

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

Complaint no. :	3047 of 2023
Date of filing complaint:	04.07.2023
Date of decision	30.04.2024

Naveen Kataria R/O: 817/35, West Rajiv Nagar, Sector 12a, Main Road, Singha Chowk, Opp Aaina Vatika, Near Hp Petrol Pump	<b>Complainant</b>
Versus	
M/S Ansal Housing and Construction Limited also known as Identity Buildtech Pvt. Ltd. Regd. Office: 110, Indraprakash, 21, Barakhamba Road, New Delhi-110001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Arun Kumar	<b>Chairman</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. K.K Kohli (Advocate)	Complainant
Sh. Sparsh Chaudhary (Advocate)	Respondent

**ORDER**

1. The present complaint dated 04.07.2023 has been filed by the complainant/allottee in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

#### A. Project and unit related details

2. The particulars of the project, the details of 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, Haryana.
2.	Nature of project	Residential
3.	DTCP License no.	32 of 2012 dated 12.04.2012 valid upto 11.04.2020
4.	Name of licensee	M/s Identity Buildtech pvt. Ltd. M/s Agro Gold Chemicals India LLP
5.	RERA registered / not registered	Registered 16 of 2019 dated 01.04.2019 valid upto 30.11.2021
6.	Date of allotment	18.04.2013 (Page 30 of the complaint)
7.	Unit no.	OBAAN -0104 (As on page no. 30 of complaint)
8.	Unit area	1361 sq.ft. (As on page no. 35 of complaint)

9.	Date of execution of buyer's agreement	12.04.2013 (As on page no. 32 of complaint)
10.	Possession clause	<p><b>Clause 31</b></p> <p><i>The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of this 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 the 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></p> <p>[Emphasis supplied]</p> <p>(As on page no. 341 of complaint)</p>
11.	Date of sanction of building plan	16.04.2013 (Taken from another complaint no. 1612 of 2018)
12.	Due date of possession	16.10.2017 [Calculated 48 months from the date of approval of building plan being later + 6 months grace period allowed being unqualified] (Inadvertently mentioned in the proceeding of the day as 16.12.2017)

13.	Basic sale consideration	Rs. 56,54,854/- (As per buyer's agreement at page 35 of the complaint)
14.	Amount paid by the complainant	Rs.57,60,781/- (As stated by the complainant in the complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

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

3. The complainant has made the following submissions in their complaint:

I. That the pursuant to the elaborate advertisements, assurances, representations and promises made by respondent about their project called ansal highland park at Sector 103, Gurugram with impeccable facilities and believing the same to be correct and true, the complainant considered booking a unit measuring 1361 sq. ft. and paid an advance amount of Rs. 1,35,000/- on 13.05.2012.

II. That the respondent company confirmed the allocation of the unit Obaan-0104 and the complainant made the payments over the course of several years thereafter. On 12.04.2012 after having received a total of Rs. 14,06,394/-/- (i.e., more than 10% of the total sale consideration), the respondent entered into a apartment buyer's agreement with the complainant on 12.04.2013 for unit No. Obaan-

0104 admeasuring 1361 sq. ft. for a basic sale price of Rs. 56,54,854/- and other additional charges.

- III. That the complainant continued to make the all payments in compliance with the demands of the respondent. These payments were acknowledged by the respondent vide receipts issued against the same and the statement of account. After a delay of more than 6 years and taking a huge amount of money from the complainant did not completed the construction of the said project.
- IV. That the respondent deliberately and with a mischievous intent tricked the complainant through false promises and forced into paying up huge amounts to the respondent. The said dishonest intent of the respondent is amply evident from their entire conduct and omissions on part of the respondent.
- V. That the respondent was in receipt of a sum of Rs. 14,06,394/- before the execution of the apartment buyer agreement. In this conduct, the respondent violated Section 13(1) of Real Estate (Regulation and Development) Act, 2016 which clearly states that "a promoter shall not accept a sum more than ten percent, of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.
- VI. That the complainant booked the unit in 2013 and as per clause 31 of

the apartment buyer's agreement, the respondent was required to offer possession of the unit within 48 months from date of execution of agreement or within 48 months from the date of required sanctions or approvals whichever is later,, i.e., by mid of 2017. However, the possession was never offered even after a delay of more than 6 years and hence, the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. They have not only been deprived from timely possession but also the prospective return they could have got if they had invested in a fixed deposit in bank.

