

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

Complaint no.: 5391 of 2023
Order pronounced on: 20.11.2024

Mrs. Poonam Bhatia
R/o: - House no.-177, Sector-7,
Gurugram, Haryana.

Complainant

Versus

M/s Ansal Housing & Construction Ltd.
Regd. office: UGF-15, Indra Prakash, 21
Barakhamba Road, New Delhi-110001.

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Sh. Sayam Diwan (Advocate)
Sh. Amandeep Kadyan (Advocate)

Complainant
Respondent

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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project details

2. The particulars of unit, 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	"Ansals Hub 83 Boulevard", Sector-83, Gurugram.
2.	Area of the project	2.80 acres
3.	Nature of project	Commercial
4.	DTCP license no.	License no. -71 of 2010 dated 15.09.2010
5.	RERA registered	Registered Vide regd no. 09 of 2018 dated 08.01.2018
6.	Unit no.	G-159, Type-Shop (As on page no. 29 of complaint)
7.	Date of execution of builder buyer's agreement	Not executed
8.	Possession clause	Not available



9.	Due date of possession	Cannot be ascertained
10.	Total sale consideration	Rs.65,24,870/- (As per S.o.A on page no. 21 of complaint)
11.	Total amount paid by the complainant	Rs.7,00,000/- (As per S.O.A on page no. 21 of complaint)
12.	Refund request	28.03.2017 (As on page no. 46 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B Fact of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent, M/s Ansal Housing & Construction Ltd. is a company duly formed under the provisions of the Indian Companies Act, 1956. That the respondent is dealing in real estate business of constructing commercial projects.
- II. That the respondent through its authorized representative and executives approached the complainants and informed that they are working as a real estate developer and own huge land and all requisite permissions(s) and inclined to construct the project, a commercial complex namely "ANSAL HUB83 BOULEVARD



- Gurugram" situated in the revenue estate of Sector-83, Tehsil & District Gurgaon Manesar.
- III. That the respondent informed the complainants that the above mentioned project is in pre-launch stage and lured them to book a unit in the project. That in good faith and interest upon, the complainants showed interest in the proposal and booked a commercial unit. The total consideration of the unit was Rs.65,24,870/-. The complainants paid Rs.7,00,000/- vide cheque no. 044158 as booking amount in year 2013. The cheques were duly encashed.
- IV. The respondent collected Rs.7,00,000./- against the total sale consideration as per payment plan. The respondent has till date has failed to execute any agreement to sell/purchase, despite receiving payments from the complainants. That the complainant after booking and realization of cheques qua pre-launch booking approached the respondent several times during the year 2012-2013 demanding for the payment receipts or any of the acknowledgement for the booking made for ground floor unit by the complainant but respondent never cared to respond to the complainant and not even cared to execute any agreement to sell/purchase till date or signed any MOU.
- V. That the complainant was surprised to see that neither any construction started nor any demand letter was issued by the respondent. At the time of booking, the complainants were assured that the possession of the unit would be delivered on or before 42 months from the commencement of the project but till date the

possession has not be offered.

- VI. That when the complainant got to know that the respondent have no necessary licenses/permissions and the construction work was kept at hold, he approached the respondent but the respondent allured the complainant by their false claims that all necessary conditions and licenses have been granted to them.
- VII. That the complainant visited the construction and the office of the respondent several times for the clarification and status but got no response over the same. Upon the unsatisfactory response and the hostile behaviour of the respondent, the complainant requested for cancellation of the booking on 28.03.2017.
- VIII. That the respondent assured the complainant that they will refund the booking amount of Rs.7,00,000/- many a times but failed to do the same. Stating that "we do not have requisite funds available with us and presently we have got many other old pending claims to satisfy"
- IX. That even after the cancellation of the booking, the respondent kept on raising demands, to which the complainant has objected. That the respondent continued to raise demand notice from 2014-2020. Rather than refunding the amount paid by the complainant, the respondent is levying heavy interest on the complainant by showing the arrears in the name of the complainant in its books.
- X. That it is pertinent to mention that the project is registered with the Authority bearing no. 09 of 2018 dated 08.01.2018 and due to such long delay in the commencement of the project and the completion of the project, the complainant is in no need of the unit in question

and the booking of the same was cancelled long ago. Hence, the present complaint.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the payment made in lieu of unit alongwith interest.

D. Reply filed by the respondent

5. The respondent has submitted the following by way of written reply:

- I. That the respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction.
- II. That the complainants had approached the respondent for booking a shop in its upcoming project "Ansal Boulevard" situated in Sector 83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. a shop bearing unit no. G-159 was allotted to the complainant.
- III. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the allotment was made in the year 2013. It is submitted that the regulations at the 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.
- 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 2023 and the cause of action accrues in 2017 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 even if the complaint is admitted to be true and correct, then as per the clause 24 of the BBA, the developer is entitled to deduct 20% of the basic sale price in case the buyer makes any defaults in payment of instalments as per the payment plan. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Authority in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.
- VI. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents 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 adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the respondent. It is further submitted that the Builder Buyer Agreement provides for such eventualities and the cause for delay is completely covered in the said clause.
- VIII. That the respondent have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of

