

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

Complaint no.	:	4045 of 2023
Date of Filing:		19.09.2023
Date of Decision:		23.05.2025

Vijay Sharma

**Address at:** R/o 841, Sector-9, Gurugram

**Complainant**

Versus

M/s Ansal Housing and Construction Limited  
**Corporate office:** 2F-AHCL, 2<sup>nd</sup> floor, Ansal  
Plaza, Sector-1, Vaishali, Ghaziabad (UP) -  
201010

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Gagan Sharma

Sh. Amandeep Kadyan

Advocate for the complainant

Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/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*.

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**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.N.	Particulars	Details
1.	Project name and location	"Ansal Heights", Sector 86 Gurugram
2.	Nature of project	Residential
3.	RERA registered/not registered	Not Registered
4.	DTPC license no. & validity status	License No. 48 of 2011 dated 29.05.2011
5.	Date of builder buyer agreement	11.12.2012 (page no. 29 of complaint)
6.	Unit no.	G-0604 (page 32 of complaint)
7.	Area admeasuring	Super Area 1360 sq. ft. (page 32 of complaint)
8.	Possession clause	<b>31</b> The Developer shall offer possession of the Unit any time, within a <b>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</b> subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances

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		as described in clause 32. Further, there shall be a grace period of <b>6 months allowed to the Developer over and above</b> the period of 42 months as above in offering the possession of the Unit. <i>(Emphasis supplied)</i>
9.	Due date of possession	11.12.2016  (42 months from the date of agreement i.e 11.12.2012 as the date of construction is not on record plus 6 months grace period allowed being unqualified)
10.	Endorsement letter	11.07.2013  (Page 49 of complaint)
11.	Total sale consideration	Rs.46,97,879/-  (Page 32 of complaint)
12.	Paid up amount	Rs.53,25,795/-  (as stated by the complainant at page 23 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession for fit out	29.12.2021  (Page 87 of complaint)

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
  - I. That in response to the advertisement of the project named Ansal Heights, 86 in Sector 86, Gurgaon by the respondent, the complainant, booked a 2 BHK, measuring 1360 sq. ft. in the said project, on 24.10.2011 with a booking amount of Rs. 6,00,000/- and total basic sale price of Rs. 60,11,069/- including taxes. Accordingly, a flat buyer's



agreement was executed on 11.12.2012 between the complainant and the respondent with copy of change of right on dated 11.07.2013.

- II. That the payments for the flat were construction linked as per the payment plan given at Annexure 'A' of the flat buyer's agreement and till 30.07.2017 an amount of Rs. 53,25,795/- including Rs. 40,429/- interest on delay of payments had been paid by the complainant.
- III. That according to clause 31 of flat buyer's agreement, the respondent were required to offer possession of the flat to the allottee within a period of 42 months from the date of the agreement.
- IV. That clause no 31 of the agreement is one sided and legally untenable because this clause shows that there could have been certain sanctions/approvals still pending to be obtained by the respondent at the time of execution of the flat buyer's agreement. A builder cannot accept any bookings of the flats unless he has received all the sanctions and approvals related to the development of the projects and thus, the time of offering possession cannot be related to the receipt of sanctions/approvals. Hence the period of completion of the project has to be taken as within 42 months from the date of execution of the agreement, 42 months being the outer limit. Secondly, the respondent has allowed himself a concession of 6 months over and above the period of 42 months. This clause is one sided. However, even after giving the benefit of 6 months concession to the respondent, the possession ought to have been offered latest by 01.12.2016.
- V. That even after accepting the one-sided clause of 6 months concession, the time limit of offering possession of the flat has gone past by more than 64 months. Hence, the complainant is within his rights to withdraw from the project in terms of Section 18(1) of the Act. The complainant is further entitled to claim the refund of amount paid





along with interest and compensation in terms of Section 19(4) of the Act.

- VI. That in terms of clause 24 of the agreement the respondent has specified 24% rate of interest in case of delay in payment.
- VII. That the complainant had paid almost 99% the amount but the respondent did not deliver the flat till date even passing 84 months and now sending mischievous demand letter without obtaining occupation certificate, thus, causing anxiety and mental harassment to the Complainant.

