

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

Complaint no.	:	1876 of 2024
Date of Filing:		14.05.2024
Date of Decision:		07.03.2025

1. Sudhir Kumar
2. Deepali Dhupar

Address at: A-2/284, Janakpuri, New Delhi-110058

Complainants

Versus

Ansai Housing & Construction Limited
Regd. office: 606, 6th floor, Indra Prakash
Building, 21, Barakhamba Road, New Delhi-110001

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Parminder Singh
Sh. Amandeep Kadyan

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Project name and location	"Ansal Heights 86, sector 86, Gurgaon.
2.	Nature of project	Residential
3.	RERA registered/not registered	Not Registered
4.	DTPC license no. & validity status	48 of 2011 dated 29.05.2011
5.	Unit no. /Villa	V-04 (page no. 25 of complaint)
6.	Unit area admeasuring	4300 sq. ft. (pageno.25 of complaint)
7.	Date of villa buyer agreement	28.01.2013 (page no. 22 of complaint)
8.	Possession clause	<i>31 Construction & Possession</i> <i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of agreement or within 42 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 32. Further there shall be a grace period of 6 months allowed to the developer over and above</i>



		<i>the period of 42 months as above in offering the possession of the unit.</i> <i>Emphasis Supplied</i> <i>(Page 30 of the complaint)</i>
9.	Commencement of construction	Cannot be ascertained
10.	Due date of possession	28.01.2017 (Due date is calculated from the date of execution of agreement including grace period of 6 months being unqualified)
11.	Total sale consideration	Rs. 1,71,99,750/- (as per payment plan on page no. 38 of complaint)
12.	Amount paid by the complainants	Rs 1,76,58,473/- (as per customer ledger at page 60 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not Offered

B. Facts of the complaint

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

- I. That the respondent intended to develop a project known as "ansal heights 86" situated at Sector 86, Gurugram, Haryana. The complainants, believing the promises and assurances in favour of the project, made by the respondent, booked a 01- VILLA unit no. V-04, admeasuring super area of 4410 sq. ft. and carpet area of about 2823 sq. ft. and balcony area of about 566.07 sq. ft. for a total sale consideration of Rs. 1,77,93,257/- after including all the other charges.
- II. That a buyer's agreement was executed between the complainants and the respondent on 28.01.2013. The complainants paid a total sum of



Rs 1,76,58,473/- in different installments from 29th february 2012 to 6th september 2018 as per the payment schedule/payment plan generated by the respondent at the time of executing of buyer's agreement which is a part of villa buyers' agreement.

- III. That the complainants tried to follow-up the respondent several times through personal visits and raised the issue of the delay in possession of the said unit as per the agreed terms and conditions of builder buyers' agreement. The respondent has not handed over the possession of the said unit till date.
- IV. That as per the clause 31 of the BBA dated 28.01.2013, the developer shall offer possession of the unit any time within 42 months from the date of execution of agreement or from the start of construction, which, after calculation, comes out to be 28.07.2016. Further, there will be a grace period of 6 months allowed to the developer over and above the period of 42 months which after calculating, comes out to be 28.01.2017.
- V. That the respondent has been at default in granting the possession of the said premises and the construction of the project is not yet completed. The complainants have invested all her hard-earned money into the disputed unit in the project developed by the respondent and because of the continuous defaults of the respondent, the innocent complainants suffer huge monetary losses. Therefore, it is submitted that the respondent is liable to pay the interest @12% p.a. from the date of default in possession, i.e., 28.01.2017, till date of its actual realization.
- VI. That as per the clause 37 of VBA, the developer has to pay the buyer @Rs 5/- per sq feet per month on super area for any delay in offering possession of the said unit, the total super area of the said villa is



4410.00 sq. ft., which, after calculating comes out to be Rs 22,050/- per month

- VII. That the complainants are ready to make the further payments due, if any, as per the agreed terms and conditions of the executed BBA and the payment plan, and further seeks the possession of the said unit, along with the payment of Rs. 22,050/- per month from the effective date i.e., 28.01.2017, till the date of grant of possession and also seeks the delayed possession charges @12% p.a. from the date of default till date of actual realization. The complainants have followed-up the respondent several times, raising the above-stated concerns, but to no avail. Hence, the present complaint.

C. Relief sought by the complainants:

- a) Direct the respondent to make the payment of delayed possession charges @Rs. 22050/- per month from the effective date i.e., 28.01.2017, till the date of grant of possession.
- b) Direct the respondent to make the payment of interest @12% p.a. from the date of default, i.e., 28.01.2017, till date of its actual realization.
- c) Direct the respondent to deliver the possession of the allotted unit in the said project.

D. Reply by the respondent

4. The respondent has contested the complaint on the following grounds.
 - I. That the complainants approached the respondent sometime in the year 2012 for the purchase of an independent unit in its upcoming residential project "ansal heights" situated in Sector-86, district Gurgaon. The complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were being fully satisfied with respect to all



aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same and the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner.

