

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

Date of decision:

22.11.2023

NAME OF THE BUILDER		ANSAL Housing Limited	
PROJECT NAME		Estella, Sector-103 Gurugram	
S. No.	Case No.	Case title	Appearance
1	CR/6173/2022	Mr Rajesh Babbar and Mrs Bhawana Babbar Vs. Ansal Housing Limited	Ms. Priyanka Agarwal (Advocate) None
2	CR/6174/2022	Mr Rajesh Babbar and Mrs. Bhawana Babbar Vs. Ansal Housing Limited	Ms. Priyanka Agarwal (Advocate) None

**CORAM:**

Shri Ashok Sangwan

Member

**ORDER**

1. 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.
2. 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, "Estella", Sector 103, Gurugram, being developed by

the same respondent/promoter i.e., Ansal Housing 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.

3. 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		"Estella", Sector 103, Gurugram.				
<p><b><u>Possession clause: - Clause 30.</u></b>  <i>The Developer shall offer possession of the Unit any time, within a period of 36 months from the date of execution of 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 the 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 style="text-align: right;">(Emphasis supplied)</p>						
<p><b><u>Common details: -</u></b>                      Occupation certificate- Not received                      Offer of possession- Not offered</p>						
Sr no.	Complaint no/ title/date of filing	Date of execution of agreement	Unit no. and area admeasuring	Due date of possession	Total Sale consideration and amount paid	Relief
1.	CR/6173/2022 Case titled as Mr Rajesh Babbar and Mrs. Bhawana Babbar VS Ansal Housing Limited	30.04.2012	1255 sq. ft.	30.10.2015	TSC: Rs. 41,07,963/- Rs. 42,03,546/- Amount paid by the complainant	1. DPC 2. Possession

	<b>DOF:</b> <b>15.09.2022</b>					
2.	CR/6174/2022 Case titled as Mr Rajesh Babbar and Mrs. Bhawana Babbar VS Ansal Housing Limited <b>DOF:</b> <b>15.09.2022</b>	30.10.2012	1725 sq. ft.	03.04.2016	TSC: Rs. 56,09,650/- Rs. 58,90,093/- Amount paid by the complainant	1. DPC 2. Possession

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.
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. 6173 of 2022 case titled as Mr Rajesh Babbar and Mrs Bhawana Babbar Vs. Ansal Housing Ltd.** is being taken as the 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No	Particulars	Details
1.	Name of the project	"Estella", Sector-103, Gurugram, Haryana.
2.	Project type	Residential
3.	Area of project	15.743 acres
4.	Name of licensee	Rattan Singh and 9 others
5.	Registered/not registered	Extension granted vide no.- 09 of 2019, dated:25.11.2019 Valid till:17.08.2020 (Validity of registration has expired)
6.	DTCP license	License no. 17 of 2011 Dated- 08.03.2011 valid up to 07.03.2015
7.	Transfer letter	19.04.2011 (As on page 46 of complaint)
8.	Date of execution of BBA	30.04.2012 (As on page 25 of complaint)
9.	Unit no.	K-0702
10.	Unit area admeasuring	1255 sq ft. [super area]
11.	Possession clause as per BBA	<i>Clause 30</i> <i>The Developer shall offer possession of the Unit any time, within a period of 36 months from the date of execution of</i>

		<p><i>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 the 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>(As on page 36 of complaint)</i></p>
12.	Due date of possession	30.10.2015 (Calculated 36 months from date of execution of agreement plus 6 months grace period allowed being unqualified)
13.	Total sale consideration	Rs. 41,07,963/- (As per the payment plan on page 68 of complaint)
14.	Amount paid by the complainants	Rs. 42,03,546.40/-
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

### **B. Facts of the complaint**

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

- i. That the complainants were subjected to unethical trade practice as well as subject of harassment, Flat buyer agreement clause of escalation cost, many hidden charges which will be forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the

- executed Builder Buyer Agreement between Respondent and complainant mentioned in Developer's Representations, DTCP given the licence 17 of 2011 dated 08.03.2011.
- ii. That based on promises and commitment made by the Respondent, previous buyer booked a Approx 1300 sq. ft, Flat along with one covered car parking and corner cum park PLC in the Unit in Residential Project "Ansal ESTELLA", Sector 103, Gurugram, Haryana. The initial booking the unit and legally transfer the unit in favour of Mr. Rajesh Babbar & Mrs. Bhawna Babbar and Respondents acknowledge the transfer paper in favour complainants and paid amount Rs. 3,50,000/- credited in the favour of complainants.
- iii. That the complainants were allotted the Unit K-0702 admeasuring 1255 Sq. Ft. in residential Project Ansal Estella situated in Sector 103, Gurugram, Haryana on dated 16.12.2011. That the respondent to dupe the complainants in their nefarious net even executed Developer Buyer Agreement Signed Between M/s Ansal Housing Ltd. & M/s Samyak Projects Pvt. Ltd and Complainants dated 30.04.2012. Respondents create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands with threat of levying interest at a compounded rate of 24% for any delay in payment. Due to persistent demands and threats of levying interest for payment delay they were able to extract huge amount of money from the complainant.
- iv. It is submitted that as per clause 23 of the flat buyer agreement the buyer was charged very high interest rate i.e. 24% per annum,



compounded quarterly. Furthermore, according to clause 24 of agreement if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.

