

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

Complaint no. : 1144 of 2019  
Date of complaint : 25.03.2019  
Date of decision : 02.04.2024

	Ansal Highland Park Resident Welfare Association R/O - C-55, First Floor, Greenwood City, Sector-45	<b>Complainant</b>
<b>Versus</b>		
1.	Divya Ansal R/O -6, Aurangzeb Road, New Delhi	<b>Respondents</b>
2.	Karun Ansal R/O- Villa B, 6, Aurangzeb Road, New Delhi	
3.	Ansal Housing Limited R/O: 606, 6th Floor, Indra Prakash, 21, Barakhamba Road, New Delhi-110001	
4.	Deepak Ansal R/O- 6, Aurangzeb Road, Delhi	
5.	Kushagr Ansal R/O- 82, Jor Bagh, New Delhi	
6.	Identity Buildtech Pvt Ltd R/O-110, Indra Prakash Building, 12, Barakhamba Road, New Delhi	
7.	Tarun Kathuria R/O-252, Dhudhial Apartment, Madhuban Chowk, Pitampura, New Delhi	

<b>CORAM:</b>	
Sh. Arun Kumar	<b>Chairman</b>
Sh. Vijay Kumar Goyal	<b>Member</b>
Sh. Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Uday Bedi (Advocate)	Complainant
Sh. Amandeep Kadian (Advocate)	Respondents

### ORDER

1. The present complaint has been filed by the complainant/association under Section 31 of the Real Estate (Regulation and Development) Act, 2016 ( in short, the Act) read with rule 29 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 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 details

2. The brief details of the project is as under:

S. No.	Heads	Information
1.	Project name and location	"Ansal Highland Park", Sector 103 Gurugram
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	Registered vide no. 16 of 2019 Valid from 01.04.2019 Valid Upto 30.05.2024
4.	DTPC License no.	32 of 2012 dated 12.04.2012
5.	Validity status	11.04.2020



6.	Name of licensee	M/s Identity Buildtech Pvt. Ltd. & M/s Agro Gold Chemicals India LLP
7.	Licensed area	11.7 Acres
8.	Possession clause	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." (Emphasis supplied) [page 98 of complaint]
9.	Occupation Certificate details	Not yet obtained

**B. Fact of the complaint**

3. That the present complaint is with reference to the residential group housing colony project "ansal highland park" being developed and marketed by Ansal Housing Limited (formerly known as Ansal Housing & Construction Ltd.) on the land falling in the Sector 103, Gurugram which is owned by Ansal Housing Limited's wholly owned subsidiary Identity Buildtech Private Limited (hereinafter referred to as "IBPL") and under the license issued by the Government of Haryana, vide letter No. 32 dated 12.04.2012, issued by Director General, Town & Country Planning, Chandigarh, Government of Haryana in the name of IBPL.

4. That the complainant / association namely, Ansal Highland Park Resident Welfare Association (hereinafter referred to as AHPRWA) is a registered welfare association registered under the Haryana Registration and Regulations of Societies Act, 2012, (Haryana Act No. 1 of 2012) and is legally entitled to represent the allottees of the residential group housing colony project "ansals highland park" being developed and marketed by Ansal Housing Limited on the land falling in the Sector 103, Gurugram which is owned by Ansal Housing Limited's wholly owned subsidiary IBPL. The AHPRWA was registered with the primary objective of protecting the collective interest of buyers of group housing project "Ansals Highland Park" situated at village Tikampur, Gurugram Manesar Urban Development Plan in Sector 103, Gurugram. The present Complaint is filed to represent and protect the interest of the buyers/allottees of the project Ansals Highland Park.
5. That since its inception in September, 2018, the AHPRWA has been regularly working for the welfare of the members of the Association. It is submitted that the complainant/association being a voluntary association registered under the provisions of Haryana Registration and Regulations of Societies Act, 2012 and Haryana Registration and Regulations of Societies Rules 2012, vide Registration No. 03483 dated 01.11.2018 is authorized to submit this complaint. It is submitted that, out of more than 98 members of the AHPRWA, the AHPRWA is filing the consumer complaint for and on behalf of 95 members in aggregate of the AHPRWA who are the buyers/ allottees the project Ansals Highland Park. It may not be out of place to mention that two



of the members as per the list have not been provided with the buyer's agreement till date.

