

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

Complaint no.:	270 of 2022
First date of hearing:	03.03.2022
Date of decision:	15.09.2023

Rahul Rekhi

R/o House No. D-54, Vijay Nagar, New Delhi-110009

**Complainant**

Versus

1. M/s Ansal Housing Ltd.

**Office address:** 606, 6<sup>th</sup> floor, Indraprakash, 21,  
Barakhamba Road, New Delhi-110001

2. M/s Samyak Projects Pvt. Ltd.

**Office address:** 111, 1<sup>st</sup> floor, Antriksh Bhawan, 22,  
K.G. Marg, New Delhi-110001.

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Anuruddha Singh (Advocate)

Complainant

None

Respondent

**ORDER**

1. The present complaint dated 15.02.2022 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 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 Heights 92", Sector 92, Gurugram.
2.	Total area of the project	10.563 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	76 of 2010 dated 01.10.2010 valid up to 30.09.2020
5.	Name of licensee	JSG Builders Pvt. Ltd. & anr.
6.	Registered/not registered	Not registered
7.	Unit no.	E-903 [pg. 23 of complaint]
8.	Area of the unit	1320 sq. ft. [pg. 23 of complaint]
9.	Date of execution of buyer's agreement	19.05.2012 [pg. 19 of complaint]
10.	Possession clause	29. <i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 30. 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> (Emphasis supplied)

		<i>[page 29 of complaint]</i>
11.	Date of start of construction as per customer ledger dated 24.01.2015	14.06.2012 <i>[pg. 45 of complaint]</i>
12.	Due date of possession	14.12.2015 (Note: 36 months from date of start of construction i.e., 14.06.2012 being later + 6 months grace period allowed being unqualified)
13.	Total sale consideration as per customer ledger dated 24.01.2015 on pg. 40 of complaint	₹ 39,55,104/-
14.	Total amount paid as per customer ledger dated 24.01.2015 at pg. 43 of complaint	₹ 36,00,492/-
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

**B. Facts of the complaint**

3. The complainant pleaded the complaint on the following facts:
- That the complainant booked the unit no. E-903, on 09<sup>th</sup> floor at tower E having super area admeasuring 1320 sq. ft. on 10<sup>th</sup> January, 2011 under construction linked plan (CLP) in the project named "Ansal Heights, Sector 92" of the company M/s Ansal Housing Limited & M/s Samyak Projects Private Limited through a transfer letter dated 23<sup>rd</sup> March 2012 and got the unit transferred in the name of the complainant from the previous owners named Mr. Vineet Chelani & Mr. Subhash Chelani.
  - After transferring formalities with regard to the unit concerned a flat buyer agreement has been executed on 19<sup>th</sup> May 2012 between the respondent no.1 and the complainant. As per clause 29 of the flat buyer agreement, the respondent no.1 promised to deliver the

flat by 19<sup>th</sup> November 2015 i.e., within 36 months + 6 months of grace from the date of execution of the agreement that is 19<sup>th</sup> May 2012 but failed to do so.

- c. That the complainant has made a total payment of ₹ 36,00,492/- through itself. It has been more than ten years from the date of the booking of the flat and an excessive delay of more than 6 years from the date of agreed possession, but the complainant has not been offered the possession of its unit requisite certificates and NOCs, subsequently the complainant wants the earliest possession of its flat along with the applicable rate of interest for the delayed period from the respondent.
- d. That the respondent no.1 issued a reminder letter dated 28.01.2020 having subject as overdue outstanding in respect of E-903, Ansal Heights, Sec 92 Gurgaon. However, the complainant was shocked when it was informed by a close relative that the respondent no.1 has only applied for the OC at that time and it has not received any occupancy certificate for the above said project but at this stage the respondent no.1 was asking for clearance of the final payment by issuing reminder letter which was promised to be made only after obtaining the proper OC/CC at the time of final possession only. Further, the complainant was also shocked to see that in the reminder letter, the respondent(s) have added exorbitant charges relating to external electrification charges to the tune of ₹ 1,78,200/-, STP charges to the tune of ₹ 39,600/-, power backup charges to the tune of ₹ 50,000/- and electric meter cost charges to the tune of ₹ 10,000/- even without handing over

physical possession which have no basis under the agreement entered into between the parties.

