

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

Complaint no. : 1290 of 2023
Order pronounced on : 24.04.2024

Balbir Singh Dawett

Address: 2-4, Peat Ponds Salendine,
Nook, Huddersfield, HD3, 3UA, U.K.

Complainant

Versus

1. Ansal Housing and Constructions Ltd.
Address: - 15 UGF, Indra Prakash, 21,
Barakhamba Road, New Delhi.

2. Ishkripa Properties Private Limited.
Address :- Plot no.-6, Sector-44, Gurgaon.

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Satish Tanwar (Advocate)

None

**Complainant
Respondents**

ORDER

1. The present complaint dated 17.03.2023 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the

Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se them.

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Ansal Estella, Sector-103, gurugram
2.	Nature of project	Residential
3.	Area of project	15.743 acres
4.	Date Of BBA	23.05.2013 (As on page no. 20 of complaint)
5.	Unit no.	0401, Type-3BHK (As on page no. 17 of complaint)
6.	Area	1945 sq. ft. (As on page no. 24 of complaint)
7.	Possession clause	Clause 30. <i>The developer shall offer possession of the Unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions</i>



		<p>and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."</p> <p><i>(Emphasis supplied)</i></p>
6	Date of start of construction	Cannot be ascertained
7	Due date of possession	23.11.2016 [Note: Due date calculated from date of agreement i.e., 23.05.2013, being later. Grace period allowed being unqualified]
8	Total sale consideration	Rs.75,56,510/- (As per payment plan on page no. 40 of the complaint)
9	Total amount paid by the complainant	Rs.74,70,711/- (As per customer ledger dated 23.06.2022 on page no. 45 of complaint)
10	Occupation certificate	N/A

V

B. Facts of the complaint

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

- I. That the complainant is a law-abiding and peace-loving citizen and the respondent is a company incorporated under the Companies Act, 1956 and is engaged in the business of real estate. The respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its constructed units projects as per promised quality standards and agreed timelines. The respondent while launching and advertising the project committed and promised that the booked units will be completed and delivered within the time agreed initially in the agreement. They also assured to the consumers like the complainant that all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project have been taken.
- II. That the respondent launched a group housing project namely "Estella" situated within the revenue estate of Village Dhanwapur-Tikampur at Sector103, Gurugram. In May, 2013 on impressive projections of the respondent, the complainant booked an apartment in the project. The respondent allotted a 3 BHK apartment no. 0-0401, unit type -3 BHK in tower-0 having the carpet area of 3500 sq. ft to the complainant.

III. That thereafter on 23.05.2013 the apartment buyer's agreement was executed between the complainant and the respondent. The basic price of the unit was Rs.68,07,500/-. Besides this the complainant additionally paid an amount of Rs.2,50,000/- towards the grant/allotment of exclusive right of using one covered car parking space.

IV. That the complainant has paid more than 90% of the entire sale consideration despite that the possession of the unit has not been handed over. As per clause 30 of the agreement the possession was to be handed over within a period of 36 months from the date of execution of agreement or within 36 months from the date of obtaining all required sanctions and approval necessary for commencement of construction whichever is later subject to timely payment of all dues by buyer. Clause 30 of the said Agreement dated 23.05.2013 is reproduced as under:

"30. The Developer shall offer possession of the Unit any time, within a period of 36 months from the date of execution of Agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 36 months as above in offering the possession of the Unit.

V. That the complainant has sent letters to the respondent and requested to handover possession of the flat, but the respondent did not take any proper action for the same. That vide email dated 04.12.2019, Ms. Harpreet Kaur, Deputy Manager Sales & Accounting

informed the complainant that the finishing work for the Tower-O has commenced at site and assured the complainant that the respondents would be in position to offer possession of the flat to the complainant tentatively by June 2020.

VI. That the complainant has complied with all terms and conditions of the said agreement and despite the communication dated 04.12.2019 of respondent no.1 no step has been taken for handing over the possession of the flat. There are deficiencies of service on the part of the respondents and due to delay on their part the complainant has suffered a lot. That considering the continued indifferent conduct of the respondents coupled with non-compliance of the terms and conditions of the said agreement, the complainant issued a legal notice on 30.12.2020 requesting the respondents to comply with the liabilities towards the complainant.

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:
 - a. Direct the respondents to hand over the vacant possession of the flat/apartment at the earliest in good habitable condition.
 - b. Direct the respondent to pay delay possession charges along with litigation charges Rs.1,00,000/-
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

6. The respondent failed to comply the orders of the Authority dated 23.08.2023 and did not file reply in the present complaint. Thus, the defence of the respondent was strucked off vide order dated 29.11.2023.

7. 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.

D. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the reliefs sought by the complainant:-

F.I. Possession and delayed possession charges.

14. In the present complaint, the complainant is seeking possession of the unit and delayed possession charges along with interest on the amount paid. The complainant and the respondent no. 1 executed a builder buyers agreement on 23.05.2013 and an apartment bearing no.0-0401 in Tower-0 admeasuring 1945 sq.ft was allotted at the basic sale price of Rs.65,15,750/-. Clause 30 of the builder buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"30. The Developer shall offer possession of the Unit anytime, within a period of 36 months from the date of execution of Agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 11. Further, there shall be a grace

period of 6 months allowed to the Developer over and above the period of 36 months as above in offering the possession of the unit."

..... [Emphasis supplied]

15. 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 favor 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.

19. 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.

18. 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.
19. 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%.
20. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—



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

(ii) the interest payable by the promoter to the allottees shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

21. 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 23.05.2013 and the due date of possession is 36 months from the date of execution of the agreement, with a grace period of 6 months. So the authority calculated the due date from i.e., 23.05.2013. The period of 36 months plus grace period of 6 months expired on 23.11.2016. Therefore, the due date of handing over possession is 23.11.2016. The respondent did not offer possession of the subject unit on time. Also, the occupation certificate in respect to the said has not been received yet. There has been a delay of more than 7 years. 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., 23.11.2016 till offer of possession plus two months or actual handing over of possession after obtaining occupation certificate from the competent authority, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.

F.II. Direct the respondent to pay litigation charges of Rs.1,00,000/-.

22. The authority is of the view that it lacks the jurisdiction of entertaining the above mentioned relief as it is a matter of compensation and thus, the Adjudicating officer is the right authority to seek the relief of compensation. Thereby, the authority declines the relief.

E. Directions of the authority

23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 23.11.2016 till offer of possession plus two months after obtaining occupation certificate from the concerned authority or actual handing over of possession, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.
- ii. The respondent is directed hand over physical possession of the unit to the complainant after receiving the occupation certificate in regard to the unit.

- iii. The arrears of such interest accrued from due date i.e 23.11.2016 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 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.
- v. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement
- 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 (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