BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**4530 of 2021**
First date of hearing:	**21.01.2022**
Date of decision:	**06.07.2022**

1. Amrit Lal Saxena
2. Neha Saxena

Both RR/o B6-602, Vatika City Homes, Sector 83, Vatika India Next, Gurugram-122004 **Complainants**

Versus

M/s Ansal Housing Ltd.
Office address: 606, 6th Floor, Indraprakash, 21, Barkhamba Road, New Delhi- 110001. **Respondent**

CORAM:
Dr. K.K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Shri G.N Gautam (Advocate) Complainants
Shri Amandeep Kadyan (Advocate) Respondent

ORDER

1. The present complaint dated 25.11.2021 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.	GF-04 [pg. 14 of complaint]
8.	Unit measuring	602.75 sq. ft. [pg. 14 of complaint]
9.	Date of allotment letter with original allottee	04.09.2011 [pg. 14 of complaint]
10.	Date of endorsement	Not mentioned
11.	Date of transfer letter	16.11.2012 [pg. 12 of complaint]
12.	Date of sanction of building plans	11.09.2013

13.	Possession clause	**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 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."* *(emphasis supplied)* *[pg. 21 of complaint]*
14.	Due date of possession	11.09.2016 [Note: Due date calculated from date of sanction of building plan i.e., 11.09.2013 being later.]
15.	Delay in handing over of possession till the date of this order i.e., 06.07.2022	5 years 9 months 25 days
16.	Basic sale consideration as per allotment letter dated 04.09.2011	₹ 56,11,150/- [pg. 14 of complaint]
17.	Total sale consideration as per customer ledger dated 14.10.2021	₹ 57,81,017/- [pg. 34 of complaint]

18.	Amount paid by the complainant as per customer ledger dated 14.10.2021	₹ 52,76,733/- [pg. 36 of complaint]
19.	Occupation certificate	Not yet obtained
20.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have pleaded the complaint on the following facts:

a. That on 16.03.2011, the erstwhile owner Mr. Anil Chawla booked a unit in the project named "Ansals Hub 83" in Sector 83, Gurugram on 16.11.2012, the erstwhile owner transferred all the rights and liabilities in respect of such allotment to the complainant with due permission of the respondent company. Accordingly, the complainant was allotted a shop bearing unit no. SHOP-GF05 (SHOP-GF04 before revision in Layout Plan).

b. That on 04.09.2011, Builder Buyer Agreement was entered into between the parties wherein as per clause 26, the developer should offer possession of unit within 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later.

c. That vide letter dated 11.10.2013, the respondent informed the complainant that the area and cost of the shop has been changed and the area of the shop has been reduced to 574 sq. ft. from 602.75 sq. ft. and accordingly basic cost of the shop has been reduced Rs 46,46,530/- from Rs 48,79,261/- and PLC cost has been reduced to Rs 6,96,979.5/- from 7,31,889/-.

d. That out of the total cost of the said unit a sum of Rs. 21,28,974/- was paid by the first purchaser, Mr. Anil Chawla, till 16.11.2012 and after that the complainant paid further instalments to the

respondent till 30.08.2017. Thus, total sum paid to the respondent till 30.08.2017 is Rs.51,79,022/-.

e. That as per the builder buyer agreement, the committed date of offering the possession was 05.09.2015 but even after payment of more than 95 percent of total consideration, the respondent is still not offering the possession and is demanding complete payment which is illegal and arbitrary. That despite repeated calls and meetings with the respondents, no definite commitment was shown for timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant.

f. That respondent promised to offer the possession to the complainant before Diwali in year 2019. But the same was not offered as per promise and then complainant vide email dated 15.10.2019 asked Mr. Sonu Gupta from Ansals Housing and Construction Limited about the updates on the status of possession handover. Vide email dated 16.10.2019, Mr. Sonu Gupta assured the complainant that they will offer the possession in December 2019 or January 2020. Again, vide email dated 09.12.2019 complainant asked the respondents about the status of offer of possession, but no one even bother to respond to the email of the complainant.

g. That repeated calls, meetings and correspondences with the respondent and multiple visits to know the actual construction status not only caused loss to the complainant in terms of time, money and energy but also caused mental agony to him.

h. That the cause of action arose in favour of the complainants and against the respondent from the date of booking of the said units and it further arose when respondents failed/neglected to deliver the said units within a stipulated time period. The cause of action further arose when the respondents have not completed the said project with the assured facilities and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as the respondents have still not rectified their defects and not fulfilled their obligations as per the buyer's agreement.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:

a. Compound interest for every month of delay @ 24 % per annum (the rate at which builder charges interest from buyer as per clause 30 of BBA) since **04.09.2014** (committed date of possession) as per provisions of clause 2(za) and as per section 18(1) of Real Estate (Regulation and Development) Act, 2016.

b. Direct the respondent to complete the project in expeditious manner and to commit the date of possession in front of honorable court and offer the possession of the unit bearing no. SHOP-GF05 in Project HUB 83 located in Sector 83, Gurgaon along with all the promised amenities and facilities and to the satisfaction of the complainant.

c. Grant cost of litigation of Rs. 1,00,000/- to the complainant.

d. 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 (ahl@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. Compound interest for every month of delay @ 24 % per annum (the rate at which builder charges interest from buyer as per clause 30 of BBA) since 04.09.2014 (committed date of possession) as per provisions of clause 2(za) and as per section 18(1) of Real Estate (Regulation and Development) Act, 2016.

F.II. Direct the respondent to complete the project in expeditious manner and to commit the date of possession in front of honorable court and offer the possession of the unit bearing no. SHOP-GF05 in Project HUB 83 located in Sector 83, Gurgaon along with all the promised amenities and facilities and to the satisfaction of the complainant.

11. The above mentioned two reliefs are being taken up together. 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, allottment) 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 respondent and the original allottee on 04.09.2011, 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 approval of building plans i.e., 11.09.2013, being later. Accordingly, period of 36 months expired on 11.09.2016. Therefore, the due date of

handing over possession is 11.09.2016. 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 11.09.2016 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. Grant cost of litigation of Rs. 1,00,000/- to the complainant.

19. 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

20. 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., 11.09.2016 till the actual handing over of possession.

ii. The arrears of such interest accrued from 11.09.2016 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.

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.

21. Complaint stands disposed of.

22. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.07.2022