

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

Complaint no. : 5312 of 2022
Date of filing : 02.08.2022
Date of decision : 06.05.2025

1. Rajan Khanna

2. Anu Khanna

R/O: Hno. 4/160, Subhash Nagar, New Delhi

Complainants

Versus

M/S Ansal Housing Limited

Registered office at: 15 UGF, Indra Prakash,
21 Barakhamba Road, New Delhi-110001

Respondent

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh. Khush Kakra (Advocate)

Sh. Amandeep Kadiyan (Advocate)

Counsel for Complainants

Counsel for Respondent

ORDER

1. The present 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 related details

2. The particulars of unit details, 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.	Particulars	Details
1.	Project name and location	Ansal Hub 83 Sector 83 Gurugram
2.	Date of execution of buyer agreement	Not executed
3.	Date of allotment letter (signed by both the parties)	12.10.2011 [pg. 31 of complaint]
4.	Unit No.	Resto-324 (Page no. 31 of complaint)
5.	Unit area admeasuring	2463.88 sq. ft. (Page no 31 of complaint)
6.	Possession clause	Clause 26 <i>The Developer shall offer of the unit any time a period of 36 months from the date of execution of agreement or the date of sanction of building plan, whichever is later.</i>
7.	Change of unit due to revision in layout plan	28.10.2013 [pg. 75 of complaint]
8.	New unit	Resto-317 admeasuring 3092.75 sq. ft. [pg. 75 of complaint]
9.	Due date of Possession	24.11.2016 (due date calculated from the date of commencement of construction i.e., 24.11.2013 as the BBA has not been signed between the parties) <i>*Note: The due date of possession as been inadvertently mentioned as 15.12.2018 instead of 24.11.2016 in the POD dated 06.05.2025. The same has been corrected in the said order.</i>



10.	Sale consideration for new unit	₹1,36,34,852.29/- (pg. no 75 of complaint)
11.	Total amount paid by the complainant	₹1,15,31,176.87/- (as alleged by the complainant at pg. 12 of complaint)
12.	Offer of Possession	NA
13.	Occupation Certificate	NA

B. Facts of the complaint

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

a. That the Complainants in the year 2011 were looking to purchase a commercial property, and were approached by the Respondent for purchasing a commercial unit in the project being developed by the Respondent namely "ANSALS HUB 83" situated at Sector-83, Gurugram, Haryana [hereinafter referred to as the "Project"]. Based on the various representations made by the Respondent, the Complainants booked a Unit in the Project of the Respondent by paying an amount of Rs. 5,93,288/- (Rupees Five Lakh, Ninety-Three Thousand Two Hundred and Eighty-Eight Only) as booking amount vide two cheques 12.03.2011. The Complainants were initially allotted a restaurant bearing no. Resto-324, on the Third Floor, admeasuring 2463.88 sq. ft. [hereinafter referred to as the "Initial Unit"] vide Booking Application Form submitted by the Complainants to the Respondent.

b. The Complainants followed up with the Respondent for execution of the Buyer's Agreement/Allotment Letter. However, the Respondent kept extending the date of execution of the Agreement under one pretext or the other. The Complainants nevertheless kept following up with the Respondent vide telephonic conversations and visits to the office of the Respondent. The Respondent executed the

Allotment Letter dated 12.10.2011 [hereinafter referred to as the "Agreement"] after a delay of 7 months from the date of booking of the Initial Unit. That the Complainants were shocked to find that the Agreement contained various one-sided and arbitrary terms and conditions in the favor of the Respondent. For instance, the Complainants would be liable to pay interest @ 24 % per annum for any delay in making payments as per Clause 18 of the Agreement however, on delay in offering possession of the Initial Unit, the Respondent would be liable to pay delay compensation at merely Rs. 5 per sq. ft. to the Complainants as per Clause 30 of the Agreement. The Respondent had already collected a substantial amount towards the booking of the Initial Unit before executing the Agreement and any disagreement with respect to the terms and conditions of the Agreement would have led to termination of the booking of the Initial Unit and forfeiture of the amount already collected by the Respondent. Thus, the Complainants had no other choice but to sign on the dotted lines.

