



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

<b>Complaint no.:</b>	<b>2234 of 2022</b>
<b>First date of hearing:</b>	<b>06.07.2022</b>
<b>Date of decision:</b>	<b>09.08.2023</b>

Kuldeep Grewal  
R/o Hno. 1028/20, Durga Colony, Sonipat Stand,  
Rohtak, Haryana-124001

**Complainant**

Versus

M/s Ansal Housing Ltd.  
**Office address:** 606, 6<sup>th</sup> floor, Indraprakash Building,  
21, Barakhamba Road, New Delhi-110001.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Ms. Samvedna Verma (Advocate)

Complainant

Mr. Amandeep Kadiyan (Advocate)

Respondent

**ORDER**

1. The present complaint dated 30.05.2022 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 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	Ansal Heights,86
2.	Project location	Sector 86, Gurugram, Haryana
3.	Project area	12.843 acres
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
6.	Name of licensee	Resolve Estate Pvt. Ltd.
7.	RERA registration details	Not registered
8.	Unit no.	D-1201 [page 21 of complaint]
9.	Unit area admeasuring	1895 sq. ft. super area
10.	Date of execution of builder buyer agreement	17.01.2013 [page 18 of complaint]
11.	Possession clause	<b>31.</b> <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</i>



		<p><b>sanctions and approval necessary for commencement of construction, whichever is later</b> 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 <b>grace period of 6 months allowed to the developer over and above the period of 42 months</b> as above in offering the possession of the unit.”</p> <p>(Emphasis supplied) [page 26 of complaint]</p>
12.	Date of commencement of construction as per customer ledger dated 08.09.2022 at pg. 84 of complaint	01.10.2013
13.	Due date of possession	01.10.2017 [Note: Due date calculated from date of commencement of construction i.e., 01.10.2013 being later. Grace period allowed being unqualified]
14.	Sale consideration as per BBA at pg. 34 of complaint	₹ 76,22,354/-
15.	Amount paid by the complainant as alleged by the complainant at pg. 10 of complaint	₹ 76,11,435/-
16.	Occupation certificate	Not yet obtained
17.	Offer of possession	Not offered

**B. Facts of the complaint**

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

- a. The complainant states that the respondent, a real estate company having its registered office as mentioned above, is engaged in the business of developing residential and commercial projects.

- b. In February 2012, the complainant approached the respondent to purchase a flat in one of the respondent's projects named as "**ANSAL HEIGHTS, 86**" situated at GT Road, Rajpura, based on the advertisements assuring compliance of all the rules and laws of the land & assuring timely possession.
- c. On 17.01.2013 the respondent allotted unit no D-1201 admeasuring 1895 sq. ft. for a total consideration of ₹ 76,22,354/-of which a sum of ₹ 76,11,435/- has been paid so far. The flat buyer agreement dated 17.01.2013 was executed/signed between the complainant and the respondent herein on the terms and conditions exclusively as laid down by the respondent company. As per the builder buyer agreement possession of the unit in question was to be handed over within 42 months from the date of execution of the said agreement with a grace period of 6 months as provided in clause 31 of the agreement.
- d. In August/September 2017 onwards, the complainant approached the respondent to know the status of the development/construction of the said project the complainant was deeply shocked to know that even after almost 4 years of the allotment the construction work was not completed, and the said unit was not ready for possession. The complainant approached the respondent in order to get clarifications over the same then the respondent asked the complainant not to worry and assured the complainant that the respondent is trying their best to arrange for the funds for the said project. The respondent assured the complainant that they would very soon arrange the funds and the construction work would



immediately start after that and they would give the possession of the unit. It is pertinent to mention here that the complainant simultaneously kept paying the amount demanded by the respondent.

- e. Initially, the complainant believed the blatant lies of the respondent but when the complainant went again to the project site, the project work was found to be stalled. Feeling cheated, the complainant raised objections to such acts done by the respondent but again the respondent could not offer anything but lies and false promises. As per the flat buyer's agreement the possession of the flat/unit in question was to be handed lastly by January 2017.
- f. It is pertinent to mention here that the complainant never agreed to any such settlement and the respondent with a malafide intention to curb the legal rights of the complainant, forcing the complainant to sign the settlement agreement.

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

4. The complainant has sought following reliefs:
- 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.
  - Direct the respondent to recall the settlement agreement and not to pressurize the complainant to sign it.
  - Litigation cost- ₹ 1,00,000/-.
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 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 original allottee had approached the answering respondent to book a flat no. D-1201 in an upcoming project Ansal Heights 86, Sector 86, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 17.01.2013 was signed between the parties.
  - c. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the original allottee, and the answering respondent was in the year 2013. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e., RERA Act, 2016. It is further submitted that parliament would not make the operation of a statute retrospective in effect.
  - d. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.

- e. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2022 and the cause of action accrue on 17.01.2017 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- f. That even if the complaint is admitted being true and correct, the agreement which was signed in the year 2013 without coercion or any duress cannot be called into question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 37 of the said agreement provides for Rs. 5/ sq. foot per month on super area for any delay in offering possession of the unit as mentioned in clause 31 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.
- g. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.
- h. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. Similarly, the approval for digging the foundation and basement was obtained and sanctions



from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.

- i. That the answering respondent has adequately explained the delay. It is submitted that the delay has been caused 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 the 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.
- j. That the answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 32 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.





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 these 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.

15. **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.

16. 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.

17. 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."*

18. 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).

19. **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."

20. 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.



21. 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., **09.08.2023** is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

22. The definition of term 'interest' as defined under section 2(z) 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;"*

23. 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.

**F.II. Direct the respondent to recall the settlement agreement and not to pressurize the complainant to sign it.**

24. In the present matter the complaint has not signed the settlement agreement therefore, the said agreement on face of it is not binding upon the parties. Moreover, according to the issue already been dealt by the authority in case bearing no. **CR/4031/2019 Varun Gupta Vs. Emaar MGF Land Limited & ors.** that execution of indemnity-cum-undertaking



does not preclude the complainant-allottee from exercising his right to claim delay possession charges as per the provisions of the Act.

**F.III. Litigation cost- ₹ 1,00,000/-**

25. 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 is advised to approach the adjudicating officer for seeking the relief of compensation.
26. 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 17.01.2013, 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., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G. Directions of the authority**

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):
- The respondent is directed to pay interest at the prescribed rate of 10.75% 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.
  - 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 10<sup>th</sup> 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., 10.75% 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 complainant 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 being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
28. Complaint stands disposed of.
29. File be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2023