

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

Order reserved on:	17.05.2023
Date of Pronouncement:	20.09.2023

NAME OF THE BUILDER		1. Identity Buildtech Pvt. Ltd. (Subsidiary company wholly owned by Ansal Housing Ltd.) 2. Ansal Housing and Construction Ltd.	
PROJECT NAME		"Ansal Highland Park", Sector 103, Gurugram.	
S. No.	Case No.	Case title	Appearance
1	CR/1194/2022	Dhira Sudan vs. Identity Buildtech Pvt. Ltd. @ formerly known as Ansal Housing & Construction Ltd. & Ansal Housing and Construction Ltd.	Ms. Daggal Malhotra (Advocate) None (Advocate)
2	CR/1533/2022	Anil Kumar Rathi V/S Identity Buildtech Private Limited & Ms Agro Gold Chemicals Pvt Ltd.	Shri K.K. Kohli (Advocate) None (Advocate)
CORAM:			
Shri Ashok Sangwan			Member

ORDER

- This order shall dispose of both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and



- functions to the allottees as per the agreement for sale executed inter se between parties.
- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Highland Park", Sector 103, Gurugram, being developed by the same respondent/promoter i.e., Identity Buildtech Pvt. Ltd. @ formerly known as Ansal Housing & Construction Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in both the cases pertains to failure on the part of the promoter and seeking possession and delayed possession charges.
 - The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		"Ansal Highland Park", Sector 103, Gurugram.				
<u>Possession clause: - Clause 31.</u>						
<i>The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit.</i>						
(Emphasis supplied)						
<u>Common details: -</u>						
Occupation certificate- Not received						
Offer of possession- Not offered						
Date of sanction of building plan- 16.04.2013						
Sr.	Complaint no/	Date of executio	Unit no. and area	Due date of	Total Sale consideratio	Relief



n o.	title/date of filing	n of agreement	admeasuring	possession	n and amount paid	
1.	CR/1194/2022 Dhiraj Sudan vs Identity Buildtech Pvt. Ltd. @ formerly known as Ansal Housing & Construction Ltd. & Ansal Housing and Construction Ltd. DOF: - 25.03.2022	17.04.2013	GLSGW-1305 [pg. 20 of complaint] 1940 sq. ft. [pg. 20 of complaint]	17.10.2017 (Note: 48 months from date of execution of BBA i.e., 17.04.2013 being later + 6 months grace period allowed being unqualified)	BSP:- ₹ 1,03,74,768.22/- Paid up amount:- ₹ 83,15,183.74/- (Total amount paid by the complainant as per account ledger dated 10.04.2022 at page 38 of complaint)	1. DPC. 2. Direct the respondent to give fixed date for completion of project.
2.	CR/1533/2022 Anil Kumar Rathi V/S Identity Buildtech Private Limited & Ms Agro Gold Chemicals Pvt Ltd. DOF: - 13.04.2022	29.03.2013	EDNBG-0804 [pg. 60 of complaint] 1940 sq. ft. [pg. 60 of complaint]	16.10.2017 (Note: 48 months from date of building plans approval i.e., 16.04.2013 being later + 6 months grace period allowed being unqualified)	BSP:- ₹ 1,01,80,983.80/- Paid up amount:- ₹ 44,25,058/- (Total amount paid by the complainant as per passbook record at pg. 51-56 of complaint)	1. DPC. 2. Restrain the respondent to raise fresh demand. 3. Restrain the respondent from charging HVAT, GST, AMC & Car parking charges.

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date and seeking award of delay possession charges, possession and return the amount of GST and HVAT.

(Handwritten mark)



5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of *complaint case bearing no. 1194 of 2022 case titled as Dhiraj Sudan vs. Identity Buildtech Pvt. Ltd. @ formerly known as Ansal Housing & Construction Ltd. & Ansal Housing and Construction Ltd.* is being taken as a lead case in order to determine the rights of the allottee(s) qua delayed possession charges and Possession.
- A. Unit and project related details**
7. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Highland Park", Sector 103, Gurugram.
2.	Total area of the project	11.70 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	32 of 2012 dated 12.04.2012 valid up to 11.04.2020
5.	Name of licensee	M/s Identity Buildtech Pvt. Ltd.



