

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

Complaint no.
Date of decision

3027 of 2023
24.04.2023

1. Mr. Alok Upadhyay
R/o: - House No. A-83/1, Chatterpur Enclave,
Phase-II, New Delhi-110074.

Complainant

Versus

M/s Ansal Housig Limited
Office at:- 2nd Floor, Ansal Plaza, Sector-1,
Near Vaishali, Ghaziabad, Uttar Pradesh-201010.

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Ms. Priyanka Aggarwal (Advocate)
Shri. Amandeep Kadyan (Advocate)

Complainant
Respondent

HARERA
GURUGRAM
ORDER

1. This complaint has been filed by the complainant/allottees 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 under the provision of the Act or the Rules and regulations made thereunder or to the allottees 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 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	"Ansal Heights 86", Sector-86, Gurugram, Haryana.
2.	Nature of project	Residential
3.	Area of project	12.843 acres
4.	DTCP License no.	Licence No. 48 of 2011 Dated 29.05.2011
5.	RERA registered	Not registered
6.	Unit no.	H-0405, 2 bhk (As on page no. 25 of complaint)
7.	Unit area	1360 sq.ft (As on page no. 25 of complaint)
8.	Date of execution of buyer's agreement	19.12.2012 (As on page no. 23 of complaint)



9.	Possession clause	<p>Clause 31</p> <p><i>The Developer shall offer possession of the Unit any time, within a period of 42 months from the date of execution of this Agreement or within 42 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 42 months as above in offering the possession of the Unit.</i></p> <p>[Emphasis supplied] (As on page no. 27 of complaint)</p>
10.	Due date of possession	19.12.2016 [Calculated 42 months from date of execution of agreement + 6 months grace period]
11.	Payment plan	Construction linked
12.	Total sales consideration	Rs.52,95,004/- (As on page no. 48 of complaint)
13.	Amount paid by the complainant	Rs.52,74,374/- (As per statement of account dated 29.06.2021 on page no. 50 of complaint)

14.	Offer of possession for fit-outs	29.06.2021 (As on page no. 49 of complaint)
15.	Occupation certificate	Not received

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That based on promises and commitment made by the respondent, the complainant booked a 2 BHK flat admeasuring super area 1360 sq. ft. along with one covered car parking in the project "Ansal Heights 86" situated in Sector 86, Gurugram, Haryana and was allotted unit no. H-0405, Tower-H.
- II. That the respondent no.1 executed the flat buyer agreement on 19.12.2012 and created a false belief that the project shall be completed in time bound manner. The total cost of the said flat was Rs.52,95,004/- including PLC, EDC, IDC, Car Parking & Club Membership excluding taxes and the complainant has already paid Rs.64,40,626/- including taxes in the time bound manner.
- III. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) the complainant has fulfilled his responsibility in making the necessary payments within the time specified in the agreement and the complainant signed the one sided buyer's agreement Therefore the complainant herein are not in breach of any of its terms of the agreement.

In similar caseNeelkamal Realtors Suburban Pvt. Ltd. and anr. vs UOI and Ors (W.P 2737 of 2017

Wherein the Bombay HC bench held that :

Para 182 *"The real estate sector has largely been opaque, with consumers often unable to procure complete information, or enforce accountability against builders and developers in the absence of effective regulation. The biggest fallout affecting the sector has been (1) the delay in project completion; (2) diversion of funds collected from buyers, (3) one-sided contracts due to power asymmetry; (4) renegeing on contractual commitments by both the developers and the buyers; and (5) constraints in financing and investment options available to the sector, thereby affecting os-wp-2737-17 & ors-RERA-JT.doc its long-tern growth"*

Para181..... *"There was no accountability as to entity or persons responsible and/or liable for delivering on several projects that were advertised and in respect of which amounts had been collected from individual purchasers. What was promised in advertisements/broachers, such as amenities, specifications of premises etc. was without any basis, often without plans having been sanctioned, and was far from what was finally delivered. Amounts collected from purchasers were either being diverted to other projects, or were not used towards development at all, and the developer would often be left with no funds to finish the project despite having collected funds from the purchasers. For a variety of reasons including lack of funds, projects were stalled and never completed and individual purchasers who had invested their life-savings or had borrowed money on interest, were left in the lurch on account of these stalled projects. Individual purchasers were often left with no choice but to take illegal. os-wp-2737-17 & ors-RERA-JT"*

- IV. That as per clause 31 of the buyer agreement, the respondent was to offer possession of the unit within a period of 42 months from date of execution of buyer's agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later.

"The Developer shall offer possession of the unit any time ,within a period of 42 months from the date of execution of agreement or within 42 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 42 months as above in offering the possession of the unit.”.

- V. The buyer's agreement was executed on 19.12.2012 and construction of the project started on 21.05.2012. Thus, the buyer's agreement was executed later so 42 months are to be calculated from 21.05.2012 the due date of possession comes out to be 19.06.2016.
- VI. That the builder started construction work almost 10 year back still respondent want to more year to complete the project that 8- 10 year long period make adverse effect on construction quality of project and during the 10 years period all approval issued by the competent authority was expired on 2018 and till date the respondent is not applied for revalidation of license & approval till date.
- VII. That as the booking and allotment of the apartment was done on 2011 and due date of possession as per BBA 19.06.2016 before the GST respectively which was prior to the coming into force of the GST Act, 2016 and it is submitted that the complainant is not liable to give extra tax amount to the respondent and the respondent is also liable pass on anti-profiteering benefit to the complainant.
- VIII. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of the 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 and no possession date has been given by the respondent from 19.06.2016 to till date. The respondent has rudely and cruelly dashed the savored dreams, hopes and expectations of the complainant to the ground and the complainant is eminently

justified in seeking delay possession charges from the due date of possession i.e. 19.06.2016 to till date of physical possession of the unit after obtaining occupation certificate.