- e. That it is very pertinent to mention that the respondents have made inordinate delay of more than six years and no update of the current position of the project has been given to the complainant from last four years. That it is very important to state here that the complainant is a law-abiding citizen and a consumer which has been cheated by the malpractices adopted by the respondents being developer and promoter of real estate for a long time. Based on the advertisement, complainant showed its interest in purchasing a service apartment in project "Ansal Heights", Sector 92, village Wazirpur, Gurugram, Haryana and being developed by M/s Ansal Housing Limited & M/s Samyak Projects Private Limited.

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

4. The complainant has sought following reliefs:
- Earliest possession of the flat along with delay penalty at applicable rate as per Rera Act till date of physical possession of the unit with occupancy certificate/ completion certificate.
  - Direct the respondent (s) not to issue any demand to the complainant till the date of possession with proper occupancy certificate.
5. On the date of hearing, the authority explained to the respondents/promoters 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 by the respondent.**

6. Notice to the promoter/respondent through speed post and through e-mail address ([rera@ansals.com](mailto:rera@ansals.com), [samyakprojects@gmail.com](mailto:samyakprojects@gmail.com)) was sent; the delivery report of which shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file a reply within stipulated time period. Since the respondent company's put in appearance through its counsel Sh. Amandeep Kadyan on 06.07.2022. However, the respondent has failed to comply with the orders of the authority dated 06.07.2022, again on 03.01.2023 the respondent was directed to file the reply along with the cost of ₹ 10,000/-, accordingly, on 15.09.2023 the defence of the respondent is struck off.

**E. Jurisdiction of the authority**

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

**E.I. Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II. Subject matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

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(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the relief sought by the complainant.**

**F.I. DPC on amount paid from due date till actual handing over of possession.**

11. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges at prescribed rate of interest on the amount paid. Clause 29 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

**"29**

*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 30. 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."*

12. 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 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.

**Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months plus 6 months from date of agreement or the date of commencement of construction which whichever is later. Due date calculated from 36 months from date of start of construction i.e., 14.06.2012 being later.



The period of 36 months expired on 14.06.2015. In the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly the grace period is allowed. Accordingly, the due date of possession comes out to be 14.12.2015.

13. **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."*

14. 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.
15. 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., 15.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

16. 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;"*

17. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.

**F.II. Restrain the respondent to raise any fresh demand.**

18. The respondent has delayed in handing over the physical possession of the said apartment on or before the due date of possession to the complainant and accordingly the authority in the above relief has also granted delay possession charges @10.75% p.a. from due date of possession. In the present matter the complainant has paid an amount of ₹ 36,00,492/- towards the total sale consideration of ₹ 39,55,104/- as per statement of account dated 10.12.2014 issued by the respondent with respect to the said unit, therefore the respondent

is further directed to first adjust the amount of DPC as allowed against the outstanding payment dues and then refund the remaining DPC amount, if any.

19. 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 29 of the agreement executed between the parties on 19.05.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement or commencement of construction, whichever is later. Due date calculated from 36 months from date of start of construction i.e., 14.06.2012 being later. The period of 36 months expired on 14.06.2015. 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 14.12.2015. 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., 14.12.2015 till the actual handing over of possession of unit or 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**

20. 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 handover the physical possession of the unit along with the interest at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 14.12.2015 till the actual handing over of possession or receipt of OC plus two months whichever is earlier.
- ii. The arrears of such interest accrued from 14.12.2015 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 complainant is 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 respondents 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.
21. Complaint stands disposed of.
22. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.09.2023

**HARERA**  
**GURUGRAM**