BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 642 of 2024
Order pronounced on : 13.11.2024

Shri. Satnam Singh
Address: C-387, Defence Colony,
New Delhi-110024. **Complainant**

Versus

1. M/s/ Ansal Housing and Constructions Limited
Address: - 15 UGF, Indra Prakash, 21,
Barakhamba Road, New Delhi. **Respondent no.1**

2. M/s. IshKripa Properties Private Limited **Respondent no.2**
Address:- Plot no. 6, Sector-44, Gurugram.

CORAM:
Shri Ashok Sangwan **Member**

APPEARANCE:
Shri. Kartik Jasra (Advocate) Complainant
Shri Amandeep Kadyan (Advocate) Respondent no.1
Shri. Aman Kalra (Advocate) Respondent no. 2

ORDER

1. The present complaint dated 20.02.2024 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"
2.	Nature of project	Group Housing
3.	Area of project	15.743 acres
4.	DTCP License no.	Licence No. 17 of 2011 Dated: 08.03.2011
5.	RERA registered	Not registered
6.	Unit no	L-0701, Type-3BHK (As on page no. 31 of complaint)
7.	Unit area	1945 sq.ft. [Sale Area] (As on page no. 31 of complaint)
8.	Date of execution of buyer's agreement	10.07.2012 (As on page no. 27 of complaint)

9.	Possession clause	**Clause 30** *The Developer shall offer possession of the Unit any time,* ***within a period of 36 months from the date of execution of this 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 the 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 over and above in offering the possession of the Unit.* [Emphasis supplied] (As on page no. 38 of complaint)
10.	Due date of possession	10.01.2016 [Calculated 36 months + 6 months from date of execution of agreement]
11.	Payment plan	Construction linked
12.	Total sales consideration	Rs. 81,23,545/- (As on page no. 47 of complaint)
13.	Amount paid by the complainant	Rs.77,20,141/- (As per S.O.A dated 07.11.2015 at

		page no. 61 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

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

I. That the respondent(s) is a company which is duly incorporated under the provisions of the Companies Act and the directors/managing directors of the respondents are fully liable and responsible for the day to day affairs, act, conduct, behaviour and work of the respondents as the whole business of the respondents has been managed and carried out by them known as M/s Ansal Housing & Constructions Limited hereinafter referred as AHCL.

II. That the respondent(s) is engaged in the business of real estate and is a land developer company which purchased the land from the landowners and after developing sell it in the form of commercial spaces, office space, shops, flat, apartment etc. to the purchasers.

III. That the respondent(s) 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 respondents while launching and

advertising any new project always commits and promises to the targeted consumer that their booked units will be completed and delivered to them within the time agreed initially in the agreement while selling the unit to them. They also assured to the complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.

IV. That in the due course of their business, the respondents have launched a Group Housing project namely "Estella" situated within the Revenue Estate of Village Dhanwapur- Tikampur at Sector103, Gurugram.

V. That the respondents have rights to exclusively develop, construct and build residential building, transfer or alienate the unit's/ floor/space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc in favour of the allottee.

VI. That in 2012, the complainant booked an apartment in the aforesaid project. The respondents had allotted him a 3 BHK apartment bearing no. L-0701, unit type 3BHK having carpet area of 1945 sq. ft.

VII. Thereafter, the respondents entered into a Flat Buyer's Agreement on 10.07.2012 with the complainant. The agreed rate of the agreement was Rs.37,674/- per sq.mt. The basic price of the unit was Rs. 69,14,475/-Besides this the buyer had to additionally pay

an amount of Rs.2,50,000/- to the respondent towards the grant/allotment of exclusive right of using one covered car parking space.

VIII. That the complainant has made almost entire payments as per the terms and conditions mentioned in the agreement dated 10.07.2012. The complaint has paid total amount of Rs.77,18,167/- approximately to the respondent. The respondent even after such inordinate delay and receipt of most of the payments from the complainant, is unable to offer possession of the unit.

IX. That in terms of clause 30 of the said agreement the developer was bound to 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 required sanctions and approval necessary for commencement of construction whichever is later subject to timely payment of all dues by buyer.

X. It is evident that the respondents have failed to fulfil their contractual obligations, thereby depriving the complainant of the benefits they are entitled to under the agreement. Furthermore, the delay in delivering the flats has caused undue financial strain on the complainant, who may be incurring additional expenses such as rent or alternative accommodation costs while awaiting possession of the promised premises.

XI. In light of the foregoing, it is imperative that the respondents be directed to expedite the process of handing over vacant possession

of the flats/apartment to the complainant at the earliest. The respondents must ensure that the premises are delivered in good habitable condition, as originally agreed upon. Any further delay in this matter would only exacerbate the prejudice suffered by the complainant and would constitute a continued breach of contract on the part of the respondents.

XII. That despite making entire payments, the complainant is still deprived of allotment of the apartment as agreed by the respondents. The complainant has sent letters to the respondents and has requested to handover possession of the flat, but the respondents have not taken any proper action for the same.