**C. Relief sought by the complainant:**

4. The complainant in the present complaint has seeking the following relief(s).
- (i) Direct the respondent to pay interest at the prescribed rate on the total amount deposited by the complainant till the date of payment within one month of the date order passed by the Authority and thereafter to pay interest on monthly basis by 10<sup>th</sup> of each month till the actual possession of the apartment to the complainant.
- (ii) Direct the respondent to adjust the delayed interest already paid by the complainant before issuing final demand.
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.

**D. Reply by the respondent.**

6. The complainant in the present complaint has filed an amended complaint and seeking delay possession charges. The respondent was directed to file reply of the amended complaint despite multiple opportunities for filing reply on 27.09.2024, 24.01.2025, 28.03.2025 it





failed to comply with the orders of the authority. Therefore, the authority observes that the reply earlier filed by the respondent in response to initial complaint shall be treated as response to modified claim and the matter is adjudicated accordingly.

7. The respondent has contested the complaint on the following grounds.
  - I. That the complainant had approached the answering respondent for booking a unit no. G-0604 in an upcoming project Ansal Heights, Sector-86, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 11.12.2012 was signed between the parties.
  - 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. The regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016.
  - III. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. The complainant cannot be allowed to take advantage of his own wrong.
  - IV. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2012 without coercion or any duress cannot be called in question today. The builder buyer agreement provides for a penalty in the event of a delay in giving possession. Clause 37 of the said agreement provides for Rs. 5/ sq. foot per month on super area for any delay in offering possession of the unit as mentioned in clause 31 of the agreement.
  - V. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities for the said project. The permit for environmental clearances for proposed group housing





project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondent had in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.

VI. That 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.

8. 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.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

10. 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**

11. 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.*

12. 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 objections raised by respondent:**

### **F.I Objection regarding jurisdiction of the complaint w.r.t the builder buyer agreement executed prior to coming into force of the Act.**

13. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the builder buyer's agreement was executed between the parties prior to the



enactment of the Act and the provision of the said Act cannot be applied retrospectively.

14. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 and which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing



*Committee and Select Committee, which submitted its detailed reports."*

15. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

#### **F.II Objection regarding force majeure conditions:**

17. 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 within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction whichever is later. Further there shall be grace period of 6 months over and above the said period. In the present case, the date of commencement of construction is not available on records. The date of execution of agreement is 11.12.2012 so, the due date of subject unit comes out to be 11.12.2016 including grace period of 6 months as it is unqualified. 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 ten 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 Complainant:**





- (i) **Direct the respondent to pay interest at the prescribed rate on the total amount deposited by the complainant till the date of payment within one month of the date order passed by the Authority and thereafter to pay interest on monthly basis by 10<sup>th</sup> of each month till the actual possession of the apartment to the complainant.**

18. The complainant intends 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."*

19. Clause 31 of the 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."*

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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, he shall be paid,

*Ad*





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.*

21. 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.
22. 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., 23.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
23. 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;"*

24. Therefore, interest on the delay payments from the complainant 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 complainant in case of delay possession charges.
25. 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 buyer's agreement executed between the parties. It is a matter of fact that buyer's agreement was executed between the parties on 11.12.2012. As per the clause 31 of the buyer's agreement dated 11.12.2012, the possession of the booked unit was to be delivered 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. Further there shall be grace period of 6 months over and above the said period. In the present case, the date of commencement of construction is not available on records. The date of execution of agreement is 11.12.2012 so, the due date of subject unit comes out to be 11.12.2016 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.

26. 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 complainant is 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 complainant to the respondent from the due date of possession i.e., 11.12.2016 till the valid 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.

**(ii) Direct the respondent to adjust the delayed interest already paid by the complainant before issuing final demand.**

27. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and thereafter the complainant is directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 30 days.

**H. Directions of the authority**


28. 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., 11.12.2016 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 10<sup>th</sup> of each succeeding month.
  - iii. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and thereafter the complainant is directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 30 days.
  - 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(za) of the Act.
29. Complaint as well as applications, if any, stands disposed off accordingly.
30. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.05.2025