

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

Complaint no.: 2428 of 2024
Date of decision:- 30.07.2025

Hunjan Kuldeep Singh
R/o: - C-387, Defence Colony,
New Delhi.

Complainant

Versus

1. M/s. Ansal Housing and Construction Limited
Regd. office: 15, UGF, Indraprakash, 21, Barakhamba
Road, New Delhi-110001.
2. M/s. Ishkripa Properties Pvt Ltd.
Regd. Office: 168-169 Amar Colony, Lajpat Nagar,
New Delhi .

Respondents

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Prannit Stefano

Amandeep Kadyan(R-1)

Complainant

Respondent

ORDER

1. The present complaint dated 24.05.2024 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 as provided under the provision 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	"Estella"
2.	Location of the project	Sector-103, Village Dhanwapur-Tikampur, Gurugram.
3.	Nature of the project	Group Housing
4.	DTCP license	License no.17 of 2011 Dated-08.03.2011
5.	HRERA Registered	Not Registered
6.	Allotment letter	Not on record
7.	Unit no.	L-0504, 3BHK+ Utility (As on page no. 32 of complaint)
8.	Unit area	1945 sq.ft [Sale Area] (As on page no. 32 of complaint)
9.	Apartment Buyer's Agreement	01.11.2012 (As on page no. 28 of complaint)

10.	Possession clause	<p>Clause-30</p> <p><i>The Developer shall 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 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-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 as above in offering the possession of the Unit.</i></p> <p>[Emphasis supplied]</p> <p>(As on page no. 39 of complaint)</p>
11.	Due date of possession	<p>01.05.2016</p> <p>[Calculated 36 months from date of agreement plus 6 months]</p>
12.	Sale consideration	<p>Rs.69,14,475/-</p> <p>(As on page no. 32 of complaint)</p>
13.	Amount paid	Rs.70,98,126/-
14.	Occupation certificate	Not received
15.	Offer of possession	Not offered

B. Facts of the complaint:

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

- I. That in 2011 on the impressive projections of the respondents and their broker, the complainant had booked an apartment in their

Residential Group Housing project "Estella" situated within the Revenue Estate of Village Dhanwapur-Tikampur at Sector- 103, Gurugram.

- II. That the respondents had allotted a 3 BHK apartment no. L- 0504, Type 3 BHK Apartment + utility having the carpet area of 1945 sq. ft. Thereafter, the respondents entered into the Flat Buyer's Agreement dated 01.11.2012 with the complainant for the sale & transfer of above stated apartment with the promise and assurance that all terms and conditions of the same were duly complied by the respondents without any default. The basic sale price of the unit is Rs.64,67,125/-. Besides this, the buyer had to additionally pay an amount of Rs.2,50,000/- to the developer towards grant/allotment of exclusive right of using one covered Car Parking Space.
- III. That the complainant has made almost the entire payments as per the terms and conditions mentioned in the agreement dated 01.09.2012, despite that the possession of the flat could not be handed over to the complainant. The complainant has paid total amount of more than Rs.70,98,126/- to the respondent.
- IV. That in terms of clause 30 of the said agreement, the respondent was bound to offer possession of the unit 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. Further, a grace period of 6 months was allowed to the respondent over and above the said period of 36 months for offering possession of the unit.

- V. Despite the lapse of the considerable time frame, the unit remain uninhabitable. That the complainant entered into the agreement with the reasonable expectation of obtaining possession of habitable premises within the agreed-upon timeframe. The failure to fulfil this obligation not only constitutes a breach of contract but also results in significant inconvenience and hardship to the complainant.
- VI. That the complainant contacted to respondent(s) in order to resolve the matter but till date, nothing fruitful came out. 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. Relief sought by the complainant:

4. The complainant has sought following relief(s):-
- Direct the respondents to pay delayed possession charges at the prescribed rate of interest to the complainant.
 - Direct the respondents to handover possession of the apartment as agreed in the Agreement dated 01.11.2012 at the earliest in good habitable condition.
 - Direct the respondents to pay litigation cost of Rs.5,00,000/-.

D. Reply filed on behalf of respondent no.1 :

5. The respondent no.1 i.e., M/s Ansal Housing and Construction Limited has made the following submissions:
- That the complainant approached the respondent for booking a flat no. L0504 in its project "Estella", Sector 103, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. a an Agreement to Sell was executed on 01.11.2012.

- II. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the answering respondent was in the year 2014. 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.
- III. 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 in 2017 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed as the same is barred by limitation.
- IV. 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 on 20.02.2015. 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.
- V. That the delay has been occasioned on account of things beyond the control of the respondent. The respondent ought to 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 Answering Respondent

specifies force majeure, demonetization 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.

- VI. 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

E. Reply on behalf of the respondent no.2

6. Vide proceedings dated 12.09.2024, 20.03.2025, the respondent no.2 i.e, M/s. IshKripa Properties Pvt. Ltd. failed to put in appearance and file reply and thus, vide proceedings dated 30.07.2025, the respondent no.2 is proceeded ex-parte.
7. 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 these undisputed documents and submission made by the parties.

F. 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.

F.1 Territorial jurisdiction

9. 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

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)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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.