XIII. That the respondent has misappropriated the hard earned money of the gullible complainant for its selfish use without utilizing the same for the said project resulting in almost abandoning the construction.

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:

I. Direct the respondent to pay interest for every month of delay of possession at the prevailing rate of interest and handover physical possession of the unit after obtaining occupation certificate.

II. Direct the respondent to pay litigation charges amounting to Rs.5,00,000/-.

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.

D. Reply filed by the respondent no.1 .

6. The respondent has contended the complaint on the following grounds:

I. That the complainant approached the respondent for booking a flat no. l in an upcoming project Estella, Sector 103, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 12.05.2012 was signed between the parties.

II. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement was signed between the complainant and the respondent in the year 2012. It is submitted that the regulation at that concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.

III. That the complainant specifically admitted to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.

IV. That even if for the sake of argument the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has

admittedly filed the complaint in the year 2024 and the cause of action accrue on 12.05.2016 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the Authority as the same is barred by limitation.

V. That the complainant himself disclosed that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment is taken to be true, the Authority does not have the jurisdiction to decide the complaint.

VI. That the respondent had obtained all necessary approvals from the concerned authorities. It is submitted that the environmental clearance for the project was obtained by the respondent on 20.02.2015. Similarly, the approval for digging the foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondent have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.

VII. That the respondent has clearly provided in Clause 35 the consequences that follow from delayed possession. It is submitted that the complainant cannot alter the terms of the contract by preferring a complaint before the Authority.

E. Reply on behalf of respondent no. 2

I. That at the outset each and every averment, statement, allegation, contention of the complainant which is contrary and inconsistent with

the reply submitted by respondent no. 2 is hereby denied and no averment, statement, allegation, contention of the complainant shall deem to be admitted save those specifically admitted to be true and correct. It is respectfully submitted that the same be treated as a specific denial of the complaint. The respondent no. 2 is a leading real estate company aiming to provide state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.

II. That the respondent no. 2 has played no role in transaction between the complainant and the respondent no. 1. The project name is "Ansal Estella". By plain reading of the facts it is presumed that complainant had booked the disputed unit with respondent no. 1 in their project and had paid certain amount basis the Apartment Buyer Agreement executed on 12.05.2012. It is worthy to note that no monetary transaction took place between the complainant and the respondent no. 2.

III. That the complainant has intentionally concealed material facts and filed present complaint with the sole purpose of harassing the respondent no. 2 herein. The respondent no. 1 had entered into an Agreement to Sell on 17.01.2011 with the respondent no.2 for sale of 5,00,000/-sq.ft. of FSI. The respondent no. 2 had sold the above FSI to the respondent no. 1 with complete right to develop, build, market and sell the built up area over the said FSI in its own name and also as per the clause 20 of the agreement, the project being developed by the respondent no. 1 shall be under his banner i.e. "ANSAL"

IV. That the License no. 17 of 2011 for a total area of 15.743 acres, was granted to the respondent no. 2 by the competent Authority, post entering into the above said ATS and the project named Estella was being developed by both the respondents for their respective shares under their different banners - "Sidharth" and "Ansal" more specifically 9.22427 acres under the banner Sidharth and 6.51873 acres under the banner Ansal.

V. That it is an admitted situation/fact that the Apartment Buyer Agreement placed on record by the complainant, itself states that the complete right to develop, build, market and sell the sanctioned FSI Area i.e. 5,00,000/- sq. ft. is with the respondent no. 1 and it is sufficiently entitled to market and sell the apartments comprised in Tower K,L,M, N,O and P. The complainant has booked the unit in tower "O" which is being developed by the respondent no. 1 and respondent no. 2 has no role to play herein. Infact, the respondent no. 2 has unnecessarily been made party to the present complaint. No monetary transaction took place between the complainant and the respondent no. 2. The respondent no. 2 entered into the Apartment Buyer Agreement just to give the transaction between the complainant and the respondent no. 1 a legal shape as originally the complete FSI was with respondent no. 2 before the sale of partial FSI of 5,00,000/- sq.ft. Thus, it can be concluded that the present complaint is devoid of merit and thus liable to be dismissed.

VI. That the complainant has alleged some baseless allegations without stating as to how they are being aggrieved by respondent no. 2. The

complainant no-where in the complaint has mentioned any specific allegation about the respondent no. 2, in every para specifying the respondent either the word "respondent no.1" or "respondents" have been used, no specific mention of respondent no.2 is there.

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.

F. 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.

F.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.

F.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)
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.

G. Findings on the objections raised by the respondent no.1:

G.I Objection 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. 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. 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.

H. Findings on the objections raised by respondent no.2

H.I. Respondent no. 2 is not a necessary party.

