area	12.843 acres
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
6.	Name of licensee	Resolve Estate Pvt. Ltd.
7.	RERA registration details	Not registered
8.	Unit no.	H-0406 [page 43 of complaint]
9.	Unit area admeasuring	1360 sq. ft. super area
10.	Date of execution of builder buyer agreement	13.09.2012 [page 40 of complaint]
11.	Possession clause	<b>31.</b> <i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 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 32. Further, there shall be a grace period of 6 months allowed</i>

		<i>to the developer over and above the period of 42 months as above in offering the possession of the unit."</i> <i>(Emphasis supplied)</i> <i>[page 48 of complaint]</i>
12.	Date of commencement of construction as per customer ledger dated 01.10.2021	01.10.2013  [page 73 of complaint]
13.	Due date of possession	01.10.2017  <b>[Note: Due date calculated from date of commencement of construction i.e., 01.10.2013 being later. Grace period allowed being unqualified]</b>
14.	Delay in handing over of possession till the date of this order i.e., 06.07.2022	4 years 9 months 5 days
15.	Basic sale consideration as per BBA dated 13.09.2012	₹ 47,13,200/-  [pg. 43 of complaint]
16.	Total sale consideration as per customer ledger dated 01.10.2021	₹ 60,31,889/-  [page 68 of complaint]
17.	Amount paid by the complainant as per customer ledger dated 01.10.2021	₹ 53,32,132/-  [page 72 of complaint]
18.	Occupation certificate	Not yet obtained
19.	Offer of possession for fit outs	29.06.2021  [page 59 of complaint]

**B. Facts of the complaint**

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

- a. That the complainant **Aishwarya Tiwari** is law-abiding and peace-loving citizen and is a resident of H. No. 804, KT – 14, Jaypee Greens, Wish Town, Sector – 128, Noida – 201304.
- b. That the respondent party **Ansal Housing Limited (formerly known as Ansal Housing & Construction Ltd.)** is a company incorporated under the Companies Act, 1956 having **registered office at** 606, 6<sup>th</sup> Floor, Indra Prakash 21, Barakhamba Road, New Delhi, Central Delhi – 110001, Corporate Office at Ansal Plaza Mall, 2<sup>nd</sup> Floor, Sector – 1, Vaishali, Ghaziabad U.P – 201010 (hereinafter called the **developer/promoter/builder/respondent**), and the project in question is known as “**Ansal Heights**”, Sector – 86, Gurugram.
- c. That as per sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of “Promoter” and is bound by the duties and obligations mentioned in the said act. And is under the territorial jurisdiction of this Hon’ble Regulatory Authority.
- d. That as per section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainant falls under the category of “allottee” and has rights and obligations under the Act.
- e. That in November 2011, **complainant / petitioner, Mr. Aishwarya Tiwari** received a marketing call from the office of the real estate agent who represented himself as an authorized agent of the respondent company and marketed a residential project namely “Ansal Heights” situated at Sector – 86, Gurugram. The complainant visited the Gurugram office and project site of the respondent/builder with his family members. There the

complainant consultant with the marketing staff of builder and got information about the project. The marketing staff of the respondent gave him a brochure and pricelist and allured him with a shady picture of the project. The marketing staff and office bearers of the respondent allured with the proposed specification and assured that possession of the unit will be handed over within 42 months of the booking.

- f. That, believing on representation and assurance of respondent the complainant & co-allottee Ankur Tiwari, booked 2BHK Flat bearing No. H-0406 in H block, admeasuring 1360 sq. ft. and paid Rs. 4,00,000/- (Four Lakh) vide cheque no. 011280 dated 28.09.2011 drawn on HSBC Bank, as booking amount and signed a pre-printed application form. The flat was purchased under the construction linked plan for a sale consideration of **Rs. 52,57,400/-** (Fifty-Two Lakh Fifty-Seven Thousand Four Hundred).
- g. That after a long follow-up, on 13.09.2012, a pre-printed, unilateral, arbitrary flat buyer agreement/buyer's agreement was executed inter-se the respondent and the complainant & co-allottee Ankur Tiwari. According to clause 31 of the buyer agreement, the respondent has to give possession of the said flat within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. It is pertinent to mention at the time of accepting the application money and execution of BBA also, the respondent represented that he has all the requisite approvals

for commencement of construction, therefore, the due date of possession as per BBA was 13.03.2016.

- h. That on 14.04.2017, the complainant & co-allottee paid a demand of Rs. 33,000/- (Thirty-Three Thousand) raised by the respondent under the head "VAT CHARGES" and payment receipt for the same was issued by the respondent dated 19.04.2017.
- i. That the respondent kept raising the demands as per the agreed payment plan and the complainant kept paying the said demands, but the respondent failed to hand over the possession of the flat by 13.09.2016. The complainant made several telephonic calls to the office of the respondent to get the possession of the unit, but all went in vain, the office bearers always gave a new date of possession.
- j. That on 29.06.2021, the respondent sent an offer of possession for fit-outs letter to the complainant and raised a demand of Rs. 8,83,245.78/- (Eight Lakh Eighty-Three Thousand Two Hundred Forty-Five and Seventy-Eight Paisa) which includes various unreasonable and unjustifiable demands raised by the respondent under various heads i.e., Rs. 3,06,152/- (Three Lakh Six Thousand One Hundred Fifty-Two) as "Escalation Charges", Rs. 24,480/- (Twenty-Four Thousand Four Hundred Eighty) as "Labour Cess" & Rs. 2,04,000/- (Two Lakh Four Thousand) as "External Electrification Charges" and also raised a demand of Rs. 1,38,379.20/- (One Lakh Thirty-Eight Thousand Three Hundred Seventy-Nine and Twenty Paisa) payable in favour of "SEMS Estate Management Services Private Limited". It is pertinent to mention here that the respondent acknowledged the delay in handing over

the unit and credited delay penalty charges of Rs. 1,63,200/- (One Lakh Sixty-Three Thousand Two Hundred). It is again pertinent to mention here that the respondent has raised various unreasonable and unjustifiable demands which are not part of the builder buyer agreement, moreover, there is no occupation certificate for tower H till 29.07.2021.