6. That in 2012, the respondents announced the launch of ansals highland park project consisting of 2bhk, 3bhk and 4bhk spartments along with certain committed amenities. The members of the AHPRWA while searching for a flat/accommodation were lured by such advertisements and calls from the agents of the respondents for buying a house in their project namely Ansals Highland Park. The members of the complainant/association who were caught in the web of false promises of the respondent company and its agents, paid the initial amount of 25%-35% of Basic towards the booking amount, accordingly filed the application form for their respective units and opted for the construction linked installment payment plan offered by the respondent company. That the members of the complainant association after having purchased their respective apartments in the said project were sent one detailed apartment buyers agreement and were requested to sign the agreement and return to the respondent company. The members of the AHPRWA and the respondent company signed the above said aba wherein the total consideration of the apartment was inclusive of the basic sale price, external development charges, internal development charges, infrastructural development charges, club membership charges, car parking, as in accordance with the clause i of the said agreement.
7. That it is submitted that as per the buyer agreement the building plans of the said project were approved by Director General Town & Country Planning, Chandigarh, Haryana (DGTCP) who has granted license number 32 of 2012 to Identity Buildtech Private Limited (IBPL), a wholly owned subsidiary of Ansal Housing Limited (formerly known as Ansal Housing and Construction

Limited) for setting up of on a land area falling in the village Tikampur, Gurgaon Manesar Urban Development Plan in Sector 103, Gurugram.

8. That from page no. 3 of the buyer agreement, bearing clause titled "developers representation" categorically means that the license has been held by the developer and the developer has been mentioned as Ansal Housing & Construction Ltd. This was a fraudulent representation to the members of the complainant association as it gave them an impression that the licensee of the project was held in the name of Ansal Housing & Construction Ltd. since Ansal Group which enjoyed certain reputation in the construction industry whereas "IBPL" was not known to anyone resulting in the members of the complainant association being induced to make investment presuming the License is in the name of Ansal Housing Limited (formerly known as Ansal Housing and Construction Limited). Further, it is necessary and absolutely imperative to state herein that all the payments at all times have been received in the name of Ansal Housing & Construction Ltd. and all the receipts are also being issued by Ansal Housing & Construction Ltd. which is against the spirit of legal parameters. Further, the members of the complainant association having dreams of their own residential unit signed the agreement in the hope that the unit will be delivered within 48 months i.e. from the year 2012-2013 as per clause 31 of the agreement. The members of the complainant association were also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a flat of the members of the complainant association was shattered due to dishonest, unethical attitude of the respondents.
9. That though the payment to be made by the members of the complainant association was to be made based on the construction on the ground but unfortunately the demands being raised were not corresponding to the



factual situation on ground. The payment plan was designed in such a way to extract maximum payment from the buyers viz a viz done/completed. The members of the complainant association approached the respondents and asked about the status of construction and also raised objections towards non-completion of the project and illegal demands raised by the respondent company but the respondents cunningly answered that they have set procedure and accordingly they have raised demand notes. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.

10. That from the time of execution of the buyer agreement till as recent as february, 2019, the respondent company has continued raising demands based on the construction linked payment plan from time to time and the members of the AHPRWA kept on paying the same together with external development charges, infrastructure development charges, etc. in addition to the consideration. however, such demands and payments have not resulted in any corresponding progress of the said project and apartments therein. At the time of the launch of the project and in the agreement executed between the respondents and the buyers/ members of the AHPRWA, the respondents as per clause 31 of the apartment buyers agreement promised that delivery of possession of apartments will be given to the buyer's within 48 months from the date of execution of aba or from the date of obtaining all sanctions & approvals for commencement of construction extendable upto six additional months as the agreed grace period i.e. before the end of the year



2017. The respondents have despite having made multiple tall representations to the complainant association, the respondents have chosen deliberately and contemptuously not to act and fulfil the promises. It is pertinent to mention herein that while making regular and diligent payments for their respective apartments, the members of the complainant association also paid for additional services/facilities which completed the allotted apartments as a whole and any possession offered without/incomplete amenities within the apartment complex cannot be considered to be complete.

11. That further, the respondents have erred in making the application for registration of the Ansal Highland Park project before the Haryana Real Estate Regulatory Authority (H-RERA) in the name of Identity Buildtech Private Limited, a wholly owned subsidiary of Ansal Housing Limited. The application for registration with HRERA was made in complete violation of Section 3 (I) of The Real Estate (Regulation and Development) Act, 2016 wherein it has been clearly specified that the projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act. Thereafter it came to the knowledge of the complainant association that the License for the project of Ansals Highland Park, which was issued on 12.04.2012, expired on 11.04.2016 and the respondent company did not renew the same for almost three years, making them a defaulter in the eyes of law. In early 2017, i.e. when the construction of the said project should have been completed, the respondents discontinued all construction activity at the project site. Pertinently, by early 2017, most of the allottees of the said project, including the members of the AHPRWA herein had already paid a considerable amount ranging from 70%



to 90% of the total consideration of their respective apartments and hence this sudden discontinuation of construction activity at the project site is beyond understanding to the AHPRWA.