- v. That the total cost of the said flat is Rs. 41,07,963/- (Including All other than Taxes) (As per Flat Buyer Agreement Payment Plan Annexed with FBA and sum of Rs. 4203546.40/- (Including Taxes) Paid by the complainant in time bound manner. It is pertinent to mention that Complainant booked the said apartment on 19.04.2011 and enter into the Flat Buyer agreement on 30.04.2012. The Complainants were lured into paying Rs. 42,03,546.40/- within a short time. This amount constituted more than 95% of the total sum taken from the Complainants within 5 years. This amount was taken by the Respondent through fraudulent means by erecting a bare structure within 2015. The Respondents declined to complete the Project after collecting money and there has been little progress in construction from 2015 onwards. This indicates the nefarious design of the builder to take about more than 95% of the total sum from complainant through false promises and threats and stopped doing work on the said project after collecting money, which is illegal and arbitrary.
- vi. That Complainant has paid all the instalments timely and deposited Rs. 42,03,546.40/- that respondent in an endeavor to extract money from Allottees devised a payment plan under which respondent linked more than 35 % amount of total paid against as an advance and linked Rest 60% of the amount with the

- construction of super structure only, of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and Internal development of facilities amenities and after taking the same respondent have not bothered to make any further development on the project till date as a whole project, not even more than 50 %, moreover, the builder has just built a super structure for the particular Tower. So, it is evident that the builder has extracted a huge amount of money and did not spend the money in project, which is illegal and arbitrary and makes a matter for investigation.
- vii. That the complainant entered into a flat buyer agreement on 30.04.2012 and as per flat buyer agreement, respondents/ builder is liable to offer possession on before 29.10.2015 (including grace period) so far.
- viii. That as the delivery of the apartment was due on 29.10.2015 which was prior to the coming into of force of the GST Act, 2016 i.e., before July 2017. Therefore, it is submitted that the Complainant is not liable to incur additional financial burden of GST due to the delay caused by the Respondent. Hence, the Respondent should pay the GST on behalf of the Complainant but just reversed builder collected the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation. That the respondent has indulged in all kinds of tricks and blatant illegality in taking money through booking and drafting of Flat Buyer Agreement with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainant and his family. That the complainant had



communicated with respondent and asked for delayed possession, but the respondent persuaded by showcasing the problem of financial crunch, where the other side builders extracted huge amount of money from complainants due to which the builders subsequently fell in debt, but the abundant project development created suspicion on builder's intention.

- ix. That keeping in view the snail paced work at the construction site and half-hearted promises of the Respondent, the chances of getting physical possession of the assured unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the Respondent, consequently injuring the interest of the buyers including the Complainants who have spent his entire hard earned savings and taken interest bearing loan in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the Respondent conducted its business and their lack of commitment in completing the Project on time, has caused the Complainant great financial and emotional distress and loss.

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

9. The complainants have sought following relief(s).
- I. Direct the respondent to pay interest for delayed possession charges.
  - II. Direct the respondent to handover the actual physical and legally valid possession of said apartment to the complainants.
10. The authority issued a notice dated 21.09.2022 of the complaint to the respondent through an email address at [customerconnect@ansals.com](mailto:customerconnect@ansals.com).

The delivery report has been placed in the file. Despite proper service of notice, the respondent has preferred neither to put in appearance in the hearing dated 10.01.2023 and 10.05.2023, nor filed the reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent on 20.09.2023.

11. 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.

**D. Jurisdiction of the authority**

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

**D.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.

**D.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)**

**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.*

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 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 complainants.**

**E.I.** Direct the respondent to handover the possession of the said unit along with interest.

16. 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."*

17. 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."*

18. 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.

19. **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 30.04.2012 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.
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., **22.11.2023** is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
23. 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 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.



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 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 30.04.2012, 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 30.04.2015. 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 30.10.2015. 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., 30.10.2015 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.

**F. Directions of the authority**

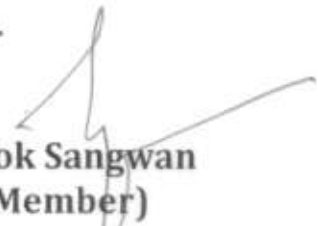
26. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of

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., 30.10.2015 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 30.10.2015 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 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.
- iv. The respondent shall not charge anything from the complainants which is not 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.

27. Complaint stands disposed of.

28. File be consigned to registry.

  
**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.11.2023



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