		M/s Agro Gold Chemicals India LLP
6.	Registered/not registered	Registered Vide registration no. 16 of 2019 dated 01.04.2019 valid up to 30.11.2021
7.	Unit no.	GLSGW-1305 [pg. 20 of complaint]
8.	Area of the unit	1940 sq. ft. [pg. 20 of complaint]
9.	Date of execution of buyer's agreement	17.04.2013 [pg. 17 of complaint]
10.	Possession clause	Clause 31. 31. The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit. <i>(Emphasis supplied)</i> [pg. 26 of complaint]
11.	Date of sanction of building plan	16.04.2013
12.	Due date of possession	17.10.2017 (Note: 48 months from date of execution of BBA i.e., 17.04.2013 being

		later + 6 months grace period allowed being unqualified)
13.	Basic sale consideration as per account ledger dated 10.04.2022 at page 35 of complaint.	₹ 1,03,74,768.22/-
14.	Total amount paid by the complainant as per account ledger dated 10.04.2022 at page 38 of complaint.	₹ 83,15,183.74/-
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

B. Facts of the complaint

8. The complainant pleaded the complaint on the following facts:

- a. That the complainant entered into an apartment buyers agreement dated 17.04.2013 with respondent no.1 vide which the complainant was allotted a residential apartment/unit no: GLSGW-1305, having 1940 sq. ft. super area in the respondents' project namely, "Ansal Highland Park" located in Sector-103, Gurugram. The total sales price of the same being Rs.1,02,97,403/-
- b. The respondent raised demands for payment as per the schedule of payment mentioned in the apartment buyers' agreement and the payments of the same were made promptly and timely by the complainant. That, only one demand raised by respondent no.1 could be disbursed by the bank on account of the own fault of the builder which has been pointed out by the complainant time and again via email communications and the fault has been duly admitted by respondent no.1. Even after admission of fault that



the said amount could not be disbursed by the bank on account of non-providing of original apartment buyer's agreement by respondent no.1, respondent no.1 has still added delay interest on the demand and has been wrongly carrying-forward the same. There has been no delay in making any payment by the complainant.

- c. The complainant, respondent no.1 and HDFC entered into a tripartite agreement dated 11.06.2013 and the complainant thus procured a loan of Rs.75,00,000/- from HDFC vide Loan Agreement dated 17.07.2013. That as per clause 31 of the apartment buyers' agreement, respondent no.1 was to handover the possession of the completed unit within 48 months plus 6 months grace period from the date of execution of the apartment buyers' agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. Therefore, the due date of possession is 17.10.2017.
- d. That till date the complainant has paid a total of Rs. 8315183.74/- to respondent no.1. respondent no.2 is the wholly owned subsidiary of respondent no.1 and the said project has been registered in the name of respondent no.2.
- e. Till date, the construction is not complete. There has been a delay of more than 4 years from the due date of possession on the part of the respondent. That, the complainant enquired on several occasions about the status of the construction and possession delivery date but all in vain. Instead on 18.06.2020, the



respondent sent a communication stating that the respondent no.1 is in the process of receiving funding for the construction of the project. In the said correspondence, respondent wanted the complainant to sign an attached document waiving off the complainant's right to seek any kind of compensation for the delay for the period prior to 31.10.2022. The same was not signed by the complainant and therefore the complainant is well within its right to seek appropriate relief before this authority. Accordingly, this present complaint is being filed by the complainant.

C. Relief sought by the complainant:

9. The complainant has sought following reliefs:

a. Direct the respondent to pay interest/charges for delay on total paid amount @ prescribed rate of interest from 17.10.2017 i.e., the due date of possession as per builder buyer agreement, till the date of actual handing over of the physical possession of the flat to the complainant.

b. Direct the respondent to provide a specific date of completion of construction/ handover of possession and direct the respondent to handover possession of the said unit.

10. The respondent/promoter put in appearance through the counsel Ms. Meena Hooda and marked attendance on 06.07.2022. Despite specific directions it failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing a written reply. In the proceeding dated 17.05.2023, it was observed that, *"The respondent has nothing to say in the present matter and accordingly, the authority proceeds with the case without reply and the defence of the respondent stands struck off"*.