12. That when the construction activity at the project site did not resume for over months, the AHPRWA along with its members and several other buyers/allottees of the Ansals Highland Park project organized several meetings with the respondents and visited the said project and various departments including DTCP office/HRERA website to obtain information on the various facts pertaining to no funds to complete the project, diversion of funds and non renewal of license etc which the respondents did not disclose to the complainant and other buyers of the Ansals Highland Park project at the time of launch and/ or allotment of apartment and/ or execution of the apartment buyers agreement.
13. That it is important to emphasize herein that despite the complainant mailing the respondents and following with them continuously about the construction at the project site, the respondents have neither bothered to start the construction nor responded to the queries of the AHPRWA till date and has now exceeded its possession date. Furthermore, after going through a recent filing by the Respondent before the HRERA, the members of the complainant Association have learnt a bit on the financial details as submitted by the respondent no.6.
14. That the complainant association had no option but to accept the terms of the apartment buyer's agreement without any negotiation and it is pertinent to mention here that as per the apartment buyers agreement, in case the buyer/allottees fails to take possession of allotted unit within 60 days from date of offering, the allottees shall be liable to pay Rs. 5/- per sq. ft per month for entire period of such delay whereas any delay on the part of the buyer is

also being penalized at 24% per annum, categorically showing bias and unfair trade practices.

15. That the total amount that has been collected from the allottees (booked flats) as on 14.1.2019 is Rs. 344.30 Crores whereas the total estimated cost of the project was Rs. 395.52 Crores which means the respondents have collected almost 87% of the estimated project cost whereas the project claimed to have been completed varies from 46.5% to 66% in respect of different flats and the construction of the other facilities such as community building, nursery school, convenient shop and the EWS varies from 0% to 2% which is a very clear indication that the funds which have been taken over from the allottees have been siphoned off somewhere else and not used for the construction of the flats. It is further interesting to note that the respondents are holding an inventory of more than 110 flats with them and hence, the equivalent amount towards the sale of these flats needs to be flowing into the project from the builder as well to complete the entire project else the respondents would be owning the flats without having invested a penny against the flats being held by them as inventory. The total construction period which was sought as per the buyer agreement was 48 months plus six months and hence the proposed date of completion of the project was mid of 2017. Hence it is important to note that if there is any escalation in the cost because of this inordinate delay, in completion of the flats by the respondents, the entire cost shall have to be borne by the respondents and the allottees under no circumstances shall be asked to pay



any amount as the application form clearly stated that the prices being quoted by the respondents and accepted by the allottees are escalation free.

16. That on 18.07.2019, the Hon'ble Authority has lareday taken a view that the respondent has delayed in delivering possession of the units to the members of the complainant association .

17. That the association had filed a complaint on behalf of its 96 members against the respondent but three member who had earlier decided to be a part of the association i.e Mr. Ashish Jainant serial no. 1 having membership no. 017 and mohd Ansari having two units in the project at serial no. 94 and 96 having membership no. 095 and 097 have now decided not to pursue the complaint. Therefore the total number of members after this is 93.

18. That another ten members have joined the association .The membership of the new members was approved by the board of members in their meeting held on 10.12.2019 .The total number of the association now are 103 .Now the clear picture is at present there are 213 members in the association.

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

19. The complainants have sought following relief(s):

- i. Direct the respondent to complete the project and handover the possession of all apartments within 6 months and to pay delay possession charges along with interest.
- ii. Direct the respondent from raising any fresh demand with respect to the project.
- iii. Direct the respondent to provide the details required to be disclosed by the respondent under rule 4(1) (a) of the hrera rules.
- iv. Direct the respondent to provide the details of land and license cost actually incurred by the respondent in terms of rule 4 of HRERA rules.