12. The respondent no.2 submitted that no monetary transaction occurred between the complainant and respondent no.2. An Agreement to Sell was executed between respondent no.1 and respondent no.2 on 17.11.2011, under which the respondent no.2 sold a parcel of land measuring 500,000 sq.ft to the respondent no.1, granting respondent no.1 full rights to develop, construct, market, and sell the property. The Authority notes that on page 33 of the complaint, specifically in the Apartment Buyer Agreement dated 12.05.2012, the Developer's Representations are explicitly outlined. According to these representations, the development rights for the subject property rests with respondent no.1, M/s Ansal Housing & Construction Ltd. This is reiterated below:

> *" B. The landowners had entered into Agreements with erstwhile Owners of the project land to obtain license from Government of Haryana for setting up a Group Housing Project on the Project Land and to develop and market the same. After receipts of License, the Landowners have purchased the entire project land from the erstwhile Owners of land through various Sale Deeds*

after taking necessary permission from Director General Town & Country Planning, Haryana for such purchase. The Landowners had entered into an Agreement with the Developer whereby the Landowners had entered into an Agreement with the Developer whereby the Landowners have assigned the complete right to develop, build and market sanctioned FSI area of 5,00,000 sq.ft. and the Developers in exercise of their rights so acquired are developing and marketing a part of the project and more specifically the built up areas comprised in Towers K, L, M , N , O and P. The balance area of the project is being developed, built and marketed by the Landowners themselves. In view of the above, the Developer is sufficiently entitled to market and sell the apartments comprised in Towers K, L, M, N, O, P and has offered the Apartment for sale to general public."

13. Additionally, the Apartment Buyer's Agreement was executed between the complainant and respondent no.1, and all payment demands were raised by respondent no.1, with payments having been received by the respondent no.1. In light of the foregoing, the Authority concludes that respondent no.2 is not a necessary party in the matter .

I. Findings of the authority on relief sought by complainant.

I.I Direct the respondent to offer vacant possession of the unit as per the agreement.

I.II Direct the respondent to pay the delayed possession charges along with interest.

14. Since both the reliefs are interconnected, they are being dealt together. In the present complaint, the complainant booked an apartment in the project "Ansal Estella" being developed by the respondent no.1 i.e., M/s Ansal Housing & Construction Ltd. An Apartment Buyer's Agreement was executed between the parties on. 10.07.2012 in respect of unit bearing no. L-0701 admeasuring 1945 sq.ft. of sale

respect of unit bearing no. L-0701 admeasuring 1945 sq.ft. of sale area. The total sale consideration of the apartment was Rs.81,23,545/-. As per Clause 30 of the Apartment Buyer's Agreement dated 10.07.2012, the respondent/promoter undertook to offer possession of the unit to the complainant within 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approvals necessary for the commencement of the construction, whichever is earlier. The respondent/promoter failed to put on record the documents wherein from the Authority can determine the dates as to when the necessary sanctions were granted in favour of the respondent-promoter for necessary construction. The Authority have calculated 36 months from the date of execution of the agreement. The agreement was executed between the complainant and the respondent on 10.07.2012, 36 months from 10.07.2012 expired on 10.07.2015. Further an unqualified grace period is agreed between the parties to be granted to the respondent over and above the period of 36 months in offering possession of the unit. Thus, the due date for handing over of possession of the unit to the complainant comes out to be 10.01.2016. The respondent/promoter has failed to obtain the Occupation Certificate from the competent authorities till date.

15. The complainant is seeking delayed possession charges along with interest on the amount paid. Clause 30 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 36 months from the date of execution of this 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 bu 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 36 months as above in offering the possession of the Unit.*

16. **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.*

17. 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.

18. 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., **13.11.2024** is 9.10%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 11.10%.

19. 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;"*

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

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 Flat Buyer Agreement was executed between the parties on 10.07.2012, the due date of possession was 10.01.2016. It is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the flat 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 at the rate of 11.10% for every month of delay from due date of possession i.e., 10.01.2016 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.

22. 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 on the amount paid by the complainant to the respondent i.e., Rs.77,20,141/- at the prescribed rate of 11.10% for every month of delay from the due date of possession i.e.,10.01.2016

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

I.III. Direct the respondent to pay litigation cost of Rs.5,00,000/-.

23. The complainant is seeking the above mentioned relief w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

J. Directions of the authority

24. 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 no. 1 is directed to handover possession of the unit to the complainant within 2 months, after obtaining the occupation certificate from the competent authorities, as per the builder buyer's agreement dated 10.07.2012.

ii. The respondent no.1 is directed to pay interest to the complainant against the paid-up amount i.e., Rs.77,20,141/- at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 10.01.2016 till the date of offer of possession plus two months after obtaining the occupation certificate or actual handing over possession whichever is earlier, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.

iii. The arrears of such interest accrued from 10.01.2016 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.

iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

vi. The respondent no. 1 shall not charge anything from the complainant which is not the part of the buyer's agreement.

25. The Authority observes that the project is an ongoing and still the project is not registered with the Authority, directions are issued to

the Planning Branch to initiate separate proceedings against the respondent-promoter for non-registration of the project.

26. Complaint stands disposed of.

27. File be consigned to registry.

(Ashok Sangwan)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.11.2024