- k. That on 12.07.2021, the complainant sent an application to the respondent for removal of the name of co-allottee and asked the respondent to remove the name of Mr. Ankur Tiwari as co-allottee and further requested to transfer all the rights in favor of the existing allottee i.e. Aishwarya Tiwari. That on 06.08.2021, the respondent sent a transfer letter to the complainant and stated that "This is to confirm the above-mentioned flat measuring 1360.00 sq. ft. situated at ANSAL HEIGHTS 86, GURGAON which was in the name of Mr. Aishwarya Tiwari & Ankur Tiwari stands transferred in your name, and the amount of Rs. 5240072/- (Rs. FIFTY-TWO LAKH FORTY THOUSAND SEVENTY-TWO only) stands credited in your name". and the respondent endorsed all the onward rights in favor of the complainant & also endorsed the same in his records.
- l. That on 24.09.2021, the complainant sent an email to the respondent and alleged various issues and also asked clarification and further stated that "*Pls provide clarity on below mentioned points with respect to the offer of possession letter in trail mail: 1. Pls provide copy of occupancy certificate 2. Pls confirm about the delay possession penalty amount 3. Pls confirm current stage of construction on the overall project 4. Pls confirm about the date of*



*execution of conveyance deed post taking possession. Clarity on these points is critical to proceed further with required formalities”.*

- m. That as per the statement of account provided by the respondent the complainant has paid Rs. 53,32,132/- (Fifty-Three Lakh Thirty-Two Thousand One Hundred Thirty-Two) i.e., 100% more than the total sale consideration.
- n. That since 2016 the complainant is regularly contacting the office bearers of the respondent party, as well as sending emails to the respondent, and making efforts to get possession of the allotted flat but all in vain. Despite several requests by the complainant, the respondent did not give possession of the flat. The complainant has never been able to understand/know the actual state of construction. Though the towers seem to be built up, but there was no progress observed on finishing and landscaping work and amenities for a long time.
- o. That the main grievance of the complainant in the present complaint is that despite the complainant paid **more than 100%** of the actual cost of the flat and ready and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of flat on promised time and till date, the unit is without amenities. Moreover, it was promised by the respondent party at the time of receiving payment for the unit that the possession of a fully constructed flat and the developed project shall be handed over to the complainant as soon as construction completes i.e., 42 months from the date of booking.
- p. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the



part of the respondent party and as such, he is liable to be punished and compensate the complainants.

- q. That due to the acts of the above and the terms and conditions of the builder buyer agreement/buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- r. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others and is prima facie clear on the part of the respondent party which makes them liable to answer this Hon'ble Authority.
- s. That the cause of action for the present complaint arose in September **2012**, when a unilateral, arbitrary, and ex-facie builder buyer agreement was executed between the parties. The cause of action again arose in **March 2016**, when the respondent party failed to hand over the possession of the unit as per the buyer agreement. The cause of action again arose on various occasions, including on **a) August 2018; b) Oct. 2020; c) December 2020; d) January 2021; f) August 2021 and on many times till date**, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by it that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

- t. That the complainant does not want to withdraw from the project. The promoter has not fulfilled his obligation, therefore as per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.

**C. Reliefs sought by the complainant**

4. The complainant is seeking the following relief:
- a. Direct the respondent to offer the physical possession of the unit with all amenities within 6 months of the filling of this complaint.
  - b. Direct the respondent to give delay possession charges @ prescribed rate of interest from due date of possession till the actual date of possession.
  - c. Direct the respondent to refrain from charging common maintenance charges.
  - d. Direct the respondent to refrain from charging external electrification charges.
  - e. Direct the respondent to refrain from charging Labour cess charges.
  - f. Direct the respondent to refrain from charging GST.
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](mailto: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 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.

**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 complainant**

**F. I Direct the respondent to offer the physical possession of the unit with all amenities within 6 months of the filling of this complaint.**

11. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate;
- ii. The subject unit should be in habitable condition;
- iii. The possession should not be accompanied by unreasonable additional demands.

12. In the present case, no occupation certificate has been obtained by the promoter, therefore the said offer of possession for fit out cannot be regarded as a valid offer of possession.
13. The respondent is legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is unsatiated 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 give delay possession charges @ prescribed rate of interest from due date of possession till the actual date of possession.**

14. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges. Clause 31 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*"31. The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 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 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."*

15. 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 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The authority calculated due date of possession from the date of date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. 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.

16. **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.

17. 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.
18. 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%.
19. 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;"*

20. 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.
21. 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 31 of the agreement executed between the parties on 13.09.2012, the possession of the subject apartment was to be delivered within 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The authority calculated due date of possession from the date of date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. 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 01.10.2017. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 01.10.2017 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.

**G. Directions of the authority**

22. 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 complainant from due date of possession i.e., 01.10.2017 till the actual handing over the possession of the unit to the complainants.
- b. The arrears of such interest accrued from 01.10.2017 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 10<sup>th</sup> 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 complainant/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 complainant 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.
23. Complaint stands disposed of.
24. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.07.2022