- v. Direct the respondent to deposit an amount equivalent to seventy percent of the amount already realized and to be realized (including towards overdoes, unsold inventory and construction which is yet to be completed) by it from the allottees of the respondents units in a separate bank account as per RERA Regulations which shall be used solely for its construction and development of the said project in compliance with the provisions of Section 4(2)(D) of RERA Act & Rule 4 of HRERA Rules.
- vi. Direct the Respondents to re - infuse requisite money in the separate bank account/ dedicated development account required for completing the Ansals Highland Park Project in compliance with the Provisions of Rule 4 of HRERA Rules.
- vii. Direct the respondents to ensure that any money shall be paid from the dedicated development account only after the prior written approval of authorize representatives/ agencies (including chartered engineer, architect and/ or chartered accountants) of the complainant.
- viii. Direct the respondent to submit phase wise completion schedule with your good office.
- ix. Direct the respondents to ensure that any money shall be paid from the dedicated development account only after the prior written approval of authorize representatives/ agencies (including chartered engineer, architect and/ or chartered accountants) of the complainant;
- x. Direct the respondents to produce the complete books of accounts and the complete record so that your good office could validate and get the same audited/ investigated by an independent agency to verify and ensure that the entire consideration amount paid/ payable by the buyers of the Ansals Highland Park Project is used solely for the construction and development of the Ansals Highland Park Project in compliance with the provisions of Rule 4 of HRERA Rules.
- xi. Direct the respondents to deposit entire EDC amount payable to DCP into the Dedicated Development Account designated under RERA Regulations so that the timely payments of the installments to DCP could be ensured under the provisions of Haryana Development and Regulation of Urban Area Rules, 1976 read with Section 11 (4) (g) of RERA Act.



- xii. Direct the respondents to reimburse the amount incurred by the complainant on engaging such agencies including chartered engineer, architect and/or chartered accountants, out of their respective profit share;
  - xiii. To pass appropriate directions to freeze the bank accounts and other assets (movable and immovable) of the Respondents and their directors/ promoters and thereafter take such further necessary actions, including consequent de - freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of RERA Act & HRERA Rules;
  - xiv. To issue appropriate directions to the directors to submit their passports with your good office so that they are not permitted to leave the country without the approval of your good office;
20. On the date of hearing, the authority explained to the respondent/ promoters about the contraventions 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 respondents:**

21. The respondent has contested the complaint on the following grounds.
22. That the present complaint deserves to be dismissed as the complainant has no locus-standi to file the present complaint as being not an elected body because as per the provisions of Haryana Apartments Ownership Act, 1983 and Haryana Registration and Regulations of Societies Act, 2012, the Complainant has not supplied the list of members who are associated with the complainant and by merely filing a bare list of members does not intend them to legally represent as an association, which can file a complaint through the proper authorization. In the present complaint, no minutes of meetings of board is attached, where the resolution to file the present complaint was passed. Furthermore no proper authority letter has

been obtained by the authorised persons and attached with the present complaint. Hence the present complaint is liable to be dismissed on this sole ground as the complaint has been filed without any proper authority.

23.. That through the present complaint the complainant has prayed for the possession and delayed interest for all the apartments, however since no proper procedure was followed while formation of the association, then how can an association pray for the possession and delayed interest on the behalf of a person who is not a member of the association. It is also worthwhile to mention here that respondent by entering into development agreement with the land owners out of the FSI area 5,00,000/- square feet and the land owners have assigned the development program to the respondent empowering them to develop and market part of project and more specifically built the up area comprised in Tower K, L, M, N, O, P and the remaining area of the project being developed, built and marketed by land owners, themselves and as such the respondent is entitled to market and sell the apartment of the said towers.

24. That it is also not out of place to mention that the buyers, in the agreement recording buyers representations had accepted, acknowledged and understood about the law, rules, regulations, notifications, extra applicable to the said project and the terms and conditions contained in the application for allotment and those contained in allotment agreement.

25. That the respondent is a Public Limited Company registered under the Companies Act, 1956 having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi - 110001. The above said project is related to



licence No.32 of 2012 dated 29.05.2011 received from DGTCP, Chandigarh over the land measuring 93 kanalas 12 Marlas 11.7 Acres details of the same are given in builder buyer agreement, situated within the revenue estate of Village Teekanpur, Gurugram, which falls within the area of Sector-103, Gurugram, Manesar Urban Development Plan. The building plans of the project has been approved by the DTCP Haryana vide memo No. P-851/AD/(RA)/2013/36610 dated 16.04.2013. Thereafter, the respondent herein was granted the approval of Fire Fighting Scheme from the Fire Safety Point of view of the Housing Colony measuring 11.70 acres by the Director, Haryana Fire Service, Haryana, and Chandigarh vide letter memo No. DFS/F.A./2014/16258 dated 31.03.2014.