- IX. That the respondent send the fit-out letter to the complainant on dated 29.06.2021 without construction of the unit. Keeping in view the snail paced work at the construction site, 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 complainant who has spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to respondent to handover possession of the unit after obtaining occupation certificate and delayed payment charges on the amount paid.
 - ii. Direct the respondent too quash the one-sided clauses from the BBA.
 - iii. Pass an order for forensic audit.
 - iv. Pass an order for payment of GST amount levied upon the complainant and the benefit of ITC taken by the respondent.
5. On the date of hearing, the authority explained to the respondent/promoter 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 respondent.

6. The respondent has contested the complaint on the following grounds: -

- I. The present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Authority, as the complainant has admitted that he has not paid the full amount. The present complaint is liable to be dismissed on this ground alone.
- II. That even otherwise, the complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Allotment Letter/Buyer's Agreement dated 19.12.2012, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- III. That the complainant approached the respondent sometime in the year 2012 for the purchase of an independent unit in its upcoming residential project "ANSAL HEIGHTS" situated in Sector-86, District Gurgaon (Haryana). It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after being fully satisfied with regard to all aspects of the project, the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner.



- IV. That, in pursuant to the application the complainant was allotted a flat bearing no. H-0504. The complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration and further represented to the respondent that the he should remit every installment on time as per the payment schedule. It is further submitted that despite there being a number of defaulters in the project, 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 full swing and the work will be completed within the prescribed time period as given by the respondent to the authority.
- V. 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 complainant 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 thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the major factor to delay in giving



possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labor 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.

- VI. That the respondent is carrying his business in letter and spirit of the Builder Buyer Agreement but due to COVID"19 the lockdown was imposed throughout the country in March, 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. That similar lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- VII. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the construction of the project.
- VIII. That the respondent reserves its right to file additional reply and documents, if required, assisting the Authority in deciding the present complaint at the later stage.
- IX. That it is submitted that several allottees have defaulted in timely remittance of payment of installment which was an essential, crucial and an indispensable requirement for conceptualization 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 effect on the operation and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the 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. The construction of the project is completed and ready for delivery, awaiting occupancy certificate which is likely to be completed by the year 2022.

- X. The central government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in Clause 7 & 8 of the Builder Buyer's Agreement, vide which complainants agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc.
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 submission made by the parties.

E. Jurisdiction of the authority

The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The

objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

.....
(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;



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 objections raised by the respondent.

F. I Objections regarding force-majeure circumstances

11. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction and development activities, restrictions on usage of water, demonitisation. The plea of the respondent regarding various orders of the NGT and demonitisation and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong. The **Hon'ble Delhi High Court in case titled as M/S Halliburton Offshore Services Inc. V/S Vedanta ltd. & Anr. bearing no. O.M.P(1) (Comm) no. 88/2020 and LAS 3696-3697/2020 29.05.2020** has observed as under:



69. *The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given by the Contractor to cure the same repeatedly. Despite the same, the contractor could not complete the Project. the outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

12. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 16.01.2016. It is claiming the benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants

G.1 Direct the respondent to hand over the possession of the said unit along with delayed possession charges.

13. 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 42 months from the date of execution of this Agreement or within 42 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 42 months as above in offering the possession of the Unit.

14. The present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour 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.

15. 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.

16. 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.
17. 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., **24.04.2024** is 8.85%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.85%.
18. The definition of term 'interest' as defined under section 2(za) 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;"*

19. 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.
20. 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 19.12.2012, the due date of possession is 42 months from the date of execution of this agreement or within 42 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., 19.12.2012. Therefore, the due date of handing over possession is 19.12.2016. 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., 19.12.2016 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.

21. 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., 16.01.2017 till the offer of possession plus 2 months or actual handover whichever is earlier, after obtaining the occupation certificate from the competent authority.

G. II. Direct the respondent to quash the one sided clause of BBA.

G. III. Pass an order for forensic audit of the builder.

G. IV. Pass an order for payment of GST amount levied upon the complainant and the benefit of ITC taken by the respondent.

22. During the proceedings dated 06.03.2024, the counsel for the complainant stated that the counsel does not wish to proceed with the above said reliefs and restricts the present complaint to the relief of delay possession charges along with possession only. Thus, the above said reliefs becomes redundant.




H. 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 handover possession of the unit on obtaining the occupation certificate to the complainant, as per the builder buyer's agreement dated 19.12.2012.
- ii. The respondent is directed to pay interest to the complainants 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., 19.12.2016 till the date of offer of possession plus two months after obtaining the occupation certificate from the concerned authority or actual handover of the said unit as per Section 18(1) of the Act 2016 read with Rule 15 of the Rules.
- iii. The arrears of such interest accrued from 19.12.2016 till the date of order by the authority shall be paid by the promoter to the allottees 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.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- vi. 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.




(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.04.2024

HARERA
GURUGRAM