



**HARERA  
GURUGRAM**

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

Complaint no. 4313 of 2019  
Date of First hearing 18.12.2019  
Date of decision 18.12.2019

1. Shri Hitesh Kumar Tuteja
  2. Smt. Uma Tuteja
  3. Smt. Kailash Tuteja
- All R/o: 381/8, Old no. 87,  
Vijay Park, near Laksmi Bazar,  
Gurugram (Haryana)- 122001.

**Complainants**

**Versus**

1. M/s. Ansal Housing & Construction Pvt. Ltd.  
Office at: 15 UGF, Indra Prakash,  
21 Barakhamba Road,  
New Delhi - 110001.

2. M/s. Identity Buildtech Pvt. Ltd.  
Office at: -110, Indra Prakash Building,  
21, Barakhamba Road, New Delhi - 110001.

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

Member  
Member

**APPEARANCE.**

Shri Hitesh Kumar Tuteja;  
Shri Kailash Tuteja  
Shri Yogesh Kumar Goyal  
Ms. Meena Hooda

Complainant no. 1 and 3 in person  
Advocate for the complainants  
Advocate for the respondents



## ORDER

1. The present complaint 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 allottee as per the agreement for sale executed inter se them.
2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, proposed date of handing over the possession, delay period (if any) have been detailed hereinbelow in the tabular form:-

S. No.	Heads	Information
1.	Project name and location	Ansals Highland Park, Sector 103, Gurugram
2.	Project area	11.7 acres
3.	Nature of project	Group housing
4.	RERA registered/ not registered	Registered vide no. 16 of 2019 dated 1.4.2019
5.	RERA registration valid upto	30.11.2021.
6.	DTCP License No. & validity status	32 of 2012 dated 12.04.2012 valid upto 11.04.2020
7.	Name of licensee	1.M/s Identity Buildtech Pvt. Ltd. 2.M/s. Agro Gold Chemicals Pvt. Ltd.
8.	Unit no., Tower no.	Tower GLSGN, 801
9.	Super area	1940 sq. ft. (sale area)
10.	Increase/decrease in super-area	N/A
11.	Date of execution of apartment buyer's agreement	11.06.2013 <b>(Pg. 51 of the complaint)</b>

12.	Payment plan	Construction linked payment plan ( <b>as per Pg. 68 of the complaint</b> )
13.	Total sales consideration	84,52,401/- <b>(As per SOA as on 06.10.2017, Pg. 137 of the complaint)</b>
14.	Total amount paid by the complainant	67,93,271.41/- <b>(as stated by the complainant and as per SOA as on 06.10.2017, Pg. 140 of the complaint)</b>
15.	Due date of delivery of possession as per agreement.  <b>Note</b> - Due date of delivery of possession has been calculated from the date of execution of agreement+ 6 months grace period.	<b>10.12.2017</b> <ul style="list-style-type: none"> <li>• <b>(Clause 31 - 48 months from the date of obtaining all required sanctions and approval necessary for commencement of construction or execution of agreement, whichever is later plus 6 months' grace period)</b></li> </ul>
16.	Status of project (ongoing/complete)	ongoing
18.	Date of offer of possession, if any	Not offered till date
19.	Reliefs sought (in specific terms)	<ul style="list-style-type: none"> <li>• To direct the respondent to handover possession of the flat immediately with delay possession charges;</li> <li>• To direct the respondents to file the status report with regard to the status of the project;</li> <li>• Impose penalty on the builder on account of various defaults under RERA Act, 2016.</li> </ul>

3. As per the apartment buyer's agreement in question vide clause 31 the possession was to be handed over within a period of 48 months plus grace period of six months from the date of execution of agreement or obtaining all required sanctions and approvals necessary for commencement of construction, whichever is later. Since the date of obtaining the required sanctions, etc. is not provided by the complainants or by the respondents, so, the due date of delivery of possession on calculation from the date of execution of agreement



comes out to be 10.12.2017. The relevant clause of the apartment buyer's agreement reads as under:

*"31. The Developer shall offer possession of the Unit any time, within a period of 48 months from the date execution of agreement or within 48 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 Buyer and subject to force-majure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer...."*

4. Possession of the apartment in question has not been offered or given so far despite repeated reminders and requests. It is alleged by the complainants that respondents have failed to honour the obligations cast upon them under buyer's agreement. Hence, this complaint for the abovementioned reliefs.
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. In nutshell, the defence taken by the respondents is three fold i.e. (i) The project could not be completed within time for the reasons detailed in the reply which were beyond their control; (ii) This Authority has registered the project by giving a fresh date for offering the possession and the complainants shall be offered the possession of the subject apartment soon; and (iii) The complainants cannot go beyond the scope of buyer's agreement and hence, cannot claim anything beyond the





terms and conditions incorporated therein. Hence, it is prayed that the complaint be dismissed.

7. Arguments are heard.

8. 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.

9. The Authority on the basis of information, documents filed and submissions made by the complainants as well as by the respondents is of considered view that there is no need of further hearing in this matter.

10. The Authority observed that the Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act as well as to balance their interest as per the provisions mentioned therein. The Authority is empowered not only to monitor the projects but also to ensure their timely compliance and in case where the projects are held up or have stopped, to take steps so that these are completed in time and interests of allottees are protected.

11. After consideration of the circumstances, submissions made and other records submitted by the complainants and respondents and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondents are in contravention of the provisions of the Act.

Therefore, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 11.06.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondents is established.


12. By virtue of clause 31 of the apartment buyer's agreement executed between the parties on 11.06.2013, possession of the booked unit was to be delivered with a period of 48 months plus 6 months' grace period from the date of obtaining all requisite sanctions and approvals necessary for commencement of construction or execution of agreement, whichever is later. Since the date of obtaining the required sanctions, etc. is not provided by the complainants or by the respondents, so, the due date of delivery of possession on calculation from the date of execution of agreement comes out to be 10.12.2017. Hence, the complainants are entitled to delayed possession charges at the prescribed rate of interest as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

13. The Authority hereby pass the following order and issue directions under section 34 (f) of the Act:-

1. The complainants are entitled for delay possession charges at the prescribed rate of interest of 10.20% p.a. with effect from

- 10.12.2017 (due date of delivery of possession) till the offer of possession;
2. The arrears of interest accrued so far from the due date of delivery of possession i.e. 10.12.2017 till the date of this order shall be paid to the complainants within a period of 90 days and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of each subsequent english calendar month;
  3. The complainants are directed to pay outstanding dues, if any after adjustment of interest for the delayed period. Interest on the due payments from the complainants shall be charged by the respondent at the prescribed rate of interest @ 10.20% p.a. which is the same as is being granted to the complainants in case of delayed possession charges.
  4. The respondents shall not charge anything from the complainants which is not the part of apartment buyer's agreement.
14. Complaint stands disposed of.
15. Case file be consigned to the registry.

  
**Samir Kumar**  
**(Member)**

  
**Subhash Chander Kush**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram

Date: -18.12.2019.