G. Findings on objections raised by the respondents

G.1 Objection regarding delay due to force majeure circumstances

11. The respondent no.1 has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic.

Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Builder Buyer Agreement was executed between the parties on 01.11.2012. As per clause 30 of the Agreement dated 01.11.2012, the due date for offer of possession of the unit was within a period of 36 months from the date of execution of this agreement or 36 months from the date of obtaining all the required sanctions and approvals necessary for construction, whichever is later. As the date of obtaining all the required sanctions and approvals necessary for commencement of construction is not available, the due date is calculated 36 months from the date of execution of the agreement. A grace period of six months over and above the said period was agreed between the parties, the same being unqualified is granted to the respondents. Thus, the due date of possession comes out to be 01.05.2016.

13. The respondent no.1 have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, shortage of labour etc but these were for a short period of time and are the events happening every year. The respondents were very much aware of these event and thus, the promoter/ respondent cannot be given any leniency based on the aforesaid reasons. The respondent no.1 has further stated that due to the outbreak of Covid-19 the project was stalled. The Authority is of the view that the Authority through notification no. **9/3-2020 dated 26.05.2020**, had already provided a six months extension for projects with completion

dates on or after 25.05.2020 , the due date of possession in the present case is much before the above mentioned timeline. Thus, no relief in lieu of covid-19 is granted to the respondents. Therefore, the due date of handing over possession was 01.05.2016.

G.II Objection regarding complaint being barred by limitation.

14. The respondent no.1 has raised an objection that the complaint has been filed by the complainant belatedly. The complainant has filed the complaint in the year 2024 and the cause of action accrue in the year 2017 as per the complaint itself.
15. The Authority is of the view that as per Clause 30 of the Agreement dated 01.11.2012, the due date of possession of the unit was 01.05.2016 and till date, the respondent has not obtained Occupation certificate from the competent authorities in respect of the subject unit. The complainant is not in default here and have paid Rs.70,98,126/- till date against the sale consideration of Rs.69,14,475/- i.e., more than 100% of the sale consideration. The respondent is raising the objection regarding the complaint being barred by limitation and is itself in default by not completing the project within the promised time period and also till date have failed to obtain the Occupation certificate. The Cause of Action is continuing in favour of the complainant and against the respondent and it can by no means said that the present complaint is barred by limitation.

H. Findings on the relief sought by the complainant.

- H.I Direct the respondents to pay delayed possession charges at the prescribed rate of interest to the complainant.**
- H.II Direct the respondents to handover possession of the unit to the complainants of the apartment as agreed in the Agreement dated 01.11.2012 at the earliest in goof habitable condition.**
- H.III Direct the respondents to pay litigation cost of Rs.5,00,000/-.**

14. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainant booked a unit bearing no. L-0504, 3BHK, Utility, in the project "Estella" situated in Sector 103 of the respondents for a sale consideration of Rs.69,14,475/- and she has paid a sum of Rs.70,98,126/- till date. The Apartment Buyer Agreement dated 01.11.2012 was executed between the complainant and respondent no. 1. As per clause 30 of the Agreement dated 01.11.2012, respondent no. 1 was obligated to complete the construction of the project and hand over possession of the subject unit within a period of 36 months from the date of execution of the agreement or 36 months from the date of obtaining all the required sanctions and approvals for commencement of construction, whichever is later, alongwith a grace period of six months. Thus, the due date of possession comes out to be 01.05.2016. The occupation certificate for the project has not yet been obtained by the respondent from the competent authority.
15. The complainants intend to continue with the project and are seeking delay possession charges interest on the amount paid. 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:

"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:

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."

(Emphasis supplied)

16. Due date of possession and admissibility of grace period: As per clause

30 of the agreement dated 01.11.2012, the respondent was obligated to complete the construction of the project and hand over possession of the subject unit within a period of 36 months from the date of execution of the agreement or 36 months from the date of obtaining all the required sanctions and approvals for commencement of construction, whichever is later, alongwith a grace period of six months. Thus, the due date of possession comes out to be 01.05.2016. The occupation certificate for the project has not yet been obtained by the respondent from the competent authority.

17. Payment of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges at the 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.

18. 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.
19. 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., 30.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
20. 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. The relevant section is reproduced below:
- "(z) "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;"*
21. 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 them in case of delayed possession charges.

22. 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 are 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 30 of the agreement dated 01.11.2012, the possession of the subject unit was to be delivered within stipulated time schedule i.e., by 01.05.2016. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the complainant till date.
23. The Authority is of considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement dated 01.11.2012. Accordingly, it is the failure of the respondents/promoters to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents/promoters is established. As such, the allottee shall be paid by the promoters interest for every month of delay from the due date of possession i.e., 01.05.2016 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

I. Directions of the authority

25. 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 promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondents are directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 01.05.2016 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - iii. The respondent no.1 is directed to hand over the actual physical possession of the unit to the complainant within 2 months after obtaining occupation certificate
 - iii. The arrears of such interest accrued from 01.05.2016 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 allottee before 10th of the subsequent month as per rule 16(2) of the rules..
 - iv. The respondents are directed to execute Conveyance Deed in favour of the complainant within a period of three months after obtaining the Occupation Certificate, on the payment of the requisite stamp duty, charges etc.
 - v. The respondents shall not charge anything from the complainant which is not the part of the agreement.

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26. Complaint stands disposed of.
27. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 30.07.2025



HARERA
GURUGRAM