



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Order pronounced on: 18.01.2023

Name of Builder	M/s Ansal Housing & Construction Ltd.
Project Name	Ansal Town Yamunanagar, "Ansal Galleria"

Sr. No.	Complaint No.	Complainant
1.	345 of 2019	Baldev Raj Kamboj s/o Sh. Sadhu Ram Kamboj, r/o Villa No. A-20, Ansal Town, Jagadhri, Yamuna Nagar (Haryana).
2.	349 of 2019	Mrs. Shashi Bhasin w/o of Mr. Prem Bhasin, r/o H.No.-92a, Ward No.7, Sadaura, Ambala, (Haryana).
3.	2413 of 2019	Namita Sharma & Anr, r/o H.No. 263, Sector 8, Panchkula

### Versus

1. M/s Ansal Housing & Construction Ltd., having its registered office at 15 UGF, Indraprakash, 21 Barakhamba Road, New Delhi-110001

.....Respondent

**CORAM: Dr. Geeta Rathee Singh  
Nadim Akhtar**

**Member  
Member**

**Present through video call:** - Sh. Neeraj Gupta, learned counsel for the complainants in all complaints.

Sh. Surjeet Bhadhu, learned counsel for the respondents in all complaints.

**ORDER (NADIM AKHTAR - MEMBER)**

1. This order shall dispose of all the 3 complaints titled as above filed before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Captioned complaints are taken up together as facts and grievances of all complaints are more or less identical and relate to the same project of the respondent, i.e., "Ansal Town Yamunanagar, "Ansal Galleria", situated at Jagadhari, Yamnunangar. The terms and conditions of the builder buyer's agreements that had been executed between the parties are also similar. The fulcrum of the issue involved in all these cases pertains to failure on part of respondent promoter to deliver timely possession of shops in question. Therefore, complaint no. 345 of 2019 titled "Baldev Raj Kamboj v/s M/s Ansal



Housing and Construction Pvt. Ltd.”, has been taken as lead case for disposal of all these matters.

**A. UNIT AND PROJECT RELATED DETAILS:**

3. The particulars of the project have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Ansal Town Yamunanagar, “Ansal Galleria”
2.	Nature of the Project	Commercial
3.	RERA registered/not registered	Registered / no. 311 of 2017

4. Further the details of sale consideration, the amount paid by all the complainants, date of proposed handing over of possession, delay period have been detailed in following table:

Sr. No.	COMPLAINT NO.	SHOPS	DATE OF AGREEMENT	DEEMED DATE OF POSSESSION	TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.)	TOTAL SALES CONSIDERATION (In Rs.)
1.	345/19	SHOP NO. 63	24.04.2012	23.10.2015	18,44,709/-	17,22,500/-
		SHOP NO. 64	26.04.2012	25.10.2015	20,11,088/-	18,78,500/-
2.	349/19	SHOP NO. 36	04.07.2012	03.01.2016	9,23,200/-	10,50,576/-
3.	2413/19	SHOP NO.18	10.07.2012	10.01.2016	12,84,773/-	10,50,576/-

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**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT**

5. Complainant had purchased two adjacent shops from the original allottees namely, Sh. Balvinder Singh and Ms. Baljit Kaur in the year 2012. Said shops were endorsed in name of the complainant vide endorsement letters dated 14.08.2012. Shops bearing no. 63 and 64 were booked by the original allottees in project of the respondent namely "Ansal Town, Ansal Galleria" situated at Jagadhari, Yamnunanagar. Vide endorsement letters dated 14.08.2012, both the shops bearing no. 63 and 64, on ground floor, having carpet area of 344.50 sq. ft. each were transferred in the name of complainant on the same original terms and conditions. Builder Buyers Agreement for both shops bearing no. 63 and 64 were executed between the original buyers and respondent-promoter on 24.04.2012 and 26.04.2012 respectively. (Annexure C-3,4 of complaint book).
6. According to clause 28 and 29 of the BBA, respondent committed to offer possession of said shops to allottee within a period of 42 months from the date of execution of provisional allotment letter which comes to 23.10.2015 for shop no.63 and 25.10.2015 for shop no. 64. As per clause 1, basic sale price for the shop no. 63 and 64 were fixed at Rs 17,22,500/- and Rs. 18,78,500/- respectively. Complainant has paid Rs. 18,44,709/- for shop no. 63 and Rs. 20,11,088/- for shop no. 64 to the respondent-promoter. Complainant argued



that since more than the basic sale price of the shops were paid by the complainant, possession should have been offered within time to the complainants.