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

4. The complainant is seeking the following relief:
  - I. Direct the respondent to pay interest for every month of delay of possession at the prevailing rate of interest and handover physical possession of the unit after obtaining a valid occupation certificate.
  - II. Direct the respondent to execute sale deed of the above unit in favour of the complainant.
5. On the date of hearing, the authority explained to the respondent / promoter 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.
6. The respondent/promoter put in appearance through its Advocate and marked attendance on 09.11.2023 respectively and sought short adjournment for filing of the reply. Despite given ample opportunities,



it failed to file the reply. It shows that the respondent was intentionally by avoiding filing of written reply. Therefore vide proceedings dated 30.01.2024, the defence of the respondent was struck off.

7. 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 on the basis of these undisputed documents and submissions made by the complainants-allottees.

**D. Jurisdiction of the authority:**

8. 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**

9. 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**

10. 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;*

11. 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 of the authority on relief sought by the complainant:**

**E.I Direct the respondent to pay interest for every month of delay of possession at the prevailing rate of interest and handover physical possession of the unit after obtaining a valid occupation certificate.**

12. In the present complaint, the complainant 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: -

*The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of this 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 the 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.*

13. The buyer's agreement was executed between the parties on 12.04.2013. As per possession clause 31 of the agreement, the promoter has proposed to handover the possession within a period of 48 months from the date of execution of this agreement or within 48 months from



the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The due date of possession is calculated from the date of building plan approval being later i.e 16.04.2013. The period of 48 months expired on 16.04.2017. Since 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 of 6 month is allowed to the promoter being unqualified. So the due date comes out to be 16.10.2017.

14. **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.

15. The legislature in its wisdom in the subordinate legislation under 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.
16. 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., 30.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.85%.

17. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

*Explanation. —For the purpose of this clause—*

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

*(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
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 builder buyer agreement. That the BBA was executed between the parties on 12.04.2013, the due date of possession is 48 months from the date of execution of this agreement or within 48 months from the date of obtaining all required sanction and approval necessary for commencement of construction, which is later. Further, there shall be a

grace period of 6 months allowed to the respondent in offering the possession of the unit. So the authority calculated the due date from i.e., 16.04.2013 the date of sanction building plan being later. The period of 48 months expired on also it was subject to a grace period of six months. Therefore, the due date of handing over possession is 16.10.2017. The respondent did not offer possession of the subject unit on time. It is the failure of the respondent /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 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., 16.10.2017 till offer of possession plus 2 months or actual handover whichever is earlier after obtaining the occupation certificate from the competent authority, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.

20. Thus in view of the above, the authority directs the respondent/promoter to offer valid offer of possession to the complainant within 2 months after obtaining the occupation certificate from the competent authorities. Also, the respondent is liable to pay interest at the prescribed rate of 10.85% for every month of delay from the due date of possession i.e., 16.10.2017 till the offer of possession plus 2 months or actual handover whichever is earlier, after obtaining the occupation certificate from the competent authority.

**E.II. Direct the respondent to execute sale deed of the above unit in favour of the complainant.**

21. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
22. Since the respondent has not obtained the occupation certificate and has not offered the possession to the complainant, first the respondent will obtain the occupation certificate following which the possession will be offered to the complainant. The respondent is directed to get the conveyance deed executed within a period of three months from the date of handover of possession of the unit.

**F. Directions of the authority**

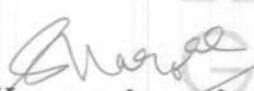
23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 16.10.2017 till the date of offer of possession plus two months after obtaining the occupation certificate or actual handing over possession whichever is earlier, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.
  - ii. The arrears of such interest accrued from 16.10.2017 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 allottees before 10th of the subsequent month as per rule 16(2) of the rules.


- iii. The respondent is directed to offer the valid offer of possession of the allotted unit within 2 months after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of three months of the occupancy certificate.
- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoter 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.

24. Complaint stands disposed of.

25. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 30.04.2024**