

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

Complaint no.	:	4549 of 2023
Order reserved on:		20.09.2024
Order pronounced on:		13.12.2024

1. Ashok Kumar

R/o- House no.-1876, Patti Pachiya, Near Vivek High School, Scetor-39, Jharsa, Gurgaon, Haryana-122001.

2. Ajay

R/o- House no.-380, Sector-40, Gurgaon, Haryana-122001.

Complainants

Versus

1. M/s. Identity Buildtech Pvt. Ltd.

Address: - 110, Indraprakash, 21, Barakhamba Road, New Delhi-110001.

2. M/s. Ansal Housing and Constructions Limited

Address: - 15 UGF, Indra Prakash, 21, Barakhamba Road, New Delhi

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Priyanka Agarwal (Advocate)

None

Complainants

Respondents

Ex-Parte Order

1. The present complaint dated 04.10.2023 has been filed by the complainants/allottees 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:

S. No.	Heads	Information
1	Project name and location	"Ansal Highland Park", Sector-103, Gurugram
2	Project area	11.7 acres
3	Nature of the project	Residential
4	DTCP license no. and validity status	32 of 2012 dated 12.04.2012 valid upto 11.04.2020
5	Name of licensee	Identity Buildtech & another
6	RERA registration details	Not registered
7	Unit no.	OBAAN-1201 [page 24 of complaint]
8	Unit measuring	1361 sq. ft. super area [page 24 of complaint]
9	Date of execution of flat buyer agreement	20.03.2013 [page 21 of complaint]
10	Endorsement in favour of second allottee	27.05.2014 (page no. 46 of compliant)
11	Possession clause	Clause 31 <i>31. The developer shall offer possession of the unit any time,</i>

		<p><i>within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanction 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 32.</i></p> <p><i>Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit.</i></p>
12	Total consideration	₹ 61,51,764/- [page 38 of complaint]
13	Total amount paid by the complainant	₹ 58,51,185/- [as per customer ledger on page no. 43 of complaint]
14	Due date of delivery of possession	20.09.2017 (Note: As no approval/sanction has been placed on record therefore, the due date of possession has been calculated from date of execution of builder buyer agreement i.e., 20.03.2013) (Note: Grace period is allowed) Due date of possession has been inadvertently mentioned as 20.03.2017 instead of 20.09.2017 in the proceeding dated 13.12.2024.
15	Occupation certificate	Not obtained

16 | Offer of possession

Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in their complaint:

- i. That the complainants are law-abiding citizens and consumers who have been cheated by the malpractices adopted by the respondents who are known to be the builders and are allegedly carrying out real estate development.
- ii. That the respondent advertised their project extensively through advertisements and thus the complainants were allured by the enamoured advertisements of the respondent. Due to the malafide intentions of the respondents and non-delivery of the residential unit, the complainants have accrued huge losses.
- iii. That the respondents advertised the residential project namely 'Ansals Highland Park" being developed by the developer under Licences No.32 of 2012 received from DTCP and RERA Registration No. RERA-GRG-146-2019 at sector-103 of Gurgaon Haryana.
- iv. That the original allottee booked a residential flat on 28.05.2012 in the name of Mr. Kunal Sharma and paid a booking amount of Rs.2,67,078.6/- on 28.05.2012. Thereafter, the aforesaid unit got transferred in the name of complainant no.1 i.e., Mr. Ashok on 06.03.2013.

- v. That the builder buyer agreement was executed on 20.03.2013 with complainant no.1, in respect of unit bearing no. OBAAN-1201 admeasuring 1361 sq. ft. in the project "Ansals Highland Park" situated in Sector 103, Gurugram.
- vi. That the complainant no.1 converted the allotment of the said unit from his name to the joint name of himself and complainant no.2 i.e., Mr. Ajay vide endorsement letter dated 27.05.2014. That the total sale consideration of the unit is Rs.61,51,764.49/- as per the payment plan attached with the BBA and an amount of Rs.58,51,185/- has been paid by the complainants till 29.04.2014.
- vii. That the respondent kept raising undue demands with added charges and till 06.04.2019, had raised a demand of Rs.83,57,930/- which is completely arbitrary and unjust. As per clause 31 of the agreement, the respondent was liable to complete the construction of the project within a period of 4 years. The due date of possession was 20.03.2017, but the project has been abandoned by the respondents since 2014 for the reasons best known to themselves.
- viii. That the complainants approached the respondent to know the reasons for inordinate delay but did not reply. Moreover, the respondent never proposed any tentative date of completion of the project but kept on raising payment demands with unjustified added charges and interests, due to which the complainants

stopped making further payments as they have already paid more than 90% of the total sale consideration.

