

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

Complaint no.
Date of decision

3396 of 2023
24.04.2024

Mr. Ashok Bali
RR/o: - Flat no. 244, Block-C,
Triveni Heights, Sector-16 B, Dwarka.

Complainant

Versus

M/s Ansal Housing Ltd.
Corporate Office at: 606, Floor-6th,
Indra Prakash 21, Barakhamba road,
New Delhi-110001.

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Sh. Sukhbir Yadav (Advocate)
None

Complainant
Respondent

HARERA
GURUGRAM

ORDER

1. This 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 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:

Sr. No.	Particulars	Details
1.	Name of the project	Ansal Heights, Sector-86
2.	Area of project	12.843 acres
3.	Nature of project	Residential
4.	Rera registered	Not registered
5.	Dtcp license	Licence no.-48 of 2011 Dated 29.05.2011
6.	Date Of BBA	26.12.2012
7.	Unit no.	E-0703 ,3BHK (As on page no. 26 of complaint)
8.	Super area	1690 sq. ft. (As on page no. 26 of complaint)
9.	Transfer of flat dated	13.08.2015 (As on page no. 43 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 the 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 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 42 months as above in offering the possession of the Unit."</i></p> <p>[Emphasis supplied] (As on page no. 31 of complaint)</p>
11.	Date of start of construction	Cannot be ascertained
12.	Due date of possession	26.12.2016 (Note: 48 months from date of agreement i.e., 26.12.2012 as date of start of construction is not on record + 6 months grace period allowed being unqualified)
13.	Sale consideration	Rs. 73,29,408/- (As per SOA dated 19.04.2023 on page no. 56 of complaint)

14.	Total amount paid by the complainant	Rs. 64,27,646/- (As per S.O.A dated 19.04.2023 on page no. 58 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of fit outs	21.09.2022 (As on page no. 45 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant is a law-abiding and peace-loving citizen and the respondent Ansal Housing Limited (formerly known as Ansal Housing & Construction Ltd) is a company incorporated under the Companies Act, 1956 and the project in question is known as 'Ansal Heights' situated at Sector - 86, Gurugram.
- II. That on 30.11.2011, relying on the representation and assurances of the respondent, Mr. Jenander Kumar Sharma & Gulshan Kumar (Original Allottees) booked an apartment bearing unit no. E-0703 admeasuring 1690 sq. ft. in the project 'Ansal Heights' under installment payment plan for a total sale consideration of Rs.63,99,850/- including basic sale price, covered parking charges, development charges & IFMS, etc.
- III. That after a long follow-up on 26.12.2012, a pre-printed, unilateral, arbitrary Flat Buyer Agreement/Buyer's Agreement was executed inter-se the respondent and the original allottees. According to Clause 31 of the Buyer Agreement, the respondent had to give

possession of the said flat within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later with 6 months grace period. It is pertinent to mention at the time of accepting the booking amount and execution of the builder buyer agreement, the respondent represented that he has all the requisite approvals for commencement of construction therefore, the due date of possession as per the agreement was 25.12.2016.

- IV. That with the permission of the respondent Ms. Neha Kalra (first subsequent allottee) purchased the said flat from the original allottee and became the subsequent allottee. The respondent endorsed all the onward rights and liabilities in favour of the subsequent allottee. Thereafter vide application dated 20.07.2015, Mr. Ashok Bali (complainant) purchased the above said flat from Ms. Neha Kalra and became subsequent allottee. On 13.08.2015, the respondent sent a transfer letter in favour of the complainant and transferred all onward rights in favour of the complainant.
- V. That the respondent kept raising the demands as per the agreed payment plan and the complainant kept paying the said demands, but the respondent failed to hand over the possession of the flat by 25.12.2016. The complainant made several telephonic calls to the office of the respondent to get possession of the unit but all went in vain, the office bearers always gave a new date of possession.
- VI. That on 21.09.2022, the respondent sent an offer of possession for fit-outs letter to the complainant and raised a demand of Rs.10,65,673/-

