

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

Complaint no.:	802 of 2018
First date of hearing:	13.02.2019
Date of decision:	12.07.2022

Ms. Mithlesh Kumari  
R/o Hno. 1315 Block C-2, Palam Vihar, Gurugram.

**Complainant**

Versus

M/s Ansal Housing and Construction Ltd.  
Office address: 15, UGF, Inderprakash 21, Barakhamba  
Road, New Delhi-110001

**Respondent**

**CORAM:**

Dr. K.K Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Sunil Yadav (Advocate)  
Meena Hooda (Advocate)

**Complainant  
Respondent**

**ORDER**

1. The present complaint dated 30.10.2018 has been filed by the complainant/allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Townwalk", Sector 104, Gurugram.
2.	Total area of the project	2.1 acres
3.	Nature of the project	Commercial project
4.	DTCP license no.	103 of 2012 dated 01.10.2012 valid up to 30.09.2016
5.	Name of licensee	Jagriti Realtors Pvt. Ltd.
6.	Registered/not registered	Not Registered
7.	Unit no.	OFFIC-606 [annexure C3, pg. 58 of complaint]
8.	Area of the unit	697.33 sq. ft. [annexure C3, pg. 58 of complaint]
9.	Date of execution of buyer's agreement	13.03.2014 [annexure C3, pg. 55 of complaint]
10.	Possession clause	<b>Clause 30.</b> <i>30. 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</i>

		<i>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 42 months as above in offering the possession of the unit.</i> <i>(Emphasis supplied)</i> <i>[annexure C3, pg. 64 of complaint]</i>
11.	Due date of possession	13.03.2018 (Note: 42 months from date of agreement i.e., 13.03.2014 as date of start of construction is not known + 6 months grace period allowed being unqualified)
12.	Delay in handing over possession till the date of filing of this complaint i.e., 27.09.2018	5 months 14 days
13.	Basic sale consideration as per BBA at page 58 of complaint.	₹ 38,73,668.15/-
14.	Total amount paid by the complainant as alleged by him at page 17 of complaint	₹ 37,82,858/- [The counsel for the complainant submitted list of 32 transactions confirming the payment of above amount]
15.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainant pleaded the complaint on the following facts:

- a. That in December 2012 the officials of the respondent company directly himself contacted the complainant and show him the broacher of the project and describe all illusive details of the projects and told the complainant that the project will be completed within 42 months completely and they will be handed over possession in 2017. The complainant was impressed by the statements in brochure, oral representation regarding quality of

- project and timely completion and handover of the possession of the project.
- b. That on 28.12.2012 the complainant has booked the shop/office in the project namely "Ansal Townwalk", Sector 104, Gurgaon with a booking amount of Rs.2,50,000/- (two lakh fifty thousand only) vide cheque no. 815117 and obtained a receipt against the said booking vide receipt no. 527794.
  - c. On the same day the complainant has opted construction link payment plan in which all future payment was linked with the construction of the project and with the assurance that the project has completed on time, complainant has paid all payments as the respondent company raised.
  - d. That on 13.03.2014 complainant has signed shop/office buyer's agreement and during the signing of the said agreement once again the complainant was taken into confidence that the said project was completed on time or within 42 months from the execution of this shop/office buyer's agreement on 13.03.2014 or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later and the same is also written in clause no. 30 of the said agreement. Delivery time was the core factor for the complainant to have booked the said apartment in question. Time being an essence of the agreement and was promised to be delivered by 2017. It is submitted that if the delivery was not time bound, the complainant would not have brought the said office/shop.
  - e. In clause 22 of the 2014 agreement, it was stipulated that the seller shall be entitled to forfeit an amount equivalent to 20% of basic

sale price i.e. the earnest money, in case of breach of the terms and conditions of shop buyer's agreement 2014 and as per clause 23 of the 2014 agreement the seller shall entitled to recover the entire amount due from the purchaser along with interest at the rate of 24% per annum compounded quarterly for any reason whatsoever on the amount due to the seller and the seller shall also be entitled at its sole discretion to terminate this agreement forthwith etc. These are draconian clauses, vested arbitrary power in the hands of seller/builder to cancel the allotment in case of payments with interest thereon remaining unpaid /dues. Such were the stringent and one sided unfair draconian term put forth by the seller/builder in its favour and advantage and they held the complainant at disadvantage and over the barrel.

- f. It was further stipulated in clause 36 of the 2014 agreement that in case the seller/ builder is unable to deliver the shop/office to the purchaser then the developer would pay to the buyer @5/ per sq. ft per month on super area. This is an extremely discriminatory clause because the seller / builder charges interest 24% per annum compounded quarterly from the purchasers and pay them only 5% per sq. ft. per month on super area which is much lower than what they get from the purchaser. This clause is extremely arbitrary unfair and discriminatory when compared to the penalty clauses stipulated in the agreement qua timely payments in favour of the seller buyer.
- g. The most shockingly the possession has not been delivered till date despite repeated and frantic requests being made in this regard to deliver possession as per agreement dated 13 March 2014 and

promise. The complainant reiterates that despite innumerable communication with the seller/ builder they got absolutely no response in the matter of delivering the possession which is deliberate and wilful.