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11. Copies of all the relevant documents have been files and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

D. Jurisdiction of the authority

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I. Territorial jurisdiction

13. 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

14. 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)

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;

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the

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conveyance deed of all the apartments, plot or buildings, as the case may be, to the allottees are executed.

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.

15. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the relief sought by the complainant

F.I. Delay possession charges

16. **Relief sought by the complainant:** Direct respondent to pay interest/charges for delay on total paid amount @ prescribed rate of interest from 17.10.2017 i.e., the due date of possession as per builder buyer agreement, till the date of actual handing over of the physical possession of the flat to the complainant.
17. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges along with interest on the amount paid. Clause 31 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"31. The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 48 months as above in offering the possession of the Unit."



18. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoters 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.
19. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the subject unit within a period of 48 months from date of agreement or the date of commencement of construction which whichever is later plus grace period of 6 months. As no approval/sanction has been placed on record by the respondent no.1, therefore, the due date of possession has been calculated from date of execution of builder buyer agreement i.e., 17.04.2013. The period of 48 months expires on 17.10.2017. Since in the present matter the builder

buyer's agreement incorporates qualified reason for grace period/extended period of 6 months in the possession clause for obtaining occupation certificate subject to force majeure. The force majeure reasons provided by the promoter are not taken into consideration by the authority as the promoter has still not applied for occupation certificate, this quiescent act of promoter cannot be ignored and accordingly, this grace period of 6 months shall not be allowed to the promoter at this stage.

20. **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."

21. 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.
22. 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 marginal cost of lending rate +2% i.e., 10.75%.

23. **Rate of interest to be paid by complainant for delay in making payments:** 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;"

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent no.2/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
25. 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 no.1 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 17.04.2023, the possession of the subject unit was to be delivered within a period of 48 months from date of agreement or the date of commencement of construction which



whichever is later plus grace period of 6 months. As no approval/sanction has been placed on record by the respondent no.1, therefore, the due date of possession has been calculated from date of execution of builder buyer agreement i.e., 17.04.2013. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 17.10.2017. The respondent no.2 has not offered the possession of the subject unit till date. Accordingly, it is the failure of the respondent no.1/promoter to fulfil its obligations and responsibilities as per the builder buyer's 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 no.1 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., 17.10.2017 till the expiry of two 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 after obtaining OC.

F.II Direct the respondent to provide a specific date of completion of construction/ handover of possession and direct the respondent to handover possession of the said unit.

26. The above-mentioned relief sought by the complainant was not pressed by the complainant counsel during the arguments in the passage of hearing. The authority is of the view that the complainant counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

F.III Restrain the respondent from charging HVAT and GST.



27. This Additional issue raised in the complaint bearing no. 1533 of 2022 case titled as **Anil Kumar Rathi V/S Identity Buildtech Private Limited**

- **HVAT**

28. The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only. The respondent-promoter is directed to adjust the said amount, if charged from the allottee with the dues payable by the allottee or refund the amount if no dues are payable by the allottee.

- **GST**

29. The authority has decided this in the complaint bearing no. 4031 of 2019 titled as **Varun Gupta vs. Emaar MGF Land Ltd.** wherein the authority has held that the promoter is entitled to charge GST where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled to charge GST, but it is obligated to pass the statutory benefits of that input tax credit to the allottee(s) within a reasonable period. In the present complaint, the possession of the subject unit was required to delivered by 16.10.2017 and GST came into operation on 01.07.2017. Keeping in view of the facts above the authority deems fit that the respondent is right in demanding GST, but it is obligated to pass the statutory benefits of that input tax credit to the allottee(s) within a reasonable period.



G. Directions of the authority

30. 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):

- a. The respondent no.2 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., 17.10.2017 till the expiry of two months from the date of offer of possession after issuance of occupation certificate.
- b. The arrears of such interest accrued from 17.10.2017 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 10th of the subsequent month as per rule 16(2) of the rules.
- c. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- d. The rate of interest chargeable from the complainant-allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent no.2/promoters 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.
- e. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent shall not demand/claim holding charges from the complainant/allottee at any point of time even after being part of

the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
32. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
33. File be consigned to registry.


Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.09.2023