- ix. That on 07.07.2022, the respondents illegally terminated the allotment of the complainants without issuing any termination letter. The respondent sent an account statement dated 15.04.2023, whereby it is clearly evident that the respondents have raised illegal demands with hidden charges and interest imposed and GST Charges etc, which is absolutely illegal.
- x. That complainants visited project site many times and found that the development work has been carried out by the respondent and most importantly the super structure was also incomplete. That the respondent as has also failed to apply for RERA registration in phase manner, which is why the project is still abandoned and the Authority is yet to give a valid registration certificate to the respondent.

C. The complainant is seeking the following relief:

3. The complainants have sought following relief(s):

- i. Direct the respondent to pay interest on the total paid amount at the prescribed rate of interest as per the act, 2016 from the due date of possession till the date of actual physical possession.
- ii. Direct the respondent to complete all the pending works of the unit and handover the actual physical possession to the complainants after obtaining the occupation certificate.

4. The present complaint has been filed on 04.10.2023 and despite several opportunities the respondents failed to file reply and also failed to appear before the Authority. Thus, on 20.09.2024, the respondents were proceeded ex-parte. Vide order dated 20.09.2024, in the interest of justice the respondents were given an opportunity to file written arguments within a period of two weeks. The respondents failed to file any written submissions.
5. Also, it is pertinent to mention here that the Act mandates that the Authority shall deal with the complaints as expeditiously as possible and shall dispose of the same within a period of sixty days from the date of receipt of such application/complaint and in case the time period is not adhered to, the Authority shall record the reasons in writing. The legislative intent for the said enactment is to provide speedy summary trial of the complaint filed by the complainant. The spirit and object of the benevolent legislation will be frustrated and defeated if the complaints filed are not disposed of expeditiously. The present matter is pending for more than 1 years. The pleadings are complete, there is no justification in adjourning the proceedings anymore.
6. 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.

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:

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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 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 complainant at a later stage.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to pay interest on the total paid amount at the prescribed rate of interest as per the act, 2016 from the due date of possession till the date of actual physical possession.

F.II Direct the respondent to complete all the pending works of the unit and handover the actual physical possession to the complainant after obtaining the occupation certificate at the earliest.

11. In the present complaint, the complainants intend to continue with the project and are 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."

12. Clause 31 of the builder buyer's agreement provides for time period for handing over of possession and is reproduced below:

31. *The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanction 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 32. Further, there shall be*

a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit.

13. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. 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.

14. 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.
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., 13.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

16. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which are the same as is being granted to the complainants in case of delayed possession charges.
18. 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 respondents in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement dated 20.09.2017. By virtue of clause 31 of the buyer's agreement executed between the parties on 20.03.2013, the possession of the subject flat was to be delivered within a period of 48 months from the date of this agreement. Therefore, the due date of handing over possession comes out to be 20.09.2017. However, the

respondents have failed to handover possession of the subject apartment to the complainants till the date of this order. Accordingly, it is the failure of the respondents to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

19. 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 no.1 is established. As such, the complainants/allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 20.09.2017 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority

20. 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 promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondents are directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 11.10% p.a.

for every month of delay from the due date of possession i.e., 20.09.2017 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

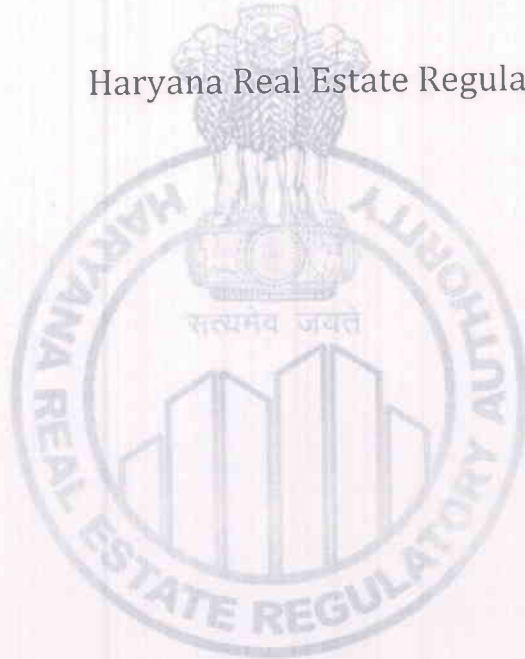
- ii. The arrears of such interest accrued from 20.09.2017 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondents are directed to handover possession of the unit to the complainants within 2 months, after obtaining the occupation certificate from the competent authorities.
- iv. The respondent/promoter shall not charge anything from the complainant(s) which is not the part of the builder buyers' agreement.
- v. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottee(s), in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

21. Complaint as well as applications, if any, stands disposed off accordingly.
22. File be consigned to registry.


(Ashok Sangwan)

Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.12.2024



HARERA
GURUGRAM