

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

Complaint no.:	2397 of 2018
First date of hearing:	27.03.2019
Date of decision:	22.03.2023

Sandeep Sahanan
R/o J8/132, Rajouri Garden, New Delhi-110027

Complainant

Versus

M/s Ansal Housing & Construction Ltd.
Office address: 2nd floor, Ansal Plaza, sector-1, Near
Vaishali Metro Station, Vaishali, Ghaziabad, Uttar
Pradesh-201010.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ms. Priyanka Agarwal (Advocate)

Complainant

Ms. Meena Hooda (Advocate)

Respondent

ORDER

1. The present complaint dated 09.01.2019 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Heights 86", Sector 86, Gurugram.
2.	Total area of the project	12.843 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
5.	Name of licensee	Resolve Estate Pvt. Ltd.
6.	Registered/not registered	Not registered
7.	Unit no.	G-1104 [pg. 18 of complaint]
8.	Area of the unit	1360 sq. ft. [pg. 18 of complaint]
9.	Date of execution of buyer's agreement	07.05.2013 [pg. 15 of complaint]
10.	Possession clause	31. <i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely</i>



		<p><i>payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p> <p>[pg. 23 of complaint]</p>
11.	Date of start of construction as per customer ledger dated 02.11.2018 at pg. 36 of complaint	01.10.2013
12.	Due date of possession	01.10.2017 (Note: 42 months from date of start of construction i.e., 01.10.2013 being later + 6 months grace period allowed being unqualified)
13.	Delay in handing over possession till the date of filing of this complaint i.e., 09.01.2019	1 year 3 months 8 days
14.	Total sale consideration as per customer ledger dated 02.11.2018 at pg. 32 of complaint	₹ 52,71,218/-
15.	Total amount paid by the complainant as per customer ledger dated 02.11.2018 at pg. 35 of complaint	₹ 52,28,848/-
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

B. Facts of the complaint

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



- a. That the complainants are a law-abiding citizen and consumer who have been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project and the complainant had needed an own home for his family.
- b. That the complainants were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which will forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the executed builder buyer agreement between respondent and complainant mentioned in developer's representations, DTCP given the licence 48 of 2011 to Resolved Estate Pvt. Limited (confirming party -1) this company was transferred his rights to Optus Corona Developers Pvt. Ltd. (confirming party-2) this company was transferred his rights to Samyak Projects Pvt. Ltd (confirming party-3). At last confirming party -3 makes another arrangement to joint with respondents those all arrangements create doubt, suspicion, M/S Ansal Housing & Construction Ltd. have legal right to collect money from allottees against the unit no-G-1104, Tower G "Ansal Heights, 86", Gurugram and have legal & valid license to develop this project.
- c. That the based-on promises and commitment made by the respondent, complainants booked a 2 BHK flat admeasuring 1360 Sq. Ft, along with one covered car parking in the unit no. G-1104, Tower-G in residential project Ansal Heights, 86", Sector 86, Gurugram, Haryana. The initial booking amount of ₹ 6,43,738/- was

paid through cheques no-046374 and 776631 dated 15.09.2011 and 30.11.2011.

- d. That the respondent to dupe the complainants in their nefarious net even executed flat buyer agreement signed between M/s Ansal Housing & Construction Ltd. and Mr Sandeep Sahanan & Krishen Kumar Sahanan dated 07.05.2013 just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently demands due to which they were able to extract huge amount of money from the complainants.
- e. That it is pertinent mentioned here that according to the statement the complainant paid a sum of ₹ 52,96,222/- to the respondent till March 2017 and before this builder was demanded more than 95% amount without doing appropriate work on the said project, which is illegal and arbitrary.
- f. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainants have fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein are not in breach of any of its terms of the agreement.
- g. That the complainant is paying EMI on Sanctioned home loan of ₹ 35,00,000/- from Indian Overseas Bank which was taken for bought this flat. And EMI of ₹ 38,148/- create extra financial burden on complainants.
- h. That complainants have paid all the instalments timely and deposited ₹ 52,96,222/- that respondent in an endeavour to extract money from allottees devised a payment plan under which



respondent linked more than 35 % amount of total paid against as an advance rest 60% amount linked with the construction of super structure only of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and internal development of facilities amenities and after taking the same respondent have not bothered to any development on the project till date as a whole project not more than 40% and in term of particular tower just built a super structure only. Extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.

