

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

Complaint no. : 1767 of 2024
Date of filing complaint: 14.05.2024
Date of Decision: 02.05.2025

Rajan Arora

R/O: B-3/22-B, Keshav Puram, Delhi-110035

Complainant

Versus

1. Ansal Housing Limited

Address: Ansal Plaza Mall, 2nd floor, Sector 1, Vaishali,
Ghaziabad, Uttar Pradesh-201010

2. Identify Buildtech Pvt. Ltd.

Address: 606, 6th Floor, Indra Prakash 21, Barakhamba
Road, Cetrul Delhi, Delhi - 110001

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Om Parkash Singh

Shri Amandeep Kadyan

None

Counsel for the Complainant
Counsel for the Respondent no. 1
Counsel for the Respondent no. 2

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 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 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.	Name of the project	Ansals Highland Park
2.	Project location	Sector 103, Gurugram, Haryana
3.	Nature of Project	Residential Group Housing Project
4.	DTCP License	32 of 2012 dated valid up to 11.04.2025
5.	RERA registration	16 of 2019 dated 01.04.2019 valid up to 30.05.2024
6.	Date of apartment buyer's agreement	01.06.2013 (As per page no. 30 of the complaint)
7.	Date of commencement of construction	15.12.2012 (As per customer ledger on page no. 55 of the complaint)
8.	Unit no.	PERTH-1001 (As per page no. 33 of the complaint)
9.	Unit area admeasuring	1762 sq. ft. (As per page no. 33 of the complaint)
10.	Possession clause	31. The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to the timely payment of all the dues by Buyer and subject

		to force majeure conditions 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 48 months as above in offering of unit.
11.	Due date of possession	01.12.2017 (Note: Due date to be calculated 48 months from the date of agreement i.e., 01.06.2013 being later plus grace period of 6 months)
12.	Total sale consideration	Rs.1,01,84,680/- (As per SOA dated 08.04.2024 on page no. 101 of the complaint)
13.	Amount paid by the complainant	Rs.91,46,783/- (As per SOA dated 08.04.2024 on page no 101 of the complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not Offered
16.	Offer for fit out	08.04.2024 (page 99 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -
 - I. That the complainant applied for allotment of flat bearing no. PERTH-1001 in group housing project of the respondents namely 'Ansal Highland Park' located in sector-113, Gurugram, Haryana vide application dated 15.06.2012 and deposited an amount of Rs. 8,00,000/-.
 - II. That the apartment buyer's agreement was executed between complainant and respondents on dated 01.06.2013 just to create a false belief that the

project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.

- III. That the total cost of the said flat was Rs 92,35,213/- and sum of Rs. 91,46,783/- have already been paid by the complainant in time bound manner.
- IV. That respondents were liable to hand over the possession of a said unit before 31.05.2017 as per clause 31 of apartment buyer's agreement but builder not offer the physical legal possession till date because project is incomplete and not getting the occupation certificate till date.
- V. That the builder in last 12 years, many time made false promises for possession of flat and current status of project still desolated and raw even not 40% completed builder breach the trust and agreement. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement.
- VI. That as the delivery of the apartment was due on 31.05.2017 which was prior to the coming into of force of the GST Act, 2016 i.e. 01.07.2017, it is submitted that the complainant is not liable to incur additional financial burden of GST due to the delay caused by the respondents. Therefore, the respondents should pay the GST on behalf of the complainant but just reversed builder collect the GST from complainant and enjoy the input credit as a bonus, this is also matter of investigation.
- VII. That the complainant has made so many requests through email and also visited the site and office of the respondents but the respondents have neither completed the construction nor applied for occupancy certificate as

well as did not offer the possession of the flat though a period of more than 12 years is going to be passed.

- VIII. That complainant wrote the mail again regarding current status of the project, occupation certificate and delay penalty charge physical possession and multiple issues but respondents not replying proper response to the above said query.
- IX. That the respondents sends the illegal offer of possession for fit outs along with demand of amount Rs. 10,37,897/- without getting occupation certificate. This practice used by builder guise of a biased, arbitrary and one sided. Extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.

C. Relief sought by the complainant.

4. The complainant has sought following relief:

- a. Direct the respondents to deliver immediate physical possession of the unit No. PERTH-1001 in a habitable condition along with all the promised amenities and specifications to the satisfaction of the complainant after obtaining a valid occupation certificate.
- b. Direct the respondents to pay delay interest on amount of Rs. 91,46,783/- paid by complainant as per the prescribed rate of interest from the promised date till the actual delivery of possession after adjusting any overdue outstanding.
- c. Direct the respondents not to cancel the allotment on account of non-payment of overdue outstanding until project is completed in all respect as agreed in the builder buyer agreement, occupancy certificate is obtained and peaceful possession is offered to the complainant.
- d. Direct the respondents to quash the settlement agreement.
- e. Direct the respondents to quash the VAT charges.

