

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

Complaint no.:	7354 of 2022
First date of hearing:	07.04.2023
Date of decision:	13.12.2024

1. Sanjeev Ganguly
2. Mahua Ganguly
R/o K-1302, Great Value Sharnam, Sector-107, Noida-
201301

Complainants

Versus

M/s Ansal Townships Infrastructure Pvt. Ltd.
Office address: 115, Ansal Bhawan, 16 K.G Marg, New
Delhi-110001

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Shri Manual Mitra (Advocate)
None

Complainants
Respondent

ORDER

1. The present complaint dated 20.12.2022 has been filed by the complainants/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 as provided 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 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	"Esencia", Sector 67, Gurugram
2.	Nature of the project	Residential Colony
3.	DTCP license no. and validity status	26 of 2012 dated 27.03.2012 valid upto 26.03.2018
4.	Name of licensee	Hans raj and 1 other
5.	RERA Registered/ not registered	313 of 2017 dated 17.10.2017 valid up to 31.10.2018
6.	Unit no.	D1551, Ground Floor, Sector/block D (As per page no. 31 of complaint)
7.	Unit area admeasuring	3474 sq. ft. (As per page no. 31 of complaint)
8.	Date of allotment Letter	26.04.2012 (page no. 30 of complaint)
9.	Date of Execution of FBA	23.05.2012 (As per page no. 28 complaint)
10.	Possession clause	5.1 <i>Subject to clause 5.2 and further subject to all the buyers of the dwelling units in the sovereign floors, Esencia, making timely payment, the company shall endeavor to complete the development of residential colony and the dwelling unit as far as possible within 30 (thirty) months with an extended period of 6 months from the date of execution of this agreement or the date of sanction of the building plan whichever falls later.</i> (As per page no. 36 of the complaint)
11.	Date of approval of building plans	19.11.2014 (page no. 57 of complaint)

12.	Due date of possession	19.11.2017 (Calculated as 30 months from date of approval of building plans i.e., 19.11.2014, being later plus grace period of 6 months)
13.	Total sale consideration	₹ 2,02,51,650/- (As per payment plan on page no. 54 of complaint)
14.	Amount paid by the complainant	₹ 1,41,35,748/- (As per page no. 51 of the amended complaint)
15.	Occupation certificate /Completion certificate	Not obtained

B. Facts of the complaint.

3. The complainants pleaded the complaint on the following facts:
- That the respondent was developing and setting up a residential complex by the name of "Sovereign Floors, Esencia" comprising of independent floors (GF, FF & SF) with four bedrooms on each floor over an area of 2.156 acres situated at Sector 67, Gurugram, Haryana.
 - That believing the false assurances and the promises of the respondent, the complainant had decided to put their life-long savings in the said project being developed by the respondent with a dream of owning their own property in Gurugram, Haryana.
 - That on 22.04.2012 the respondent and the complainant(s) entered into an application form having broad terms and conditions for provisional allotment of residential unit bearing no. D1551 on the ground floor in sovereign floors, Esencia, sector-67, Gurugram, Haryana for a B.S.P of Rs. 1,85,00,000/-.
 - That on 23.05.2012 the respondent and the complainant(s) entered into an agreement for the above said unit. According to clause 5.1 of the agreement dated 23.05.2012, the respondent was bound to give



possession of the said unit to the complainant(s) within 30 months with an extended period of 06 months from the date of execution of the agreement or the date of sanction of the building plans whichever falls later. Therefore possession was to be offered maximum by 19.11.2017 (including the extended period) to the complainant(s).

- e. That on 24.12.2015 the respondent shared it's statement of account with the complainant showing having received an approximate sum of Rs. 1,41,35,748/- from the complainant against the said unit.
- f. That the complainant(s) had already paid an approximate of 77% of the B.S.P of the said unit to the respondent by December 2015 which is evident from the statement of account.
- g. That the complainant(s) had time and again put multiple efforts and approached the respondent for offering legal and peaceful possession but all the efforts made by the complainant(s) went in vain as the respondent has not completed the project yet and therefore has not offered possession to the complainant(s) till date.
- h. That the respondent since the very inception represented a statement which was never intended to be culminated in its true terms and spirit thereby committing the act of cheating, fraud, criminal breach of trust, embezzlement of amount which now a days has become a standard modus operandi of the real estate giants to usurp the hard earned money of common people.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:
 - a. Direct the respondent to offer the legal and complete possession of the said unit to the complainant.
 - b. Direct the respondent to pay interest at the rate of SBI MCLR +2% p.a. on the total amount paid by the complainant till date.



