



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

Complaint no. : 3197 of 2023
Order pronounced on : 24.04.2024

Kulwant Singh
Address:- Village Sahanpur, Tehsil-Safidon,

Complainant



Ansal Housing limited
Address:- Ansal Plaza, 2nd Floor, Sector-1,
Vaishali, Ghaziabad.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sanjeev Kumar Bhardwaj (Advocate)

Complainant

Shri Amandeep Kadyan (Advocate)

Respondent

ORDER

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

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. 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.	V-06, Type-Villa (As on page no. 32 of complaint)
7.	Unit area	4300 sq. ft. (As on page no. 32 of complaint)
8.	Endorsement in favour of complainant [Note:- From original allottee's Mr. /Mrs. Najm Ali Azhar & Rana Tabassum]	21.06.2013 (As on page no. 49 of complaint)
9.	Date of execution of buyer's agreement	02.05.2013 (As on page no. 29 of complaint)
10.	Possession clause	Clause 31



		<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. 37 of complaint)</p>
11.	Due date of possession	<p>02.05.2017</p> <p>[Calculated 42 months from date of execution of agreement + 6 months grace period]</p>
12.	Letter intimating change of unit no. [Note:- Unit no. changed from V-06 to V-08 and unit area reduced from 4300 sq.ft. to 4410 sq.ft.]	<p>15.11.2013</p> <p>(As on page no. 50 of complaint)</p>
13.	Payment plan	<p>Construction linked</p>
14.	Total sales consideration	<p>Rs.1,75,08,689/-</p> <p>(As per customer ledger on page no. 54 of complaint)</p>



15.	Amount paid by the complainant	Rs.1,61,61,122/- (As per customer ledger dated 16.03.2023 on page no. 54 of complaint)
16.	Offer of possession	Not offered
17.	Occupation certificate	Not received

[*Note: In the last proceeding order dated 06.03.2024, the due date of possession was inadvertently mentioned as 02.11.2016 instead of 02.05.2017*]

B. Facts of the complaint:

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

- I. That the complainant approached the respondent in the year 2013 in its residential project "Ansal Heights" situated in sector-86, Gurugram. Vide application dated 16.04.2013, the complainant applied for transferring of the subject unit i.e., villa no. V-06 from Mr./ Mrs. Nazm Ali Azhar and Rana Tabassum (original allottees) .
- II. That the respondent and the complainant entered into a villa buyer agreement on 02.05.2013 and villa no. V-06 which was in name of the original allottees was transferred to the complainant for a sale consideration of Rs.1,71,99,750/-
- III. That on 15.11.2013 the respondent issued a letter to the complainant and informed that the allotted villa no. 06 has been changed to villa no. 08 and also the size of the unit was increased from 4300 sq.ft to 4410 sq.ft. arbitrarily without consent of the complainant.
- IV. That as per the buyer agreement, sale consideration of the villa was Rs.1,71,99,750/-. However, subsequently consideration for the villa was arbitrarily increased on account of addition of other charges which included labor cess etc. which was supposed to be borne by the



respondent. The same was accepted by the complainant under protest.

- V. That the complainant has till date made a total payment of Rs. 1,61,61,122/-. The payments were stipulated in the agreement upon completion of certain percentage of the construction. However, the respondent on various occasions raised demands for payment without completion of the milestone. Accordingly, the complainant paid the total consideration towards the villa, even before the completion of milestones as contemplated in the villa buyer agreement. The construction at the site of the project has not progressed since the last demand was raised by the respondent and consequently the respondent has failed to offer the possession of the villa to the complainant till date.
- VI. That as per the terms of the villa buyer agreement, the respondent was required to handover the possession of the villa within 42 months from the date of execution of the agreement with a further grace period of 6 months. Accordingly, after considering grace period also physical possession of the villa must have been handed over on or before 02.05.2017. However, the project has not been completed and also no occupancy certificate is received yet.
- VII. That the respondent has failed to abide the Rules and Regulations of Haryana RERA and other Authorities. The respondent has not even applied for registration in RERA so far.
- VIII. That the complainant has visited office of the respondent many times to complain about delay in the project, however no plausible reply has been received from the respondent. Since the respondent is unable to develop the project and handover physical possession of the villa for



occupancy, the complainant is entitled to get refund of the entire amount Rs.1,61,61,122/- paid by him along with interest as applicable. Hence, the present complaint.

C. Relief sought by the complainants:

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

- i. Direct the respondent to refund the entire paid-up amount i.e., Rs.1,61,61,122 along with interest at the prescribed rate.
- ii. Direct the respondent to place on record all the statutory approvals and sanctions of the project.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions:

- I. That the present complaint is neither maintainable nor tenable as the complainant has admitted that he has not paid the full amount. The complainant has filed the present complaint seeking interest. 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 02.05.2013, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- III. That sometime in the year 2013, the complainant approached the respondent in order to purchase an independent unit in its upcoming residential project "ANSAL HEIGHTS" situated in Sector-86, Gurgaon. It is submitted that prior approaching the respondent, the complainant 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 thereafter the complainant applied for provisional allotment of a unit in the project. In pursuant to the said application, unit bearing no. V-06 was allotted to the complainant. The complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration.
- V. 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 swing on full mode and the work will be completed within the prescribed time period as given by the respondent to the authority.
- VI. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession within time had there been no force majeure circumstances beyond the control of the respondent. There had been several circumstances which were absolutely beyond the 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 factors 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. Due to COVID"19, 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. 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 ongoing construction of the project 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 earnest 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.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

7. 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)(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;

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.

10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."



Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

F.I Objections regarding force majeure.

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, non-payment of instalment by allottees, and Covid- 19. The plea of the respondent regarding various orders of the NGT and demonetisation 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. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. 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.

F. II. Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

12. 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 dated 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 to 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."

13. 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 02.05.2017. It is claiming 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. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.



"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

15. **Due date of possession:** Clause 31 of the buyer's 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.

[Emphasis supplied]

16. Accordingly, the due date of possession is calculated 42 months from the date of execution of agreement i.e 02.05.2013 along with a grace period of 6 months. The due date of possession comes out to be 02.05.2017.

15. **Admissibility of refund along with prescribed rate of interest:** The complainant intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided 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 the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
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 marginal cost of lending rate +2% i.e., **10.85%**.
18. In the instant case, the BBA for the subject unit was executed on 02.05.2013. According to the agreement, the possession of the unit was to be handed over to the complainant within 42 months from the date of execution of the agreement or date of obtaining all the required sanctions and approvals necessary for the commencement of construction. The due date is calculated 42 months from the date of execution of the agreement i.e. 02.05.2013 and further the grace period of six months is added. Thus, the due date of possession comes out to be 02.05.2017. However, the occupation certificate for the tower where complainant's unit is situated not received.
19. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has



paid a considerable amount towards the sale consideration and as observed by **Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021**

“ ... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

20. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022.** it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from



the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by her at the prescribed rate of interest i.e., @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.II Direct the respondent to provide all the statutory approvals and sanction of the project.

23. In view of the findings detailed above on issue no. 1 the above said relief becomes redundant, as the complete amount paid by the complainant is being refunded back.

H. Directions of the Authority:

24. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

- i. The respondent/promoter is directed to refund the amount paid by the complainant i.e., Rs.1,61,61,211/- along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real



Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realisation.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to the registry.


Ashok Sangwan
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.04.2024