

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

Complaint no. :	1622 of 2022
Order reserved on:	19.07.2023
Date of Pronouncement:	20.09.2023

1. Ajay Chawla
2. Neetu Ghulani

**Both R/O:** House No. WZ - 294, Gali no -11, Lajwanti  
Garden, New Delhi

**Complainants**

Versus

Ansal Housing Limited (Formerly known as Ansal  
Housing & Construction Limited)

**Address:** - 606 Indra Prakash 21, Barakhamba Road,  
New Delhi-110001

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Mr. Ajay Chawla and Neetu Gulani (Advocate)

Complainants

Mr. Sparsh Chaudhary Proxy Counsel

Respondent

**ORDER**

1. The present complaint dated 18.04.2022 has been filed by the complainants/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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Estella
2.	Project location	Sector 103, Gurugram, Haryana
3.	Project area	15.743 acres
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid up to 07.03.2015
6.	Name of licensee	Rattan Singh and 9 others
7.	HRERA registered/ not registered.	Extension granted vide no.- 09 of 2019, dated:25.11.2019 Valid till:17.08.2020 (Validity of registration has expired)
8.	Unit no.	M-1002 [annexure C6, pg. 32 of complaint]
9.	Unit area admeasuring	1725 sq. ft. [super area]

10.	Date of builder buyer agreement	08.09.2012 [annexure C6, pg. 28 of complaint]
11.	Possession clause	<p><b>30.</b></p> <p><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 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><i>[page 39 of complaint]</i></p>
12.	Date of start of construction as per SOA dated 28.11.2023	25.05.2012 [annexure C7, pg. 55 of complaint]
13.	Due date of possession	08.03.2016 <b>[Note: Due date calculated from date of agreement i.e., 08.09.2012, being later. Grace period allowed being unqualified]</b>

14.	Basic sale consideration as per BBA dated 08.09.2012	₹ 59,31,250/- [pg. 48 of complaint]
15.	Total sale consideration as per SOA dated 29.10.2021	₹ 60,08,487/- [annexure C7, pg. 50 of complaint]
16.	Amount paid by the complainant as per SOA dated 29.10.2021	₹ 58,90,554/- [annexure C7, pg. 54 of complaint]
17.	Occupation certificate	Not yet obtained
18.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainants have made the following submissions in their complaint:

- a. That in February, 2012, the complainants booked a unit with the respondent in "Ansal Estella" Project at Sector- 103, Gurugam. In response to the booking, the respondent allotted unit no. M-1002, Sector-103, Gurugram, to the complainants vide letter of allotment in the year 2012. In pursuance to the allotment, the complainants have made all payments on time to the respondent.
- b. That the builder buyer agreement was executed between the parties on 08.09.2012. That at the time of BBA, the respondent had promised/confirmed that the possession of the Unit shall be offered/given to the complainant within 36 months from the date of execution of agreement (with a grace period of 6 months). Thus, the possession of the unit/shop was to be offered/handed over to the



complainants on or before 08.03.2016. However, even the foundation work/construction has not been started till date.

- c. That the developer informed to the complainant that due to various force measure circumstances the progress of work has been considerably effected and despite the best efforts/endeavors by the company to overcome such hurdles, it appears that there would be delay of about 18 months in offering the possession. However, the respondent/developer had failed to deliver physical possession of the unit/shop to the complainants till date and thereafter, a period of more than 7.5 years had elapsed, but the project is still incomplete.
- d. Thus, there is an inordinate and unreasonable delay in handing over the physical possession and the respondent/developer failed to fulfill contractual obligations of the agreement. The respondent had violated the law of contract as well as the contractual obligations under Act and their rules and regulations. That the complainants have made several calls and conversations through email, along with several visits to the office of the respondent, but as the intention of respondent was/is not good and the respondent did not respond in good manner and always tried to befool the complainants by giving various excuses and false promises.

**C. Reliefs sought by the complainants**

4. The complainants are seeking the following relief:
  - a. Direct the respondent to deliver the physical possession of the unit to the complainants after receiving OC.
  - b. Direct the respondent to pay delay possession charges on amount paid.

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 contended the complaint on the following grounds:

- a. That the present complaint is not maintainable against the answering respondent as the complaint is totally false, frivolous and devoid of any merits against the answering respondent. The complaint under reply is based on pure conjecture. Thus, the present complaint is liable to be dismissed on this ground alone.
- b. That the complainant approached the respondent sometime in the year 2012 for the purchase of a shop unit in its upcoming project "Ansal Estella" situated in Sector-103, District Gurgaon. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same and the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner.
- c. That thereafter the complainant applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuant to the application, was allotted shop/office space

bearing No.M-1002, in the project. The complainant consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant should remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant.

- d. It is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is in full mode and the work will be completed within the prescribed time period as given by the respondent to the authority.
- e. That it is submitted that several allottees have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effect on the operation and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the

project is completed and ready for delivery, awaiting occupancy certificate which is likely to be completed by the year 2022.

- f. The central government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
- g. That the answering respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force



majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

**E. Jurisdiction of the authority**

7. 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 complainants at a later stage.

**F. Findings of the authority on relief sought by complainants.****F.I. DPC & Possession.**

11. The respondent is legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is unsatisfied that even after the lapse of more than 7 years from the due date of possession the respondent has failed to apply for OC to the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC. Further the respondent is directed to offer possession after obtaining the OC from the competent authority.
12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges. Clause 30 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*"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."*

13. 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 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.
14. **Admissibility of grace period:** The respondent/promoter has raised the contention that the construction of the project was badly affected on account of the 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, may be harmful to the public at large without admitting any liability.

15. The promoter has proposed to hand over the possession of the apartment within a period of 36 months from 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. The period of 36 months ends on 08.03.2016 (Due date of possession is calculated from the date of agreement i.e., 08.09.2012, being later). 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, accordingly the due date of possession comes out to be 08.03.2016.
16. 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. 2021-2022(1) RCR (c), 357** 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.*

17. 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).
18. **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.*

19. 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.

20. 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., **20.09.2023** is 8.75%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.75%.
21. The definition of term 'interest' as defined under section 2(za) 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:

*"(za) "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;"*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.75%** by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
23. 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 30 of the agreement executed between the parties on 08.09.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement or date of start of construction whichever is later. The authority calculated the due date from date of agreement i.e., 08.09.2012. The period of 36 months expired on 08.03.2016. 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 08.03.2016. 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.

24. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 08.03.2016 till the expiry of 2 months from the date of offer of possession after issuance of occupation certificate at prescribed rate i.e., 10.75% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G. Directions of the authority**

25. 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., 10.75% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 08.03.2016 till the expiry of 2 months from the date of offer of possession after issuance of occupation certificate.

- b. The arrears of such interest accrued from 08.03.2016 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 10<sup>th</sup> 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 complainants /allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% 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(za) of the Act.
- e. The respondent shall not charge anything from the complainants 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.

26. Complaint stands disposed of.

27. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.09.2023