



**HARERA**  
**GURUGRAM**

Complaint No. 3459 of 2023

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

Complaint no. : 3459 of 2023  
Date of filing : 01.08.2023  
Date of decision : 15.04.2025

Poonam Verma

**R/O:** H.no. 908, Sector 22B, Gurugram-  
122001

**Complainant**

**Versus**

M/S Ansal Housing Limited

**Registered office at:** 606, 6<sup>th</sup> floor, Indra  
Prakash, 21 Barakhamba Road, New Delhi-  
110001

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman  
Member**

**APPEARANCE:**

Sh. Himanshu Gautam (Advocate)  
Sh. Amandeep Kadyan (Advocate)

**Counsel for Complainant  
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:

Sno.	Heads	Information
1.	Project name and location	"Ansal Hub", Sector-83, Gurugram
2.	Project area	2.46875 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	87 of 2009 dated 30.12.2009 valid up to 29.12.2013
5.	Name of licensee	Smt. Mina Devi
6.	RERA registration details	Not registered
7.	Unit no.	FF-109 [pg.11 of complaint]
8.	Unit measuring	393 sq. ft. [pg. 11 of complaint]
9.	Date of allotment letter	23.11.2011 [pg. 11 of complaint]
10.	Date of sanction of building plans	11.09.2013
11.	Possession clause	26. <i>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</i>





		<p><i>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."</i></p> <p><i>(emphasis supplied)</i> <i>[pg. 19 of complaint]</i></p>
12.	Due date of possession	<p>11.09.2016</p> <p>[Note: Due date calculated from <b>date of sanction of building plans</b> i.e., 11.09.2013 being later.]</p>
13.	Basic sale consideration as per allotment letter	<p>₹ 27,11,700/-</p> <p>[pg. 28 of complaint]</p>
14.	Total Sale consideration as per customer ledger dated 17.08.2023 at pg. 29 of complaint	<p>₹ 35,07,465/-</p>
15.	Amount paid by the complainant as per customer ledger dated 17.08.2023 at pg. 32 of complaint	<p>₹ 24,92,077/-</p>
16.	Occupation certificate	Not yet obtained
17.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
  - a. That on 15.07.2011, the complainant Mrs. Poonam Verma booked a shop in the project named "**Ansals Hub 83**" in Sector 83, Gurugram. Accordingly, the complainant was allotted a shop in the said project bearing unit no. **SHOP-108** admeasuring 904 sq. ft. After revision in layout plan, the shop was divided into two shops i.e. **SHOP-108FF and SHOP-109FF both admeasuring 393 sq. ft.** Hence, Shop bearing unit no. 109FF admeasuring 393 sq. ft. Has been allowed to the complainant.



- b. That on 03.11.2011, Builder Buyer Agreement was entered into between the parties wherein as per clause 26, the developer should offer possession of unit within 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later. That after revision in layout plan, the respondent informed the complainant that the 904 sq. ft. area of the SHOP-108 has been reduced and divided into two shops i.e. SHOP-FF108 and SHOP-FF109 both admeasuring 393 sq. ft. and accordingly basic cost of both the shop has also been changed in the proportion of their areas.
- c. That out of the total cost of the said unit a sum of Rs. 24,92,077.73 /- was paid by the complainant to the respondent till the present date. That as per the builder buyer agreement, the committed date of offering possession was 03.11.2014 but even after paying more than 75% of total consideration, the respondent is still not offering the possession, which is illegal and arbitrary and breach of the Builder Buyer Agreement.
- d. That despite repeated calls and meetings with the respondents, no definite commitment was shown for timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainants. That repeated calls, meetings and correspondences with the respondent and multiple visits to know the actual construction status not only caused loss to the complainants in terms of time, money and energy but also caused mental agony to him.
- e. That the cause of action arose in favour of the Complainants and against the respondent from the date of booking of the said unit and it further arose when respondent failed/neglected to deliver possession of the said units within a stipulated time period. The





cause of action further arose when the respondent has not completed the said project with the assured facilities and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as the respondent has still not rectified his defects and not fulfilled his obligations as per the Builder Buyer's Agreement.

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

4. The complainant has sought following relief(s).
  - a. Direct the respondent to handover the physical possession of the subject unit along with interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.
  - b. Litigation cost-₹1,00,000/-.
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 respondents have contested the complaint on the following grounds.
  - a. 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 2011. 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.
  - b. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer



agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.

- c. 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 2023 and the cause of action accrue in 2015 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- d. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2011 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 35 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 30 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.
- e. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.
- f. That the Respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group





housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging the foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. 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.

- g. That the answering Respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering Respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. 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.
- h. 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.
- i. That the answering 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.

- j. That the answering Respondent has clearly provided in clause 35 the consequences that follow from delayed possession. It is submitted that the Complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.
- k. That the answering Respondent has not appreciated the fact that the downward spiral in property prices has propelled him to file a complaint before the HRERA, Gurugram.

7. 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.

**E. 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.

**E. 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.

**E. 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.

**F. Findings on the relief sought by the complainant.**

**F.I. Direct the respondent to handover the physical possession of the subject unit along with interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.**

12. In the present complaint, 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."*

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 sanction of building plans i.e., 11.09.2013 being later. Accordingly, the due date of possession comes out to be 11.09.2016.
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., 15.04.2025 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(za) 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 possession of the said unit was to be delivered within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later. Therefore, the due date of handing over possession comes out to be 11.09.2016. In the present case, the has not yet offered possession by the to the complainant. The respondent in its reply contended 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. The Authority after consideration of the same holds that





clause 31 does not provide for no compensation clause whereas clause 30 provides for obligation of developer to pay the allottee a compensation of ₹5 per sq. ft. for any delay in offering the possession. Accordingly, the said contention of the respondent is hereby declined by the Authority.

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 to it after adjusting amount already paid if any, from the due date of possession i.e., 11.09.2016 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. 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 respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10% p.a. w.e.f. 11.09.2016 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules.
23. 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.

**F.II. Litigation cost- ₹1,00,000/-**

24. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**G. 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. 11.09.2016 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier. The arrears of interest accrued so



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 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.
  - 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

(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 15.04.2025**