26. That it would be relevant to mention here in case titled as Mr. Abhishek Mohan Gupta Vs. M/s Ireo Grace Realtech (Pvt.) Ltd., Complaint No.2044 of 2018, date of first hearing 12.03.2019, decided on 12.03.2019 by the Hon'ble Authority, in Para No.36, it was held by the Hon'ble Authority the authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtained clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety

plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 3 months and 13 days till the date of decision. ....”

27. That the allottees (shown to be members of so called association) had approached the respondent on different occasions for the purchase of their respective units on different dates in the residential project "Ansal Highland Park" hereinafter "the project" situated in Sector-103, Village Nawada, Fatehpur, Gurugram. It is submitted that the purchasers prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after their full satisfaction with regard to all aspects of the project including but not limited to the capacity of the respondent to undertake development of the same and thereafter they took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

28. That it is further submitted that despite there being a number of defaulters in the project, who are also the allottees shown as members of association, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is in swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority. The relief sought in the complaint by the complainants is based on false and frivolous grounds and they are not entitled to any discretionary relief from this Hon'ble Authority as the person(s) not coming with clean



hands maybe thrown out without going into the merits of the case. However, the true facts of the case are that the land of the project is owned the possessed by the respondent through its subsidiary M/s Identity Builtech Pvt. Ltd. and M/s Agro Gold Chemical Ltd., having its registered office at B-1/1345, Vasant Kunj, New Delhi - 110070. It is also worthwhile mention here that the respondent has applied for registration of the project with RERA which is pending.

29. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factor to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in

letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

30. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. It is further submitted that the interest for alleged delay demanded by the complainants is beyond the scope of buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.
31. That it is also a conceded and admitted fact that the project related to the present complaint has already been registered with RERA in the month of April 2019, according to which the respondent would deliver the possession of the unit to the buyer within stipulated time period as has been given to the Hon'ble Authority. That it is submitted that several allottees and alleged members of association have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnestly pursued the development of the project in question and has constructed the



project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the Authority of the said project by giving afresh date for offering of possession, it is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

32. All other averments made in the complaint were denied in toto.

33. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint decided on the basis of these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**

34. 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**

35. 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**

36. 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) 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.*

37. 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 complainants.**

**F.I Direct the respondent to complete the project and handover the possession of all apartments within 6 months and to pay delayed possession charges along with interest.**

**F.II Direct the respondent from raising any fresh demand with respect to the project.**

38. Both the relief no. I , II and III being interconnected are being taken up



together. The relief of delayed possession charges is to be adjudicated in terms of section 18 of the Act of 2016. Since there are a number of allottees in the association and the case of each allottee has to be adjudicated with respect to the specific facts of the individual case where the date of builder buyer agreement and date of handing over of possession may vary. Therefore, individual allottees may file separate cases with relevant documents for the above relief.

39. These issues are to be adjudicated by the authority in individual cases and not as a relief to RWA. Hence, the complaint is not maintainable qua this relief against the respondent/promoter.

**F.III Direct the respondent to provide the details required to be disclosed by the respondent under rule 4(1) (a) of the HRERA rules.**

40. The complainant association is seeking relief under rule 4(1) (a) of the rules 2017. Rule 4(1)(a) is reproduced below:

*Rule 4 Additional disclosure by promoters of ongoing projects*

*4.(1) The promoter of an ongoing project shall make an application to the Authority to furnish the following information namely:-*

*(a) the total money collected from the allottees , money spent on development of the project*

41. As per the section mentioned above the respondent is directed to provide the details to the complainant / association.

**F.IV Direct the respondent to provide the details of land and license cost actually incurred by the respondent in terms of rule 4 of HRERA rules.**

42. The present complaint is with regard to the project of Ansal Highland Park . The same is registered with the Authority vide no. 16 of 2019.As per section

4(f) of the Act of 2016, the respondent should provide the land and license cost to the complainant and the same section is reproduced as below:-

**4(f)**

*The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project*

**F.V Direct the respondent to deposit an amount equivalent to seventy percent of the amount already realized and to be realized (including towards overdoes overdues, unsold inventory and construction which is yet to be completed) by it from the allottees of the respondents units in a separate bank account as per RERA Regulations which shall be used solely for its construction and development of the said project in compliance with the provisions of Section 4(2)(D) of RERA Act & Rule 4 of HRERA Rules.**

**F.VI. Direct the Respondents to re - infuse requisite money in the separate bank account/ dedicated development account required for completing the Ansals Highland Park Project in compliance with the Provisions of Rule 4 of HRERA Rules.**

**F.VII Direct the respondents to ensure that any money shall be paid from the dedicated development account only after the prior written approval of authorize representatives/ agencies (including chartered engineer, architect and/ or chartered accountants) of the complainant**



43. That as per section 4(2) (1)(D) states that the seventy per cent of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose. The same clause is reproduced as hereunder:-

*4(2)(1)(d) That seventy per cent of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose*

*Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project*

*Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project*

*Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project*

44. Therefore the respondent is directed to deposit the same in view of the above section 4(2) (1)(D) of the Act of 2016.