D. Reply by the respondent no. 1.

5. The respondent no. 1 contested the complaint on the following grounds:

- I. That the complainant had approached the answering respondent for booking a flat no. Perth 1001 in an upcoming project Ansal Highland Park, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 01.06.2013 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 2013 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.

6. 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. Reply by the respondent no. 2.

7. The present complaint was filed on 14.05.2024. The counsel for the respondent no. 2 neither appeared nor filed the reply in the complaint. Despite multiple opportunities for filing reply on 23.08.2024, 04.10.2024, 10.01.2025 it failed to comply with the orders of the authority. It shows that the respondent no. 2 was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondent no. 2 has nothing to say in the present matter and accordingly the authority proceeds with the case exparte against respondent no. 2.

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. 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 completed territorial jurisdiction to deal with the present complaint.

F. II Subject-matter jurisdiction

10. 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 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.

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 complainant at a later stage.

G. Finding on objections raised by the respondent no. 1

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

12. 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.
13. 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."

14. 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."

15. 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.

G.II Objection regarding force majeure conditions:

16. 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 48 months from the date of execution of agreement or within 48 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 15.12.2012. The date of execution of agreement is 01.06.2013. The due date of subject unit is calculated from the date of agreement being later which comes out to be 01.12.2017 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.

H. Findings on the relief sought by the complainant.

- a. Direct the respondents to deliver immediate physical possession of the unit No. PERTH-1001 in a habitable condition along with all the promised amenities and specifications to the satisfaction of the complainant after obtaining a valid occupation certificate.
- b. Direct the respondents to pay delay interest on amount of Rs. 91,46,783/- paid by complainant as per the prescribed rate of interest from the promised date till the actual delivery of possession after adjusting any overdue outstanding.

- c. Direct the respondents not to cancel the allotment on account of non-payment of overdue outstanding until project is completed in all respect as agreed in the builder buyer agreement, occupancy certificate is obtained and peaceful possession is offered to the complainant.

17. 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."

18. Clause 31 of the apartment 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 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to the timely payment of all the dues by Buyer and subject to force majeure conditions 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 48 months as above in offering of unit."

19. 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, 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.

20. 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.
21. 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., 02.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
22. 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;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% p.a. by the respondents/promoter which is the same as is being granted to the complainant in case of delay possession charges.

24. On consideration of the documents available on record and submissions made by the parties, 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 buyer's agreement executed between the parties. It is a matter of fact that buyer's agreement was executed between the parties on 01.06.2013. As per the clause 31 of the buyer's agreement dated 01.06.2013, the possession of the booked unit was to be delivered within a period of 48 months from the date of execution of agreement or within 48 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 15.12.2012 and the date of execution of agreement is 01.06.2013 so, the due date of subject unit is calculated from the date of execution of agreement being later which comes out to be 01.12.2017 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 respondents. The authority is of the considered view that there is delay on the part of the respondents 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.

25. 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 respondents are 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 respondents from the due date of possession i.e., 11.12.2016 till the 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.

26. The respondents are also directed to handover possession of the subject unit allotted to the complainant within a period of 60 days after obtaining valid occupation certificate and execute conveyance deed on payment of stamp duty charges by the allottee in terms of Section 17 of the Act.

d. Direct the respondents to quash the settlement agreement.

27. The above-mentioned relief sought by the complainant was not pressed by the complainant counsel during the arguments in the passage of hearing. The authority is of the view that the complainant counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

e. Direct the respondents to quash the VAT charges.

28. The promoter is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only. The respondents-promoter is directed to adjust the said amount, if charged from

the allottee with the dues payable by the allottee or refund the amount if no dues are payable by the allottee.

I. Directions of the Authority

29. 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):

- i. The respondents are 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., 01.12.2017 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 respondents are 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 respondents are directed to handover possession of the unit allotted to the complainant 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 respondents/promoter, which is the same rate of interest which the

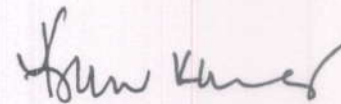
promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- v. The respondents shall not charge anything from the complainant, which is not the part of the buyer's agreement.

30. Complaint as well as applications, if any, stands disposed off accordingly.

31. File be consigned to registry.

Dated: 02.05.2025



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