2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the respondent specifies force majeure and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

- IX. That the respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
- X. That the complainant had signed and agreed on Builder Buyer Agreement dated 25.11.2014. That perusal of the said agreement would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd is also a party to the said agreement.
- XI. That the perusal of the Builder Buyer Agreement at page 3 would show that M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal boulevard, Sector 83 is being developed, but also is a developer in the said project. That the operating lines at page 3 of the Builder Buyer Agreement are as follow: *"The Developer has entered into an agreement with the Confirming Party 3 i.e M/s Samyak Projects Pvt. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid."*

- XII. That M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.
- XIII. That in an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the respondent for completion of the project and the respondent has no locus or say in the present project.
6. Copies of all the relevant documents have been filed and placed on the record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents as well as written submissions made by the complainants.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram

District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 complainants at a later stage.

F. Findings on the objections raised by the complainant:

F.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 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. The due date of offer of possession of the unit is 16.04.2017. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

15. The complainant and the respondent failed to execute the Builder Buyer Agreement and also no allotment letter is produced on record by either of the parties. So the due date of possession is calculated taking into account the reasonable period as per the *CIVIL APPEAL NO(S). 3533-3534 OF 2017 M/S. Fortune Infrastructure (Now known as M/S. Hicon Infrastructure) & Anr. Versus Trevor D'lima & Ors.* Which is 3 years from the date of allotment but here in the present complaint, the allotment letter is not there, so the due date is calculated three years from the date of booking i.e., 16.04.2014, thus, the due date of possession comes out to be 16.04.202017. The

respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

16. 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.

G. Findings on the relief sought by the complainant:

G.I. Direct the respondent to refund the payment made in lieu of flat till date alongwith interest till the date of realization of the amount.

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

"Section 18: - Return of amount and compensation

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

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

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other

remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:"

(Emphasis supplied)

12. **Date of possession:** In the present matter, the complainant made an application in the project "Ansal Hub 83 Boulevard", Gurugram and paid Rs.7,00,000/- vide cheque no. 044158. Thereafter, neither an allotment letter has ever been issued by the respondent nor Builder Buyer agreement has been executed in favour of the complainant. The Hon'ble Supreme Court has held in *Fortune Infrastructure Vs. Trevor D'Lima Civil Appeal No. 3533-3534/2017* "15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of the case, a time period of 3 years would have been reasonable for completion of the contract". Vide letter dated 16.04.2014, the respondent requested to deposit the balance booking amount before 08.05.2014. Thus, making it clear that the unit has been booked before 16.04.2014 but since no specific date is available, the Authority is calculating the three year period from the date of the letter dated 16.04.2014. The period of three years from 16.04.2014 expires on 16.04.2017.

13. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by her at the prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

14. 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.

15. 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., 20.11.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

16. 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;"*

17. In the present complaint, the complainant booked a commercial unit in the project "Ansal Hub 83 boulevard", situated at Sector-83, Gurugram, Haryana. The total sale consideration of the unit was Rs.65,24,870/- and the complainant has paid Rs.7,00,000/- vide cheque no. 044158 as booking amount. The due date for offer of possession is calculated as per the *Fortune Infrastructure Vs. Trevor D'Lima Civil Appeal No. 3533-3534/2017*. By letter dated 16.04.2014, the respondent requested that the complainants deposit the remaining booking amount by 08.05.2014. This indicates that the unit was booked prior to 16.04.2014. However, in the absence of a specific booking date, the Authority has considered the three-year period from the date of the letter, 16.04.2014. Accordingly, the three-year period from 16.04.2014 would expire on 16.04.2017. The complainant on 04.07.2022 sent a notice to the respondent through its

directors, requesting the respondent to cancel the booking of the said unit and refund the amount back with interest to the complainant.

18. Thus it can be established that the complainant first expressed his willingness to surrender the unit on 04.07.2022. In this communication, the complainant requested the respondent to allow him to withdraw from the project and sought a refund of the amounts paid, citing the respondent's failure to deliver possession of the allotted unit in accordance with the terms of the buyer's agreement.
19. There is a delay in handing over the possession as due date of possession was 16.04.2017 whereas, the respondent has failed to obtain the occupation certificate from the concerned authorities till date. The complainant had requested to surrender the unit to the respondent on 04.07.2022 i.e., much after the due date of possession.
20. Thus, keeping in view the aforesaid factual and legal provisions, the failure of the respondent is established under the Act, 2016 as the respondent failed to obtain the occupation certificate from the concerned authorities and also offer possession of the unit to the complainant within the agreed time period. The respondent cannot retain the amount paid by the complainant against the allotted unit and is directed to refund the same in view of the agreement to sell for allotment along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development)

Rules, 2017, from the date 16.04.2014 till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority


22. 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 refund the full paid-up amount of Rs.7,00,000 /- alongwith interest at the prescribed rate i.e., 11.10% on the amount paid by the complainant, from the date 16.04.2014 till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- ii. A period of 90 days is given to the respondent to comply with the directions given in the order and failing which legal consequences would follow.

23. Complaint stands disposed of.

24. File be consigned to registry

Dated: 20.11.2024


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