45. The respondent is directed to ensure adherence to the provisions of section 4 (2)(1)(d) and any withdrawal is to be allowed only on furnishing of the requisite certificates of CA, architect and engineer.

**F.VIII Direct the respondent to submit phase wise completion schedule with your good office.**

46. The present complaint is with regard to the project of Ansal Highland Park . The same is registered with the Authority vide no. 16 of 2019. The same is mentioned in section 11 (1) and rule 14(1)(d) of the Act of 2016. Therefore , the respondent is bound to act upon the same. The clauses are reproduced as below:-

*Section 11 (1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5 , as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4 , in all the fields as provided, for public viewing, including—*

- (a) details of the registration granted by the Authority;*
- (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;*
- (c) quarterly up-to-date the list of number of garages booked;*
- (d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;*
- (e) quarterly up-to-date status of the project; and*
- (f) such other information and documents as may be specified by the regulations made by the Authority.*

**Rule 14(1)(d)**

*The promoter shall upload the following updates on the webpage for the project, within fifteen days from the expiry of each quarter, namely:-*

- (i) list of number and types of apartments or plots, booked;*
- (ii) list of number of garages/ parking space booked;*



*(iii) status of the project,-*

*(A) Status of construction of each building with photographs; (B) Status of construction of internal infrastructure and common areas with photographs*

*(iv) Status of approvals*

47. Therefore the respondent is directed to provide the schedule to the complainant/association.

**F IX Direct the respondents to ensure that any money shall be paid from the dedicated development account only after the prior written approval of authorize representatives/ agencies (including chartered engineer, architect and/ or chartered accountants) of the complainant;**

**F.X Direct the respondents to produce the complete books of accounts and the complete record so that your good office could validate and get the same audited/ investigated by an independent agency to verify and ensure that the entire consideration amount paid/ payable by the buyers of the Ansals Highland Park Project is used solely for the construction and development of the Ansals Highland Park Project in compliance with the provisions of Rule 4 of HRERA Rules.**

**F.XI Direct the respondents to deposit entire EDC amount payable to DCP into the Dedicated Development Account designated under RERA Regulations so that the timely payments of the installments to DCP could be ensured under the provisions of Haryana Development and Regulation of Urban Area Rules, 1976 read with Section 11 (4) (g) of RERA Act.**

**F.XII Direct the respondents to reimburse the amount incurred by the**

**complainant on engaging such agencies including chartered engineer, architect and/or chartered accountants, out of their respective profit share.**

**F.XIII To pass appropriate directions to freeze the bank accounts and other assets (movable and immovable) of the Respondents and their directors/ promoters and thereafter take such further necessary actions, including consequent de - freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of RERA Act & HRERA Rules;**

**F.XIV To issue appropriate directions to the directors to submit their passports with your good office so that they are not permitted to leave the country without the approval of your good office;**

48. The above mentioned reliefs are being sought by the complainant association .The relief was not pressed by the complainant counsel during the arguments in the course of hearing .The authority is of the view that the complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above mentioned relief.

#### **H. Directions of the authority**

49. 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 individual allottees may file separate claim for the relief of delayed possession charges as mentioned in para no 38 .
- ii. The respondent is directed to provide all details including phase wise completion schedule as per para 47 above and land and license cost to the complainant/association.
- iii. The respondent is directed to provide requisite documents along with copies of sanctioned plan etc. as per obligation u/s 19(1) of the Act to the complainants.
- iv. The respondent is directed to ensure adherence to the provisions of section 4 (2)(1)(d) and any withdrawal is to be allowed only on furnishing of the requisite certificates of CA, architect and engineer.

50. Complaint stands disposed of.

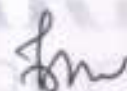
51. File be consigned to registry.



(Ashok Sangwan)  
Member



(Vijay Kumar Goyal)  
Member



(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 02.04.2024**