- c. That as per Clause 26 of the Agreement, the Respondent was obligated to deliver possession of the Initial Unit within 36 (thirty-six) months from the date sanction of the building plans or date of execution of the Agreement, whichever is later. That as per the order dated 26.07.2018 of the Hon'ble Haryana RERA in *Narain Dass Sardana v. Ansal Housing & Construction Limited* [Complaint No. 221 of 2018], the building plans with respect to the Project was approved on 11.09.2013. Thus, the Respondent was obligated to offer possession of the Initial Unit latest by 11.09.2016.



- d. That the Complainants were assured at the time of booking that the Respondent has the requisite approvals and licenses from the Directorate of Town & Country Planning, Haryana [hereinafter referred to as "DTCP"] for construction of the Project. It is categorically mentioned in the Agreement that the Respondent has the license bearing no. 87 of 2009 from DTCP for construction of the Project. That the said license bearing no. 87 of 2009 was issued by DTCP to the Respondent on 30.12.2009. It has come to the knowledge of the Complainants the said license was valid only up to 29.12.2013 however, the Respondent has failed to renew the said license till date. That the Complainants sought an update from the Respondent with respect to license number of the Project vide several emails including the email dated 15.05.2021. However, despite several reminders, the Respondent has failed to provide any response to the Complainants with respect to the renewal of the license.
- e. It is pertinent to submit that the Complainants were unilaterally informed by the Respondent vide Letter dated 28.10.2013 that the Layout Plan for the Project has been revised and the Initial Unit allotted to the Complainants has now been replaced with the Unit bearing No. Resto-317, on the third floor, admeasuring 3092.75 sq. ft. [hereinafter referred to as the "Unit"]
- f. That the Complainants had booked the Unit under a construction linked payment plan as per Annexure-A of the Agreement, whereby the Respondent was obligated to raise the demands in consonance with the stages of construction of the Project. The Complainants diligently made the payments to the Respondent towards



consideration of the Unit as and when the demands for payments were raised by the Respondent. The Complainants have paid an amount of Rs. 1,15,31,176.87/- towards consideration of the Unit to the Respondent.

- g. That on visiting the Project site in the year 2016, the Complainants were shocked to find that despite collecting a substantial amount towards the consideration of the Unit, the construction of the Unit was far from completion. That on anticipating the delay in completion of construction, the Complainants raised their concerns with the Opposite Party vide several emails including the emails dated 29.07.2016 and 02.09.2016. However, the Opposite Party kept raising demands towards the consideration of the Unit despite failing to complete the construction of the Unit within the promised time period as per the Agreement. Further, the Complainants sought updates from the Respondent with respect to the application for Occupancy Certificate and the tentative date for completion of construction of the Project vide several emails including the email dated 05.03.2021. However, the Respondent kept extending the tentative date for completion of construction and application for Occupancy Certificate under one pretext or the other. Furthermore, the Complainants had also sought the details of the license issued by DTCP for construction of the Project. However, the Respondent has failed to respond to the queries raised by the Complainants till date. That the Respondent was obligated to offer possession of the Unit by 11.09.2016. However, despite a delay of almost 6 (six) years from the promised date of possession as per the Agreement, the Respondent has failed to offer possession of the Unit, complete in all

respects till date. That due to the failure of the Respondent to provide the license number issued by DTCP for construction of the Project coupled with the inordinate delay in completion of the construction of the Project, the Complainants decided to withhold the balance payment till the receipt of Occupation Certificate and all the other requisite licenses required for completion of construction of the Project.

