

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

Complaint no.:	7360 of 2022
Date of decision	15.11.2023

1. Harcharan Singh
2. Harpreet Kaur
R/O : B-67, Ganesh Nagar, P.O Tilak Nagar,
New Delhi-110018.

Complainants

Versus

Ansal Housing Ltd.
Office address: IndraPrakash Building, 606,
6th floor, Indraprakash, 21, Barkhamba Road,
New Delhi- 110001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Complainant in person with Shri Rajat Kadiyan
Advocate

Complainants

Shri. Vishal Tomar Proxy counsel

Respondent

ORDER

1. The present complaint dated 29.11.2022 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	"Estella", Sector 103, Gurugram.
2.	Total area of the project	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	17 of 2011 dated 08.03.2011 valid up to 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
6.	Registered/not registered	Extension granted vide no.- 09 of 2019, dated:25.11.2019 Valid till:17.08.2020 (Validity of registration has expired)
7.	Date of execution BBA	08.10.2012
8.	Unit no.	K-0304
9.	Super area	2800 sq. ft.
10.	Possession clause	30. <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</i>

		<p><i>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> [Page 62 of complaint]</p>
11.	Date of start of construction	Cannot be ascertained
12.	Due date of possession	08.04.2016 (Note: 36 months from date of agreement i.e., 08.10.2012 as date of start of construction is not on record + 6 months grace period allowed being unqualified)
13.	Basic sale consideration as per BBA at page 45 of complaint.	₹ 37,24,000/-
14.	Total amount paid by the complainant	₹ 44,57,044/-
15.	Occupation certificate	Not received
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have pleaded the complaint on the following facts:

- (i) That the respondent is a company working in field of construction and development of residential as well as commercial projects across the country with the name of

“Ansal Housing Ltd. formerly known as Ansal Housing & Construction Ltd”.

- (ii) That in 2011, the respondent through its marketing executives and advertisement done through various medium and means approached the complainants with an offer to buy apartment in the proposed project namely “ESTELLA”, Sector-103, District Gurugram (hereinafter referred to as the “Said Project”). The respondent had represented to the complainants that the respondent is very ethical business house in the field of construction of residential project and in case the complainants would buy the property in the project of respondent then they would deliver the possession of proposed residential apartment on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainants that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The complainants while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of the respondent and booked apartment in the said project of the respondent.
- (iii) That initially the Apartment Buyer Agreement was executed in the favor of Mr. Gurdeep Manchanda and Mrs. Madhu Manchanda but later, the name of Mr. Gurdeep Manchanda

and Mrs. Madhu Manchanda was substituted with the name of Mr. Harcharan Singh and Mrs. Harpreet Kaur as allottee and complainants stepped into the shoes of original allottee vide the name transfer letter dated 23.11.2012.

- (iv) The complainants booked a residential apartment bearing **K-0304** admeasuring 1330.00 Square Ft. or 123.56 sq. mt for a total Basic Sale Price (BSP) of Rs.46,39,520/- as total sale consideration including PLC etc. in the said project.
- (v) That the respondent thereafter kept on delaying the execution of the Apartment Buyer's agreement on one pretext or other and the complainants had to run pillar to post to get the Apartment Buyer's Agreement executed from the respondent. Finally, after many requests the respondent executed the Apartment Buyer's Agreement on 08.10.2012 for the said apartment.
- (vi) That from the date of booking the respondent raised various demands for the payment of installments towards the sale consideration and the complainants duly paid all those demands without any default or delay on their part. The complainants as on today had paid Rs 44,57,044/- towards the sale consideration to the respondent as demanded from time to time. According to clause 30 of the Apartment Buyer's Agreement the promised date of delivery of the physical possession of the said apartment was 36 months from the date of agreement with a grace period of 6 months i.e.,

23.05.2016 but the respondent did not deliver the same and miserably failed to fulfill its part of obligation without any fault on the part of complainant. The actual physical and legal possession of the said apartment is still not handed over to the complainants.

- (vii) The respondent received the payments from the complainants and allotted the said units to them with a promise to deliver the possession as per the date and timelines mentioned in the Apartment Buyer's Agreement and but the respondent has failed to fulfil the obligations bestowed upon them by the contract as well the law and the complainants are still awaiting for the legal and valid possession of their apartment despite payment of the majority of the sale consideration and expiry of promised date of delivery.
- (viii) That the complainants are facing all kind of financial burdens and hardship from their limited income resources, only because of the respondent's failure to fulfill their promises and commitments.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. Direct the respondent to pay the delay possession charges at the prescribed rate on the amount paid Rs.44,57,044/- by the complainants.

- II. Direct the respondent to handover the actual physical and legally valid possession of said apartment to the complainants.
- III. Direct the respondent to execute Conveyance Deed in the favor of the complainants for the said apartment.

D. Reply by the respondent

5. The respondent contested the complaint on the following grounds:

- (i) The respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR. The complainants had approached the respondent for booking a flat no. K 0304 in their project Estella, Sector 103 , Gurugram and the agreement to sell was signed between the parties on 08.10.2012 .
- (ii) That the present complaint cannot be governed by the RERA Act, 2016 because of the fact that the Builder buyer Agreement signed between the complainant and the respondent was in the year 2012. 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.
- (iii) That the complainants specifically admitted to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement thus, the complainant cannot be allowed to take advantage of their own wrong.
- (iv) The complainants have admittedly filed the complaint in the year 2022 and as per the complaint the cause of action accrued on 08.10.2016. Therefore, it is submitted that the complaint cannot be filed before the authority as the same is barred by limitation.

- (v) That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2012 without coercion or any duress cannot be called in 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 35 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 30 of the agreement. Therefore, the complainants will be entitled to invoke the said clause and is barred from approaching the authority in order to alter the penalty clause by virtue of this complaint after more than 10 years.
- (vi) 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 authority does not have the jurisdiction to decide the complaint.
- (vii) That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. 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 respondent 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.
- (viii) It is submitted that the delay has been occasioned on account of things beyond the control of the 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 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.

- (ix) That the respondent has clearly provided in clause 35 the consequences that follow from delayed possession. It is submitted that the complainants cannot alter the terms of the contract by preferring a complaint before the authority.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority

7. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaints 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. Objection raised by the respondent

F.I Objection regarding the project being delayed because of force majeure circumstances.

11. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT prohibiting construction in and around Delhi and the COVID-19 pandemic. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 08.04.2016. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

- G.I.** Direct the respondent to handover the possession of the said unit along with interest.
12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges along with 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 30 of the agreement to sell 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."

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 promoter has proposed to hand over the possession of the apartment within a period of 36 months from date of execution 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 30 of the agreement dated 08.04.2016 i.e., within 36 months from date of execution as there is no document on record regarding approval necessary for commencement of construction. 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.
16. **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."

17. 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.
18. 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., **15.11.2023** is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
19. 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;"*
20. 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.

21. 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 11(a) of the agreement executed between the parties on 08.10.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of the agreement or from the date of commencement of construction, whichever is later. The period of 36 months expired on 08.10.2015. 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 08.04.2016. 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., 08.04.2016 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority

22. 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 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., 08.04.2016 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 08.04.2016 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 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 within 30 days and the respondent shall handover the possession in next 30 days to the complainant/allottee and to get the conveyance deed of the allotted unit executed in the favour of complainant in term of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- 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(z a) 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 being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

23. Complaint stands disposed of.

24. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.11.2023

HARERA
GURUGRAM