



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

Complaint no. :	2346 of 2018
First date of hearing:	28.03.2019
Date of decision:	03.03.2023

Nitin Mehta

R/o: - 1627 Sector C Pocket 1, Vasant Kunj, New Delhi-110070

Complainant

Versus

Ansal Housing Limited

Address: - Ansal Plaza, 2nd Floor, Sector-1, Vaishali, Ghaziabad, U.P-201010

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Complainant in person

Complainant

Ms. Meena Hooda (Advocate)

Respondent

ORDER

1. The present complaint dated 18.12.2018 has been filed by the complainant/allottees in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of 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 Highland Park", Sector 103, Gurugram.
2.	Total area of the project	11.70 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	32 of 2012 dated 12.04.2012 valid up to 11.04.2025
5.	Name of licensee	M/s Identity Buildtech Pvt. Ltd. M/s Agro Gold Chemicals India LLP
6.	Registered/not registered	Registered Vide registration no. 16 of 2019 dated 01.04.2019 valid up to 30.11.2021
7.	Unit no.	INVES-1503 [pg. 27 of complaint]
8.	Area of the unit	1762 sq. ft. [pg. 27 of complaint]
9.	Date of execution of buyer's agreement	04.07.2013 [pg. 24 of complaint]
10.	Possession clause	Clause 31. 31. The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 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>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 48 months as above in offering the possession of the unit.</i> <i>(Emphasis supplied)</i> [pg. 32 of complaint]
11.	Due date of possession	04.01.2018 (Note: 48 months from date of agreement i.e., 04.07.2013 as date of commencement of construction is not known + 6 months grace period allowed being unqualified)
12.	Delay in handing over possession till the date of order i.e., 03.03.2023	5 years 2 months
13.	Total sale consideration as per customer ledger dated 10.11.2018 at page 42 of complaint.	₹ 96,81,292/-
14.	Total amount paid by the complainant as per customer ledger dated 10.11.2018 at page 42 of complaint.	₹ 91,64,384.60/-
15.	Offer of possession	Not offered
16.	Occupation certificate	Not yet obtained

B. Facts of the complaint

3. The complainant has made the following submissions in their complaint:
- a. As per apartment buyer's agreement, under clause 31 on page 10 of the agreement, our unit possession was to be handed over to us upon completion of project on 04.01.2018 which should have been



delivered within 54 months inclusive of six months grace period from the date of execution of agreement on 28.02.2013. But developer failed to give us possession as on date. The possession is already delayed by almost one year and this may be delayed further by another two years since as on date the plaster work on the walls has still not started. Thus, project may be delayed by more than three years.

- b. As per clause 37 on page 11 of the agreement, developer to pay ₹ 5.00 per sq. Ft per month for the super area of 1762 so ft towards giving possession for the delayed period beyond 04.01.2018.
- c. EDC/IDC charges are to be applicable as per notification of govt of Haryana which developer have to clarify on what basis the EDC/IDC charges have been demanded and paid by us. In case any excess payment paid by us, the same to be refunded by developer along with interest @ 18 per cent per annum from the date of deposit by us.

C. Reliefs sought by the complainant.

- 4. The complainant is seeking the following relief:
 - a. Respondent be ordered to pay delayed possession charges at prescribed rate of interest.
- 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 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.32 of 2012, received from the Director General, Town & Country Planning, Haryana, Chandigarh (DGTCP) over the land measuring an area of 11.70 acres falling in the revenue estates of village Tikampura, District Gurugram and is the part of Sector-103 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 by developer's wholly owned subsidiary M/s Identity Buildtech Pvt. Ltd. (Identity) and M/s Agro Gold Chemicals Pvt. Ltd. (AGCPL) having its registered office at B-1/1345, Vasant Kunj, New Delhi – 110070. It is also worthwhile to mention here that the respondent has applied for registration of the project with RERA which is pending.
- c. That, it is submitted that the complaint is not maintainable or tenable under the eyes of law, as the complainant have not approached the hon'ble authority with clean hands and have not disclosed the true and material facts relates to this case of



complaint. The complainant, thus, have approached the hon'ble authority with unclean hands and have 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 adjudicating officer 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 complainant 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 unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of agreement as well as in compliance of other local bodies of Haryana Government.

- e. That it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered with RERA and as such the Hon'ble Authority lacks jurisdiction to entertain the present complaint.
- f. That the respondent reserves the right to file additional reply and documents, if required, assisting the hon'ble authority in deciding the present complaint at the later stage.
- g. That it is also worthwhile to mention here that the allegations having been levelled in this complaint are with regard to cheating and alluring which only can be decided by the hon'ble civil court and in these scenarios the hon'ble authority also lacks jurisdiction.

E. Jurisdiction of the authority

7. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. 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



8. 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

9. 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.”

10. 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.

F. Findings of the authority on relief sought by complainant.



F.I. Respondent be ordered to pay delayed possession charges at prescribed rate of interest.

11. The above-mentioned issues are being dealt up together. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges. Clause 31 of the apartment buyer agreement (in short, agreement) 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 48 months from the date of execution of the agreement or within 48 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 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit."

12. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter 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 promoter is 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.

13. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 48 months from the date of execution of the agreement or within 48 months from 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 date of execution as there is no document on record to regarding approval necessary for commencement of construction. The period of 48 months expired on 04.07.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
14. **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.

15. The legislature in its wisdom in the subordinate legislation under 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.
16. 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., **03.03.2023** is 8.70%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.70%.
17. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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



(ii) the interest payable by the promoter to the allottees shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

18. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.
19. 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 04.07.2013, the possession of the subject apartment was to be delivered within 48 months from the date of execution of the agreement or within 48 months from 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 from date of execution as there is no document on record to regarding approval necessary for commencement of construction. The period of 48 months expired on 04.07.2017. 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 04.01.2018. 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., 04.01.2018 till the actual handing over of possession of the unit, 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

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to pay the interest at the prescribed rate i.e., 10.70% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 04.01.2018 till the actual handing over the possession of the unit to the complainant.
- b. The arrears of such interest accrued from 04.01.2018 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.
- c. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- d. The rate of interest chargeable from the complainant/allottees 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 promoter shall be liable to pay the



allottees, in case of default i.e., the delay possession charges as per section 2(z) of the Act.

- e. If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.
- f. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

21. Complaint stands disposed of.

File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2023