



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	771 of 2020
Date of filing:	14.08.2020
Date of first hearing:	06.10.2020
Date of decision:	05.07.2023

Sahib Singh

S/O Sh. A.S. Sheron,

R/O Village Tajakpur

P.O.Pansara, District Yamunanagar (Haryana)

.....COMPLAINANT

VERSUS

Ansal Housing & Construction Ltd.

15 UGF, INDRAPRAKASH,

21 BARAKHAMBHA ROAD,

NEW DELHI-110001

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh

Nadim Akhtar

Member

Member

Present:

Mr. Neeraj Gupta, counsel for the complainant.

None for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated has been filed on 14.08.2020 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	"Ansal Galleria", Yamuna Nagar, Haryana.
2.	Nature of project	Commercial.
3.	RERA Registered/ Not	Registration No. 3011-2017
4.	Details of the shop	Shop No. 008, 1 st Floor
5.	Date of BBA	10.07.2012
6.	Deemed date of possession	10.01.2016 (36 months+6 months) clause 28 of BBA

7.	Basic sale price	Rs. 10,01,712/-
8.	Amount paid	Rs. 11,78,704/-

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. That, the complainant booked a shop no. 008, first floor on 13.04.2011 in the real estate project namely "Ansal Galleria", Yamuna Nagar, Haryana being developed by respondent promoter M/s Ansal Housing and Construction Limited by paying an advance amount of Rs. 1,00,000/-. The builder buyer agreement containing terms of allotment was signed between the parties on 10.07.2012. The total basic sale price of the shop having area of 244.32 Sq. Ft. Rs. 10,01,712/- against which complainant has paid Rs. 11,78,704/-. Respondent further kept on demanding all the amounts without carrying out any construction work at the site.
4. As per clause 28 of the agreement, the period of offering possession was agreed to be 42 months from the date of execution of the allotment letter i.e. by 10.01.2016. Further, clause no. 29 of the agreement provided that if possession of the apartment is delayed beyond a period of 42 months, the complainant shall be entitled to compensation. However, the respondent not only failed on these promises, but also did not provide any update on the development of the project. The construction at site

remained slow. Till date the construction work has not been completed at site and the respondent have failed to deliver the possession as promised and the complainant is being misled by the respondent throughout. An RTI application was filed with the Senior Town Planner, Panchkula to seek information regarding the completion certificate and in the reply received, it was mentioned that no occupation certificate is issued for shopping complex Galleria.

5. That orally the respondent says that they may have applied for completion/occupation, but no documents are shown or provided when approached, and moreover from the RTI information gathered, it has been communicated by the District Town Planner, Yamuna Nagar, that there are a number of objections/deficiencies in application for occupation certificate, which the promoter/builder is not rectifying/removing. So the stand of the respondent is falsified by the RTI information provided by the DTP Yamuna Nagar. A copy of the RTI application alongwith information provided, is annexed herewith as Annexure C-4. Since there has been an inordinate delay and no offer of possession has been given and the complainant has been harassed by the respondent, complainant had approached the respondent for refund of his deposited amount along with interest, however the respondent did not agree to the same, thus, complainant has approached the Authority.

C. RELIEF SOUGHT

6. The complainant in his complaint has prayed that the respondent be directed to:

- (i) Respondent may be directed to refund the entire deposited sum of Rs. 11,78,704/- (Rupees Eleven Lacs Seventy Eight Thousand seven hundred and four only), paid by the complainants along with interest@ 18% per annum from the date of payment till its actual realization.
- (ii) Respondent may be directed to compensate the complainants with Rs.15,00,000/- (Rupees Fifteen Lakhs Only) due to inflation in property market proportionate size of shop in the past 5 years.
- (iii) Respondent may be directed to pay the compensation of Rs. 10,00,000/- (Rupees Ten Lakhs Only) for the mental agony and financial loss suffered by the Complainant;
- (iv) Respondent may be directed to Pay Rs.2,00,000/- (Rupees Two Lakh Only) to the complainant on account of deficiency in the services of respondent and also Rs. 55,000/-towards the litigation charges; and/or
- (v) Any other relief/s which this Hon'ble Authority may deem fit and proper in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