which includes various unreasonable and unjustifiable demands under various heads i.e. Rs.3,80,439.46 on account of "Escalation Charges", Rs. 50,700/- as "STP Charges", Rs. 101,400 as "Fire Fighting" & Rs. 2,53,500/- as "External Electrification Charges" and also raised a demand of Rs.1,79,454.30/- payable in favor of "SEMS Estate Management Services Private Limited". It is pertinent to mention here that the respondent acknowledged the delay in handing over the unit and credited delay penalty charges of **Rs.2,02,800/-** .

- VII. It is pertinent to mention here that the respondent has raised various unreasonable and unjustifiable demands which are not part of the Builder Buyer Agreement, moreover, there is no occupation certificate till now. The total sale consideration of the unit was Rs.63,99,850/- and the complainant has already paid Rs.64,28,146/- i.e. more than 100% sale consideration of the unit.
- VIII. That on 10.04.2023, the complainant sent emails to the respondent and alleged various issues and also asked for clarification and further stated that **"Pls let me know the progress of my unit's possession"**. Thereafter, several emails were exchanged between the parties regarding the status of the project and possession of the unit.
- IX. That as per the statement of account provided by the respondent the complainant has paid Rs.64,28,146/- i.e. 100% more than the total sale consideration.
- X. That since 2016 the complainant is regularly contacting the office bearers of the respondent , as well as sent emails to the respondent and made efforts to get possession of the allotted flat but all in vain.

Despite several requests by the complainant, the respondent has not given possession of the unit.

- XI. That the main grievance of the complainant in the present complaint is that despite having paid more than 100% of the actual cost of the flat and is ready and willing to pay the justified remaining amount (if any), the respondent party has failed to deliver the possession of the unit on promised time and till date, the unit is without amenities. Hence, this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- (i) Direct the respondent to handover physical possession of the unit alongwith delay possession charges at the prescribed rate from the due date of possession till the actual date of possession.
- (ii) Direct the respondent to refrain from charging Common maintenance Charges.
- (iii) Direct the respondent to refrain from charging External Electrification Charges.
- (iv) Direct the respondent to refrain from charging Labour Cess Charges.
- (v) Direct the respondent to refrain from charging GST as GST came into force after the due date of possession.
- (vi) Direct the respondent to refrain from charging anything which is not part of BBA.

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.
6. The present complaint has been filed on 17.03.2023 and the reply on behalf of the respondent has not been received till date. Despite proper service of notice, no written reply has been filed nor did anyone appear on behalf of the respondent. Keeping in view the interest of the allottee's, the Authority vide order dated 06.12.2023 struck off the defence of the respondent. Thus, the respondent is proceeded ex-parte.
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.

D. Jurisdiction of the authority

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

D.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 complainant at a later stage.

E. Findings on the relief(s) sought by the complainant.

- E. I Direct the respondent to pay delay possession charges at the prescribed rate from the due date of possession till the actual date of possession..**

11. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"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, —

.....

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)

12. Clause 31 of the builder 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 the 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 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 42 months as above in offering the possession of the Unit."

[Emphasis supplied]

13. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the unit by 26.06.2016 and further provided in agreement that promoter shall be entitled to a grace period of six months. Therefore, the due date of possession comes out to be 26.12.2016.



14. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

15. The legislature in its wisdom in the subordinate legislation under 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.
16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 24.04.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
17. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the



promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee 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 allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
19. On consideration of the documents available on record 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 agreement. The authority has observed that the apartment buyer agreement was executed on 26.12.2012. Therefore, the due date of handing over possession is 26.12.2016. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the 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., 26.12.2016 till the offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handover of possession whichever is earlier, at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

20. Thus in view of the above, the authority directs the respondent/promoter to pay interest at the prescribed rate of 10.85% for every month of delay from the due date of possession i.e., 26.12.2016 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authority or actual handover, whichever is earlier.