- h. The complainant has lost confidence and in fact got no trust left in the seller/ builder as it has deliberately and wilfully indulged in undue enrichment by cheating at the cost of purchaser/ complainant besides being guilty of indulging in unfair trade practice and deficiency in services in failing to deliver the possession of the apartment as per 13 March 2014 agreement.
- i. That in the aforesaid circumstances the complainant again visited the office of the respondent and again to talk the seller /builder and to find out the actual position for possession. The complainant went to building site and saw that the complainant still waits for some more years to get the physical possession of the shop/office in the said project. The complainant was surprised to see only skeleton structure of tower, wherein the complainant has purchased the office/shop in question. The seller/builder have told the complainant that there is no chance of the completion for at least another one years. The complainant visit has confirmed that all the promises of completion were false, and the seller/ builder has clearly duped cheated and defrauded the complainant and taken them for ride. The seller builder has not registered with the Haryana, Real Estate Regulatory Authority.

**C. Relief sought by the complainant:**

4. The complainant has sought following reliefs:

- a. Direct the respondent to refund entire amount paid by the complainant along with the interest.
  - b. Compensation for mental agony.
5. Any On the date of hearing, the authority explained to the respondents/promoters 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. The respondent has contested the complaint on the following grounds:
- a. The respondent is a public limited company registered under the Companies Act, 1956, having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi-110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Aalam Zameer.
  - b. The project named "ANSAL Townwalk" is being developed on land comprised in rectangle no. 12, Khasra No. 9/2/2, 8/1/1, 13/1/3, 14/1/1, 9/1/2, 8/2, 12/2, 13/1/1 measuring above 16 Kanal - 16 Marla or 2.1 acres falling in Village Dhanwapur, Gurgaon, sector 104 of the Gurgaon, Manaser Urban Complex Plan 2021.
  - c. That the project is owned by a consortium of Jagriti Realtors Pvt. Ltd., Western Relators Pvt. Ltd. Welfares Developers Pvt. Ltd. and Pratham Relators Pvt. Ltd.
  - d. That the respondent has entered into a joint development agreement with the landowners and the company with the joint efforts have since obtain license no. 103/2012 dated 01.10.2012 for setting a commercial project on the project land of DTCP, Haryana.

- e. That, the respondent project is already registered with the Hon'ble Authority. That the complainant has paid a sum of only Rs. 10,55,830/- for the entire unit till date and the complainant has also taken a discount of Rs. 1,43,383/- i.e., 3.5% of the basic amount and as such the total cost of the project was calculated as Rs. 41,58,128.40/-.
- f. The compliant opted for project Ansal Townwalk is a construction link plan (CLP) but the complainant was its habitual defaulter but even after several reminders dated 13.05.2013, 17.06.2013, 10.09.2013, 25.09.2013, 08.10.2013, 18.01.2014 and 31.01.2014, but he did not pay the dues to the respondent and as such been defaulters, he deserves no relief from the Hon'ble Authority.
- g. That vide letter dated 31.01.2014 the respondent informed the complainant to remit the outstanding amount, failing which the unit will be cancelled. The despite the receipt of the letter and repeated correspondence, complainant failed to clear the outstanding. As timely payment was essence of the contract between parties, the respondent after giving multiple reminders, finally on 17.02.2015 cancelled the booking on the default of complainant.
- h. That vide letter dated 17.02.2015 complainant was informed that the refund of the deposited amount will be made after forfeiting the earnest amount which is 20% of the basic sale priced as per clause 27 of the application form. That complainant was required to approach the respondent with the original documents pertaining to the unit so that the process of refund can be initiated. However, the complainant failed to approach the respondent.



- i. That the construction of the project namely Ansal Townwalk was slow down due to several force majeure which are beyond the control of the respondent. It is necessary to mention that the project is under registration before HARERA authority and during registration the date of possession was changed as March 2020 and the respondent is confident that the HARERA will likely allow the change of the date of possession considering the above difficulties faces by the respondent.
- j. That, without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainants well within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders. dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 whereby ground water extraction was banned in Gurgaon; Orders passed by National Green Tribunal whereby mining of sand in Haryana and Rajasthan was banned, Reservation agitation in Haryana; orders of National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016; demonetization etc. adversely effected the progress of the project. That the respondent would pay the respondent appropriate compensation as per the terms and conditions of the said allotment letter duly executed by the complainant.

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. 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**

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*(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*

11. 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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and ***reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant**

**F.I. Direct the respondent to refund entire amount paid by the complainant along with the interest.**

14. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference: -

***Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building-*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.*

*Provided 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 the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

15. Clause 30 of the BBA dated 13.03.2014 provides for the handing over of possession and is reproduced below for the reference:

*\*30. 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 31. 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.\**

16. 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 complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters 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 promoters are 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 plus

6 months from date of agreement or the date of commencement of construction whichever is later. The due date of possession is calculated from the date of execution of agreement i.e., 13.03.2014. The period of 42 months expired on 13.09.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified.

17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid alongwith interest at the prescribed rate. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided 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."*

18. 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.
19. 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., 12.07.2022 is 7.50%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.50%.

20. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is 13.03.2018 and there is delay of 5 months 14 days on the date of filing of the complaint.
21. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:***

*"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project...."*

22. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** it was observed:

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears*

*that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed"*

23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
24. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
25. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 37,82,858/- with interest at the rate of 9.50% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of



each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F.II. Compensation for mental agony.**

26. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

**G. Directions of the authority**

27. 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 promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to refund the entire amount of Rs. 37,82,858/- paid by the complainants along with prescribed rate of interest @ 9.50% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.


- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent builder is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.

28. Complaint stands disposed of.

29. File be consigned to registry.

  
(Vijay Kumar Goyal)

Member

  
(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2022

**HARERA**  
**GURUGRAM**