7. The respondent has prayed for dismissal of the complaint submitting that complainant has filed the present complaint primarily on 2 accounts: (i) that the respondent has failed to deliver the possession of shop within 42 months from the date of agreement; (ii) respondent is not refunding the sum of Rs.11,78,704/- paid by him towards sale consideration. These grounds are highly frivolous and vexatious. That the complainant in various para has stated that payment of Rs. 11,78,704/- has been made by him for the purchase of the said shop and despite making of such huge payment the respondent has been unable to deliver the possession of the subject shop within 42 months from the date of entering of the agreement. As per Clause 28 of the agreement, the possession was to be handed over only after complete payment in regards to the booked unit. However, till date the complainant has not made complete payments in this regard. That till date a sum of Rs. 11,78,704/- is received from the complainant. The basic sale price of the unit was Rs. 10,00,000/-. However, the said amount was exclusive of property tax, service tax, ground rent or any other taxes by whatever name called, in connection with the execution and sale of project. Also, the said sale price did not include EDC, IDC, cost of external electrification etc. These provisions are clearly contained in clause 7, 8 & 9 of the agreement. Till date, the complainant has not


S. Rathor

cleared his dues in spite of various repeated reminders. Further, it is to be noted that the respondent has offered the possession of the said unit on 28.06.2017.

8. The project is complete and further, respondent has applied for an occupation certificate in December 2015. However, the concerned authorities have not acted upon till date inspite of various representations made by the complainant in this regard after due fulfilment of any inadequacies or deficiencies. The little delay in handing over the possession to the complainant is due to non-action of the concerned authorities. That, further it is to be noted that the delay on part of respondent in handing over the possession of the shop was due to delay on the part of government authority to issue the occupation certificate. There is a gap of more than 3 years without any communication with the respondent and the complainant has directly approached the Learned Authority without first communicating its intention to the respondent. It is the submissions of the respondent that until the request notice is sent by the complainant to withdraw from the project and reasonable time is given to the respondent to consider its financial impact the present complaint, it would be premature and thus deserves to be set aside at this point i.e. for want of compliance of condition precedent for filing of said complaint

F. WRITTEN SUBMISSIONS OF COMPLAINANT

9. Complainant filed an application dated 18.10.2022 in the Authority wherein it is submitted that the counsel for the complainant had sought RTI information from the District Town Planner regarding the occupation /completion certificate to the commercial shops to be developed by the respondent promoter, vide application dated 25.06.2020. The information sought was not supplied and appeal was filed after which vide letter dated 17.03.2021, the Senior Town Planner, Panchkula, informed that the request of the Ansal Housing and Construction Ltd., for granting occupation certificate for commercial site measuring 1.296 acres in sector -20 residential plotted colony in Yamuna Nagar (Licence no. 75 of 2009 dated 02.12.2009) has been finally rejected vide memo no. 899 dated 05.03.2021. A copy of the letter dated 17.03.2021 from the Senior Town Planner, Panchkula, is annexed herewith as Annexure C-10.
10. That moreover, the respondent had given occupation illegally to some allottees, and the few such shops have been ordered to be sealed, by the orders of the Town and Country Planning Department. Information has been pasted in this colony and other areas by the officials, warning that the premises have been sealed and the public may not interfere or enter these premises. That the result is obvious, that the respondent promoter

has failed to obtain occupation certificate, despite best efforts, as the violations are grave in nature and respondent has failed to rectify/remove these violations, despite much time and opportunities granted by the authority and as such, the complainant is entitled to refund of his deposited amount, with interest, as per the law.

G. ISSUES FOR ADJUDICATION

11. Whether the complainant is entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

12. It is an admitted fact that the complainant had booked shop no. 008, first floor in the real estate project of the respondent promoter namely "Ansal Galleria", Yamunanagar for a basic sales consideration of Rs. 10,53,019.20/- out of which the complainant has paid Rs. 11,78,704/-. The builder buyer agreement was entered into between the parties on 10.07.2012. As per clause 28 of the builder buyer agreement possession was to be handed over within a period of 42 months from the date of execution of allotment letter 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 Allottee Further, there shall be a grace period of 6 months as above in offering the possession of the unit. Drafting of

the clause which states that possession will be delivered within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of unit and to deprive the allottee of his right accruing after delay in delivery possession. Therefore deemed date of possession is calculated from the date of execution of allotment i.e. 10.07.2012 and the same works out to be 10.01.2016 i.e 36+6 months.