- c. Direct the respondent to waive off any maintenance charges, cost of parking or any other charges that the respondent may have charged since the respondent has not offered possession.
 - d. Direct the respondent to pay an amount of Rs. 1,00,000/- to the complainant towards litigation cost.
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 present complaint was filed on 20.12.2022. On hearing dated 15.09.2023 counsel for the respondent appeared and was directed to file reply in the authority with a period of two weeks. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Further on the proceedings dated 15.12.2023, 29.03.2024, 02.08.2024 and 20.09.2024 none on behalf of respondent appeared. Therefore, the authority vide order dated 15.12.2023 struck off the defense of the respondent and accordingly the proceeds with the case exparte.

D. Jurisdiction of the authority

7. The authority observed 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.

D.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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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.

E. Findings on the relief sought by the complainants.

E.I. Direct the respondent to offer the legal and complete possession of the said unit to the complainant.

E.II Direct the respondent to pay interest at the rate of SBI MCLR +2% p.a. on the total amount paid by the complainant till date.

11. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges. Clause 5.1 of the BBA dated 23.05.2012 provides for the handing over of possession and is reproduced below for the reference:

"Subject to clause 5.2 and further subject to all the buyers of the dwelling units in the said sovereign floors, esencia, making timely payment, the company shall endeavour to complete the development of residential colony and the floor as far as possible within 30 months with an extended period of 6 months from the date of execution of this floor buyer agreement or the date of sanction of the building plans whichever falls the later."

12. At the outset, it is relevant to comment on the pre-set 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 complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter 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 promoter is 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.

13. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 30 months from date of execution of the agreement or within 30 months from the date of sanction of the building plans whichever falls the later. The date of agreement is 23.05.2012 and the date of approval of building plans is 19.11.2014. The authority calculated the due date from the date of approval of building plans i.e., 19.11.2014 being later. The period of 30 months ends on 19.05.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage, accordingly the due date of possession comes out to be 19.11.2017.

14. **Payment of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they 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., 13.12.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
17. The definition of term 'interest' as defined under section 2(za) 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 complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
19. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 agreement. By virtue of clause 5.1 of the buyer's



agreement, the possession of the subject apartment was to be delivered within stipulated time i.e., by 19.11.2017. However, till date no occupation certificate has been received by respondent and neither possession has been handed over to the allottee till date.

20. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 23.05.2012. 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.
21. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 19.11.2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

E.III. Direct the respondent to waive off any maintenance charges, cost of parking or any other charges that the respondent may have charged since the respondent has not offered possession.

22. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.

E.IV. Direct the respondent to pay an amount of Rs. 1,00,000/- to the complainant towards litigation cost.

23. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-

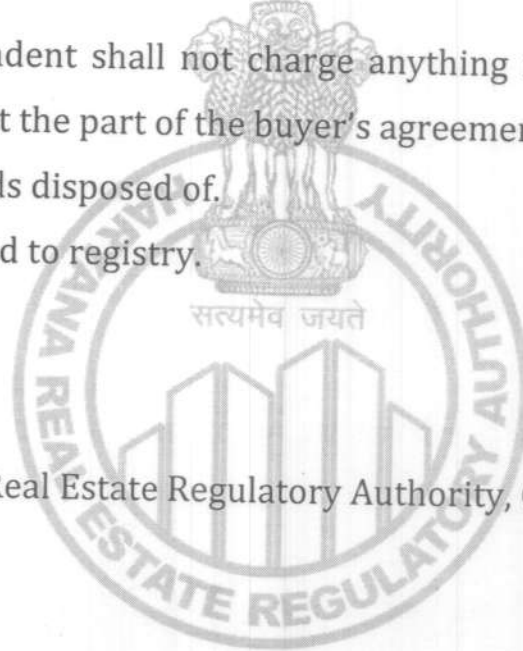
6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

F. 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 casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- The respondent is directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate.
 - The respondent is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 19.11.2017 till the valid offer of the possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest

which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - e. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
 - f. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
25. Complaint stands disposed of.
26. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.12.2024

HARERA
GURUGRAM