7. Complainant further alleges that respondent had sent a letter dated 28.06.2017 vide which he had offered possession but along with additional demands. Further said possession letter was never accompanied with Completion Certificate. Complainant had filed an RTI with Senior Town Planner, Panchkula to seek information regarding the completion Certificate of the "Ansal Galleria" project at Ansal Town. A reply dated 18.12.2018 was received from the said office, which clearly mentioned that "no Occupation Certificate is issued for Shopping Complex Galleria". Furthermore, complainant alleges that inordinate delay has already been caused. Aggrieved by the same complainant has filed the present complaint. Complainant has prayed for relief of refund of the amount paid by complainant till date along with the prescribed rate of interest from respective dates of payment till the actual realization.

C. **RELIEF SOUGHT:**

8. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund the amount paid by complainant for shop no. 63 Rs. 18,4,709/- and for shop no. 64

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- Rs. 20,11,088/- along with the interest @ 18% per annum from the date of payment till its actual realization;
- ii. To direct the respondent to pay ₹10,00,000/- to the complainant on account of mental agony and financial loss suffered by the complainant;
  - iii. To direct the respondent to compensate with Rs. 15,00,000/- due to inflation in property market proportionate size of shop in the past 5 years.
  - iv. To direct the respondent to pay Rs. 2,00,000/- to the complainant on account of deficiency in the services of respondent and also Rs. 55,000/- towards the litigation charges;
  - v. Any other relief which is deemed fit by this Hon'ble Authority.

**D. REPLY:**

9. Details of service of notice to respondent:

Particulars	Details
Notice sent on 31.01.2019	Successfully delivered on 02.02.2019

10. Reply dated 18.07.2019 along with an application for appointment of local commissioner was filed by the respondent – promoter. It is submitted that present complaint is not maintainable before the Ld. Authority as Authority has no jurisdiction to decide the captioned matter because complainant has sought relief of refund of the paid amounts for both the shops in question. Moreover,

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respondent has stated that project in question stands completed and vide letter dated 28.06.2017, possession of the same was also offered to the complainant.

11. Further, he stated in para 6 and 11 of the reply, that delay in handing over

possession of booked shops were due to delay on the part of the governmental authority to issue Occupation Certificate. As respondent has applied for the same in the year 2015.

12. Furthermore, as per clause 1 of the agreement, complainant had opted for payment plan, which complainant later on had not adhered by. Therefore, complainant's default in not making timely payments caused delay in completion of the project in question.

**E. REPLICATION FILED BY COMPLAINANT:**

13. Complainant had filed replication on 13.11.2019 wherein he has stated that application filed by respondent for appointment of a local commissioner is devoid of any substance and hence liable to be dismissed. Further, complainant has referred to Section 4.10 of the Haryana Building Code, 2017 and Section 11(4), 17(2), 18,19(10) of the RERA Act 2016 which provides that no building or unit can be occupied without first obtaining Occupation Certificate. Thus, it is mandatory to obtain Occupation/ Completion Certificate before handing over physical possession of any unit by the respondent-promoter. Furthermore, it could be concluded that respondent must have violated certain rules due to which completion certificate was not granted to the respondent-promoter.