13. Respondent has taken a plea that as per offer of possession dated 28.06.2017 complainant was requested to clear all the outstanding dues before taking over the possession. He has also referred to clause 7 of the allotment letter cum builder buyer agreement dated 10.07.2012 wherein it has been specifically written that basic sales price of the unit does not include property tax, service tax, ground rent or any other taxes but complainant was duty bound to pay all these taxes with respect to his unit. On perusal of the payment plan at Annexure A, Page 18 of builder buyer agreement, it is observed that the stages of payment do not specifically provide that at what stage the EDC, IDC, external electrification charges, sewerage treatment plant, electric connection, water service connection etc. shall be charged from the allottee..

As a matter of practice the EDC/IDC , power backup etc. are generally received proportionately with each installment and if the same was not raised/ demanded with the installment it is paid along with the last installment at the time of offer of possession . Basic Sale Price of the unit is Rs. 10,01,712/- which is exclusive of EDC, IDC and other charges. Complainant has paid 11,78,714/- which implies that he has paid over and above the basic sale price. Also no demand letter specifically providing for payment of EDC, IDC or other charges had ever been received by the complainant in this regard therefore, plea adopted by respondent that complainant has not made due payments is not tenable.

14. During the course of hearing counsel for complainant submitted, that Authority has already disposed of matters of similar nature with respect to same project and against same respondent vide order dated 18.01.2023 in complainant no. 345 of 2019, 349 of 2019 and 2413 of 2019 taking lead case as compliant no. 345 of 2019 titled *Baldev Raj Kamboj vs Ansal Housing and Constructions* whereby Authority had allowed the relief of refund alongwith interest. Ld. counsel for complainant requested that the present matter be disposed of in same terms. Authority is of the view that facts of the case are also similar to the same project of the respondent .Also the pleadings of both the parties are also similar, therefore, Authority deems it appropriate to dispose of the present case in terms of order dated 18.01.2023 in compliant no. 345 of 2019 titled

Baldev Raj Kamboj vs Ansal Housing and Constructions. Relevant part of the order of the order dated 18.01.2023 is reproduced below;

20. *From perusal of the record and documentary evidence adduced by the complainant and also on the basis of arguments advanced by learned counsel for complainant, this could be concluded that project is frustrated as even after its completion, concerned competent Authority as mentioned in para 14,15 and 16 of this order, has rejected the respondent application for grant of Occupation/ Completion Certificate. Further, warning letters were also placed on record which clearly shows that respondent has failed to receive Occupation Certificate. Since complainant has paid all the amounts in the year 2016 to the respondent promoter and promoter even after receiving more than total sale consideration, has failed to either provide possession or refund of the paid amount to the complainant till date. As per builder buyer agreement also respondent was under an obligation to handover the possession of booked shops by the year 2015 or 2016. But respondent has miserably failed to do so. Therefore, Authority cannot keep the complainant waiting endlessly and compel him to wait for indefinite period.*
15. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state. Para 25 of ibid judgement is reproduced below:

“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.”

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

16. Therefore, Authority finds it to be fit case for allowing refund in favour of complainant. Though the complainant has sought that interest be allowed @18% however, same cannot be allowed as interest can only be awarded in terms of RERA Act and HRERA Rules. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of

HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

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. 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. 05.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.


R. K. Raut

18. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

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

Explanation.-For the purpose of this clause-

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

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

19. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.70% till the date of this order in all the captioned complaints; details are given in the table below -

Sr no	Complaint no.	Principal amount as per receipts/ customer ledger/ statement of accounts (in Rs.)	Interest @ 10.75% till 05.07.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	771/2020	Rs. 11,78,704/-	Rs. 12,77,698/-	Rs. 24,56,402/-

20. The complainants are seeking compensation of ₹ 10,00,000/- on account of mental harassment caused for delay in possession; ₹ 2,00,000/- on account of deficiency in the services; ₹ 15,00,000/- due to inflation in

property market under Section 12 of RERA Act, 2016 and litigation cost of ₹ 55,000/- It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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 & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation on above stated grounds and litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

21. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:
- (i) Respondent is directed to refund the entire amount along with interest of @ 10.70% to the complainant as is specified in the table above.


G. Ramesh

- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.
22. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.


.....
NADIM AKHTAR
[MEMBER]


.....
Dr. GEETA RATHEE SINGH
[MEMBER]