- h. That despite collecting a substantial amount towards construction of the Unit, the Respondent utterly failed to provide regular updates of the status of construction to the Complainants. That the Complainants were shocked to find that as on the promised date of possession i.e. 11.09.2016 the Project was far from completion. That despite an inordinate delay of more almost 6 (six) years from the promised date of possession as per the Agreement, the Respondent has failed to offer possession of the Unit till date.
- i. It is respectfully submitted that the Respondent is liable to compensate the Complainants by paying adequate interest and damages towards financial loss and mental agony and hardships caused to the Complainants due to its failure to handover the possession of the Unit. That the Complainants are bona fide buyers and have made the booking based on the representations and assurances given by the Respondent of providing timely possession of the Unit. That the possession of the Unit was promised to be offered by 11.09.2016. Despite an inordinate delay of almost 6 years from the promised date of possession, the construction status of the Project is still at a nascent stage.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. Direct the respondent to handover possession of the unit to the complainants, complete in all respects and in conformity with the allotment letter/ brochure/ agreed drawings / specifications and for the consideration mentioned therein, with all additional facilities and as per quality standards promised and execute all necessary and required documents in respect of the unit in favour of the complainants within 3 (three) months of this complaint being filed before this Hon'ble Authority or as this Hon'ble Authority deems fit and appropriate.
 - b. Direct the respondent to pay interest @ 9.80 % on the amount deposited by the complainants with the respondent, with effect from the date of delivery promised in the allotment letter, till the date of legal and valid possession as per clause (i) above is handed over by the respondent along with all necessary documents, common areas facilities and quality standards as promised during the initial booking made by the complainants.
 - c. Direct the respondent to not charge any interest on account of delayed payments from the complainants.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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. 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 those undisputed documents and submissions made by the parties.

7. The present complaint was filed on 02.08.2022 in the Authority. The notice for hearing was duly served to the respondent as the counsel for respondent has put in appearance before the Authority on multiple hearings. However, despite providing enough opportunity for filing the reply, no written reply has been filed by the respondent till date. Therefore, in view of the above-mentioned fact, the defence of the respondent was hereby struck off by the Authority vide proceedings dated 03.11.2023.

D. Jurisdiction of the authority

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

D. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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) (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) 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.

11. 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 complainant.

E.I. Direct the respondent to handover possession of the unit to the complainants, complete in all respects and in conformity with the allotment letter/ brochure/ agreed drawings / specifications and for the consideration mentioned therein, with all additional facilities and as per quality standards promised and execute all necessary and required documents in respect of the unit in favour of the complainants within 3 (three) months of this complaint being filed before this Hon'ble Authority or as this Hon'ble Authority deems fit and appropriate.

E.II. Direct the respondent to pay interest @ 9.80 % on the amount deposited by the complainants with the respondent, with effect from the date of delivery promised in the allotment letter, till the date of legal and valid possession as per clause (i) above is handed over by the respondent along with all necessary documents, common areas facilities and quality standards as promised during the initial booking made by the complainants.

E.III. Direct the respondent to not charge any interest on account of delayed payments from the complainants.

12. In the present complaint, the complainants intend to continue with the project and is 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."

13. Clause 26 of the allotment letter provides for time period for handing over of possession and is reproduced below:

*"26. The developer shall offer possession of the unit any time, **within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later** subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."*

14. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later. The due date calculated from date of commencement of construction i.e., 24.11.2013 as the BBA has not been executed in this particular case. Accordingly, the due date of possession comes out to be 24.11.2016.
15. **Admissibility of delay possession charges at prescribed rate of interest:** The 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.

16. The legislature in its wisdom in the subordinate legislation under the 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.
17. 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., 06.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
18. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The definition of term 'interest' as defined under section 2(z) 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.
19. 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.
20. 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 26 of the allotment letter issued by the respondent, the due date of handing over possession comes out to be 24.11.2016. In the present case, the has not yet offered possession by the to the complainant.



21. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment 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. The respondent is directed to pay delayed possession charges on the amount paid by the complainant from the due date of possession i.e., 24.11.2016 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.
22. The respondent is directed to handover the possession of the unit, after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 within two months from the date of obtaining of occupation certificate and thereafter, the complainants are obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
23. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:



Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate"

24. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the final offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

F. Directions of the authority

25. 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):
- a. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., w.e.f. 24.11.2016¹ till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier. The arrears of interest accrued so

¹ The due date of possession has been inadvertently wrongly mentioned as 15.12.2018 instead of 24.11.2016 in the POD dated 06.05.2025. The same has been corrected in the said order



far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

- b. The respondent is directed to handover the possession of the unit, after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 within 3 months from the date of obtaining of occupation certificate and thereafter, the complainants are obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
 - c. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - d. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
26. Complaint stands disposed of.
27. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.05.2025