**F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:**

14. During oral arguments learned counsel for the complainant reiterated arguments as mentioned in para 6,7,8 and 13 of this order. Further complainant counsel has referred to an application filed by him under Section 151 CPC for placing on record the information sought under RTI. Vide letter dated 17.03.2021, the Senior Town Planner, Panchkula has informed that the request of Ansal Housing and Construction Ltd. for granting Occupation Certificate for commercial site measuring 1.296 acres in sector-20, Yamunanagar has been rejected vide memo no. 899 dated 05.03.2021.
15. Furthermore, in para 5 of the said application it has been disclosed by the complainant counsel that few shops, even have been ordered to be sealed by the orders of Town and Country Planning Department. This information has been pasted by the officials of Town and Country Planning Department in the local areas for warning public not to invest in this project. Copy of the warning letter is annexed as Annexure C-14.
16. Learned counsel for the complainant while concluding his arguments, has submitted that respondent neither handed over possession of booked shops nor he had obtained Completion / Occupation Certificate, although more than total sale consideration for both the shops stands paid by the complainant in the year 2016. Therefore, in light of inordinate delay caused in handing over possession



and failure on part of respondent to receive CC or OC for the project, prayer of refund of the complainant be allowed.

17. On the other hand, proxy counsel for the respondent had sought pass over for certain time as arguing counsel was busy before other forum. None appeared when case was again called. Subsequently, Sh. Surjeet Bhadu marked his presence through video call in the end of the cause list.

**G. JURISDICTION OF THE AUTHORITY:**

18. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**G.1: Territorial jurisdiction**

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, Haryana, Panchkula shall be the rest of Haryana except Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Yamunanagar. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

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**G.2: Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

*(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:*

*34. Functions of Authority.—The functions of the Authority shall include—(f) 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;*

In view of the Provisions of the Act of 2016 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 Office, if pursued by the complainants at a later stage.





**H. ISSUES FOR ADJUDICATION:**

19. Whether the complainant is entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

**I. OBSERVATIONS OF THE AUTHORITY:**

20. From perusal of the record and documentary evidence adduced by the complainant and also on the basis of arguments advanced by learned counsel for complainant, this could be concluded that project is frustrated as even after its completion, concerned competent Authority as mentioned in para 14,15 and 16 of this order, has rejected the respondent application for grant of Occupation/ Completion Certificate. Further, warning letters were also placed on record which clearly shows that respondent has failed to receive Occupation Certificate. Since complainant has paid all the amounts in the year 2016 to the respondent promoter and promoter even after receiving more than total sale consideration, has failed to either provide possession or refund of the paid amount to the complainant till date. As per builder buyer agreement also respondent was under an obligation to handover the possession of booked shops by the year 2015 or 2016. But respondent has miserably failed to do so. Therefore, Authority cannot keep the complainant waiting endlessly and compel him to wait for indefinite period.
21. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" has

highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state.

Para 25 of ibid judgement is reproduced below:

*“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.”*

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

22. Therefore, Authority finds it to be fit case for allowing refund in favour of complainant. Though the complainant has sought that interest be allowed @18% however, same cannot be allowed as interest can only be awarded in terms of RERA Act and HRERA Rules. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:



**“Rule 15:** Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (1) of Section 18 or the promoter fails to give possession of the apartment/plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

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.”

23. The legislature in its wisdom in the subordinate legislation under the provisions 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.
24. 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. 18.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.
25. The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:

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(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee 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 allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

26. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.60% till the date of this order in all the captioned complaints; details are given in the table below -

Sr. No.	Complaint No.	Principal Amount (in Rs.)	Interest @10.60% till 18.01.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	345 of 2019	Shop no- 63 18,44,709/-	18,67,777/-	37,12,486/-
		Shop no-64 20,11,088/-	20,37,441/-	40,48,529/-
2.	349 of 2019	9,23,200/-	9,21,531/-	18,44,731/-
3.	2413 of 2019	12,84,773/-	11,22,529/-	24,07,302/-

27. The complainants are seeking compensation on account of mental harassment caused for delay in possession, compensation under Section 12 of RERA Act,

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2016 and litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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 & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

**J. DIRECTIONS OF THE AUTHORITY**

28. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount along with interest of @ 10.60 % to the complainant as is specified in the table above.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

29. These complaints are, accordingly, disposed of. Files be consigned to the record room and order be uploaded on the website of the Authority.

*Geeta Rathee*

DR. GEETA RATHEE SINGH  
[MEMBER]

*Nadim Akhtar*

NADIM AKHTAR  
[MEMBER]