- i. That complainants booked apartment dated 30.11.2011 and as per flat buyer agreement builder liable to offer possession on before November 2016 so far. Still builder committed new date with authority in December 2021 is impractical, unacceptable and he made his escape from the authority's legal action.
- j. That as the delivery of the apartment was due on November 2016 which was prior to the coming into of force of the GST Act, 2016 i.e., 01.07.2017, it is submitted that the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainants but just reversed builder collect the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation.
- k. That The respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family

and new possession date given by builder also too long from now December 2021 has been rudely and cruelly been dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking return of the entire money with interest.

- l. That the complainants communicate with respondent and asked for delayed possession respondent show problem of financial crunch other side builder extracted huge amount from complaints and given loan to others, and project development abundant create suspicion on builder intention.
- m. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:
 - a. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession till the actual date of handing over of possession.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply filed by the respondent.

6. The respondent has contested the complaint on the following grounds:

- a. That 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. Vaibhav Chaudhary whose authority letter is attached herewith. The above said project is related to license no.48 of 2011 dated 29.05.2011, received from the Director General, Town & Country Planning, Haryana, Chandigarh (DGTCP) over the land measuring an area of 12.843 acres falling in the revenue estates of village Tikampura, District Gurugram and is the part of Sector-86 of Gurugram-Manesar Urban Development Plan-2021.
- b. That the relief sought in the complaint by the complainant is based on false and frivolous grounds and he is not entitled to any discretionary relief from this hon'ble authority as the person not coming with clean hands may be thrown out without going into the merits of the case. However, the true facts of the case are that the land under the project is owned and possessed by the respondent through its subsidiary M/s Optus Corona Developers Pvt. Ltd. having its registered office at J-181, Saket, New Delhi & M/s Samyak

Project Pvt. Ltd., having its registered office at 111, first floor, Antriksh Bhawan, K.G Marg & New Delhi.

- c. That it is submitted that the complaint is not maintainable and tenable under the eyes of law, as the complainant has not approached the hon'ble authority with clean hands and not disclosed the true and material facts relating to this case of complaint. The complainant, thus, have approached the hon'ble authority with unclean hands and suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as **S.P. Chengalvaraya Naidu Vs. Jagan Nath** reported in 1994 (1) SCC Page-1, in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the hon'ble authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as **Tata Motors Vs. Baba Huzoor Maharaj** bearing RP No.2562 of 2012 decided on 25.09.2013.
- d. 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 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 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing air quality index being worse, maybe harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt. stoppage of work in many projects. the payments especially to workers to only by liquid cash. The sudden restriction on withdrawals led the respondent to be unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the agreement as well as in compliance of other local bodies of Haryana government as well as government of Haryana or the Centre government, as the case may be.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

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)(a)

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession till the actual date of handing over of possession.



12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.

"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, —

***.....
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."***

13. Clause 31 of the agreement to sell provides for handing over of possession and is reproduced below:

"31. The developer shall offer possession of the unit any time, within a period of 42 months from date of execution of 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 the dues by buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."

14. 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 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 promoter 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 obtaining all the required sanctions and approval necessary for commencement of construction whichever is later. The authority calculated due date of possession according to clause 31 of the agreement dated 07.05.2013 i.e., within 42 months from date of start of construction i.e., 01.10.2013 being later. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage.

15. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at

such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

16. 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.
17. 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., **22.03.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
18. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. The relevant section is reproduced below:

"(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;"

19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
20. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 31 of the agreement executed between the parties on 07.05.2013, the possession of the subject apartment was to be delivered within 42 months from date of start of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 01.10.2017. The respondent has not yet offered the possession of the subject apartment. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 01.10.2017 till the actual handing over of the possession or offer of possession after receipt of OC plus two months whichever, is earlier, at

prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

21. 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 is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 01.10.2017 till the actual handing over of the possession or offer of possession after receipt of OC plus two months whichever.
- ii. The arrears of such interest accrued from 01.10.2017 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 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 allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, 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. However, holding charges shall not be charged by the promoters at any point of time even after



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being part of agreement as per law settled by Hon'ble Supreme Court
in civil appeal no. 3864-3889/2020.

22. Complaint stands disposed of.
23. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.03.2023



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