E.II. Direct the respondent to handover possession of the unit.

21. The respondent has offered possession to the complainant on 21.09.2022. The occupation certificate in respect to the project has not been obtained by the respondent till date and hence the offer of possession for fit outs made by the respondent is before obtaining the occupation certificate. The said offer of possession dated 21.09.2022 is bad in law and is thus not valid. 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 26.12.2012.

E.III. Direct the respondent to refrain from charging Common maintenance Charges.

22. The respondent sent an offer of possession for fit-outs to the complainant on 21.09.2022 and thereby, the respondent made several demands to the complainant under various heads. He raised a demand of Rs.1,79,454.30/- on account of common area maintenance charges.
23. It is pertinent to mention that the respondent can demand common maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession after obtaining the Occupation Certificate. However, the respondent shall not demand the common maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where CAM charges have been charged for more than a year.
24. The authority is of the view that here in the present case, since the respondent has made the offer of possession to the complainant without obtaining the occupation certificate, such an offer is bad in the eyes of law and thus the demands made with the offer are also bad. The respondent can demand common maintenance charges at the rates prescribed in the builder buyer agreement at the time of offer of possession after obtaining the occupation certificate.

E.IV. Direct the respondent to refrain from charging External Electrification Charges.

25. The respondent has made a demand of Rs.2,53,500/- on account of External electrification charges. It is pertinent to mention that it is the duty of the colonizer to arrange the electric connection from the outside source for electrification of their colony from Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer, for which the colonizer will be required to get the "electric(distribution) services plan/estimates" approved from the agency responsible for installation of "external electrical services" i.e., Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana and complete the same before obtaining completion certificate for the colony.
26. As far as external electrification charges are concerned, the respondent cannot collect the same from the allottees even though there is any provision in the builder buyer's agreement to the contrary as has already been laid down in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" decided on 12.08.2021.

E.V. Direct the respondent to refrain from charging Labour Cess Charges.

27. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction

incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as "**Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited**" wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent.

28. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, no demand of labour cess can be raised upon the complainant and any amount thus raised is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

E.VI. Direct the respondent to refrain from charging GST as GST came into force after the due date of possession.

29. The complainant has contended that the GST came into force in the year 2017, so it is a fresh tax. The possession of the apartment was supposed to be delivered in December 2016, therefore, the tax which has come into existence after due date of possession should not be levied being unjustified.

30. The authority is of the view that admittedly, the due date of possession of the unit was 26.12.2016 but the occupation certificate of the project has not been obtained till date. Had the unit been delivered within the due date or even with some justified delay, the incidence of GST would not have fallen on the allottee. Therefore, an additional tax burden with respect to GST cannot be enforced upon the buyer for no fault of his



since and is due to the wrongful act of the promoter in not delivering the unit.

31. For the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant(s)/allottee(s) as the liability of that charge had not become due up to the due date of possession as per the builder buyer's agreement.

E.VII. Direct the respondent to restrain the respondent from raising demand for payment under any head, which is not the part of the builder buyer agreement.

31. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

H. Directions of the authority

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

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 26.12.2016 till offer of possession plus two months after obtaining the occupation certificate from the concerned authority or actual handing over of possession, whichever is earlier. Also, the amount of Rs.2,02,800/- so paid by the respondent towards compensation for delay in handing



- over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act
- ii. The arrears of such interest accrued from 26.12.2016 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 allottees before 10th of the subsequent month as per rule 16(2) of the rules.
 - iii. The respondent is not entitled to charge labour cess, external electrification charges. Also, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the CAM charges has been demanded for more than a year.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. 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.



- v. 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 26.12.2012.
- vi. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement.
33. Complaint stands disposed of.
34. File be consigned to registry.



Haryana Real Estate Regulatory Authority, Gurugram

(Ashok Sangwan)
Member

Dated: 24.04.2024

HARERA
GURUGRAM