

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

Complaint no.:	4327 of 2021
First date of hearing:	23.12.2021
Date of decision:	12.04.2023

Bimlendra Jha,  
R/o Hno. 003, Janaki Apartments, Sector 22, Dwarka,  
New Delhi.

**Complainant**

Versus

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

**Respondent**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member  
Member**

**APPEARANCE:**

Sushil Yadav (Advocate)  
Meena Hooda (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 29.10.2021 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	"Estella", Sector 103, Gurugram.
2.	Total area of the project	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	17 of 2011 dated 08.03.2011 valid up to 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
6.	Registered/not registered	Extension granted vide no.- 09 of 2019, dated:25.11.2019 Valid till:17.08.2020 (Validity of registration has expired)
7.	Unit no.	L-0801 [pg. 16 of complaint]
8.	Area of the unit	1945 sq. ft. [pg. 16 of complaint]
9.	Date of execution of buyer's agreement with original allottee	01.10.2012 [pg. 12 of complaint]
10.	Date of transfer of unit in name of complainant	18.10.2013 [pg. 33 of complaint]
11.	Possession clause	<b>30.</b> <i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required</i>



		<p><i>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 36 months as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p> <p>[pg. 23 of complaint]</p>
12.	Due date of possession	01.04.2016  (Note: 36 months from date of agreement i.e., 01.10.2012 as date of start of construction is not known + 6 months grace period allowed being unqualified)
13.	Delay in handing over possession till the date of filing of this complaint i.e., 29.10.2021	5 years 6 months 28 days
14.	Basic sale consideration as per BBA at page 32 of complaint.	₹ 79,59,125/-
15.	Total amount paid by the complainant as alleged by the complainant at pg. 36 of complaint	₹ 82,83,543.48/-
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

**B. Facts of the complaint**

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

- a. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "Ansal Estella"- Sector 103 Gurgaon promising various advantages, like world class amenities and timely completion/execution of the



project etc. Relying on the promise and undertakings given by the respondent the previous owner booked the unit in the aforementioned project of respondent admeasuring 1945 sq. ft. in the aforesaid project of the respondent for total sale consideration of ₹ 79,59,125/- which includes BSP, car parking, IFMS, Club Membership, PLC etc.

- b. As per the buyers' agreement dated 01.10.2012 the respondent had allotted a unit bearing no. L-0801 admeasuring 1945 sq. ft. in their project. As per para no.30 of the buyer agreement dated 01.10.2012, the respondent had agreed to deliver the possession of the unit within a period of 36 months from the date of execution of buyers' agreement plus a grace period of six months.
- c. That complainant regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the unit without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving of payment of all the demands raised by the respondent for the said unit and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted unit to the complainant within stipulated period.
- d. That it could be seen that the construction of the floor in which the complainant unit was booked with a promise by the respondent to deliver the unit by 01.10.2015 but was not according to time line

given by the respondent for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

- e. That due to this omission on the part of the respondent the complainants had been suffering from disruption of his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the unit on time. That as per clause 35 of the buyer agreement dated 01.10.2012 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant compensation @ Rs. 5/- per sq. ft. per month of the super area of the unit. It is, however, pertinent to mention here that a clause of compensation at a such of nominal rate of @ Rs 5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the unit even after a delay from the agreed possession plan. The respondent cannot escape liability merely by mentioning a compensation clause in the agreement. It can be seen here that the respondent has incorporated the clause in one sided buyers agreement and offered to pay a sum of @ Rs.5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges 24% per annum interest on delayed payment.
- f. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is

liable to pay interest on the amount paid by the complainant @18% per annum to be compounded from the promise date of possession till the flat is actually delivered to the complainant.

- g. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the flat in question or to refund the amount along with interest @ 18% per annum on the amount deposited by the complainant, but respondent has flatly refused to do so.

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

4. The complainant has sought following reliefs:
- Direct the respondent to refund entire amount paid by the complainant along with the prescribed rate of interest.
  - Cost of litigation & compensation.
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. Notice to the promoter/respondent in the above-mentioned complaint was sent through speed post and through e-mail address ([marketing@ansals.com](mailto:marketing@ansals.com)); the delivery report of which shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file a reply within the stipulated time period. However, on the hearing dated 10.10.2022 the counsel for respondent requested to file the reply in the registry but no such record is there with the registry. Moreover, a cost of ₹ 10,000/- was imposed





on 10.10.2022, the same is also not paid till date. Since, till today no reply has been submitted therefore, the authority assumes/observes that the respondent has nothing to say in the present matter and accordingly, the authority proceeds with the case without reply and the defence of the respondent stands 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. 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) 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 complainant 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 01.10.2012 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 36 months from the date of execution of the agreement or within 36 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 36 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 36 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 agreement i.e., 01.10.2012 as date of start of construction is not known. The period of 36 months expired on 01.10.2015. 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 along with 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., **12.04.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
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 01.04.2016 and there is delay of 5 years 6 months 28 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., ₹ 82,83,543/- with interest at the rate of 10.70%







(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. Cost of litigation & compensation for mental harassment.**

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 may 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 ₹ 82,83,543/- paid by the complainant along with prescribed rate of interest @ 10.70% 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/promoter is directed to pay the cost of ₹ 10,000/- imposed vide order dated 10.10.2022.
- iv. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

28. Complaint stands disposed of.

29. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member

  
(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.04.2023