- II. That thereafter the complainants applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuant to the application, was allotted a 01- villa unit no. V-04 in the project "ansal heights" situated at Sector 86, district Gurgaon, Haryana. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants should remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants.
- III. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The construction work of the project is swing on full mode and the work will be completed within the prescribed time period as given by the respondent to the authority.
- IV. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition No.20032 of



2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble national green tribunal thereby restraining the excavation work causing air quality index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the major factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labor pressure. However, the respondent is carrying its business in letter and spirit of the villa buyer agreement as well as in compliance of other local bodies of haryana government.

- V. That the respondent is carrying his business in letter and spirit of the villa buyer agreement but due to COVID"19 the lockdown was imposed throughout the country in March, 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- VI. That similar lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- VII. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.
- VIII. That the complaint is not maintainable or tenable under the eyes of law as the complainants has not approached this Hon'ble authority with



clean hands and has not disclosed the true and material facts related to this case of complaint. The complainants, thus, has approached the Hon'ble authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint.

- IX. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the act are not retrospective in nature. The provisions of the act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the act. It is further submitted that merely because the act applies to ongoing projects which are registered with the authority, the act cannot be said to be operating retrospectively. The provisions of the act relied upon by the complainants seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the builder buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement.
- X. That several allottees have defaulted in timely remittance of payment of installment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effect on the operation and the cost for proper execution of the project



increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the default of several allottees has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the project is completed and ready for delivery, awaiting occupancy certificate which is likely to be completed by the year 2022.

- XI. The central government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainants further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.

E. Jurisdiction of the authority

5. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

6. 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.

E.II Subject-matter jurisdiction

7. 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) 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.

8. 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 respondent:

F.I Objection regarding force majeure conditions:

9. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by 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, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization. Further, the



authority has gone through the possession clause and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 42 months from the date of execution of agreement or from obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. In the present case, the date of commencement of construction is not on record so, the due date of possession is calculated from the date of execution of agreement i.e., 28.01.2013. Hence, the due date of possession comes out to be 28.01.2017 including grace period of 6 months. The events such as various orders by Punjab and Haryana High Court and demonetization were for a shorter duration of time and were not continuous as there is a delay of more than eight years. Even today no occupation certificate has been received by the respondent. Therefore, said plea of the respondent is null and void. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown 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.

G. Entitlement of the Complainants:

- a) **Direct the respondent to make the payment of delayed possession charges @Rs. 22,050/- per month from the effective date i.e., 28.01.2017, till the date of grant of possession.**



- b) Direct the respondent to make the payment of interest @12% p.a. from the date of default, i.e., 28.01.2017, till date of its actual realization.
- c) Direct the respondent to deliver the possession of the allotted unit in the said project.
10. 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."*
11. Clause 31 of the villa buyer's agreement provides the time period of handing over possession and the same is reproduced below:
- "31:*
- "The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of agreement or within 42 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 32. Further there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."*
12. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges in terms of proviso to section 18 of the Act which provides that where an allottee does not intend to withdraw from the project, they 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.

13. 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.
14. 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., 07.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
15. 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:

"(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;"*

16. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
17. On consideration of the documents available on record and submissions made by the parties, 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 allotment letter executed between the parties. It is a matter of fact that villa buyer's agreement was executed between the parties on 28.01.2013. As per the clause 31 of the buyer's agreement dated 28.01.2013, the possession of the booked unit was to be delivered within a period of 42 months from the date of execution of agreement or from the date of obtaining all the required sanctions and approval necessary for commencement of construction. In the present case, the date of commencement of construction is not on record so, the due date of possession is calculated from the date of execution of agreement i.e., 28.01.2013. Hence, the due date of possession comes out to be 28.01.2017 including grace period of 6 months as it is unqualified. Furthermore, the respondent's request for a grace period based on force majeure is hereby denied, as the reasons for such denial have been outlined above. Till date no occupation certificate has been obtained by the respondent. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject



unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period.

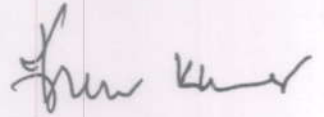
18. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainants are entitled to delay possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by complainants to the respondent from the due date of possession i.e., 28.01.2017 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
19. The respondent is also directed to handover possession of the subject unit allotted to the complainants within a period of 60 days after obtaining valid occupation certificate.

H. Directions of the authority

20. 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 complainants from the due date of possession i.e., 28.01.2017 till valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.



- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
 - iii. The respondent is directed to handover possession of the unit allotted to the complainants within a period of 60 days after completing the unit in terms of buyer's agreement and obtaining of occupation certificate and execute conveyance deed on payment of stamp duty charges by the allottee in terms of Section 17 of the Act.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 11.10% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(zb) of the Act.
 - v. The respondent shall not charge anything from the complainants, which is not the part of the buyer's agreement.
21. Complaint as well as applications, if any, stands disposed off accordingly.
22. File be consigned to registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2025