

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Date of order: 02.05.2025**

NAME OF THE BUILDER		ANSAL HOUSING LIMITED.	
PROJECT NAME		"ANSAL HUB 83"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3451/2023	Poonam Verma V/s Ansal Housing Limited	Sh. Himanshu Gautam (Advocate) Sh. Amandeep Kadyan (Advocate)
2.	CR/5854/2023	Anjali Khurana V/s Ansal Housing Limited	Sh. Himanshu Gautam (Advocate) Sh. Amandeep Kadyan (Advocate)

CORAM:

Sh. Arun Kumar

Chairman**ORDER**

1. This order shall dispose of the 2 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Hub 83" being developed by the same



respondent/promoter i.e., M/s Ansal Housing Limited. The terms and conditions of the buyer's agreement against the allotted units in the project of the respondent/builder and fulcrum of the issues involved in all the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Ansal Hub 83" situated in Sector 83, Gurugram, Haryana.
Project Area DTCP License No.	2.46 Acres 87 of 2009 dated 30.12.2009 valid upto 29.12.2013
RERA Registered	Not Registered
Possession Clause: - <i>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 or 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 Authorities, delay in grant of part/full completion (occupancy) certificate by the Government and/or any other public or competent authority or intervention of Statutory Authorities, or any other reason beyond the control of the Developer."</i>	
Occupation certificate: - Not obtained	



Sr. No	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Due Date of Possession	Total sale consideration and amount paid
1.	CR/3451/2023 Poonam Verma V/S Ansal Housing Limited DOF: 01.08.2023 Reply Filed On; 09.11.2023	FF-108 Admeasuring 393 sq. ft. (Page no. 30 of complaint)	23.11.2011 (Page no. 12 of the complaint)	23.11.2014 (Calculated from the date of agreement)	TSC: - Rs. 33,62,818/- AP: - Rs. 38,98,676/-
2.	CR/5854/2023 Anjali Khurana V/S Ansal Housing Limited DOF: 10.01.2024 Reply Filed On; 23.02.2024	FF-105 Admeasuring 514 sq. ft. (Page no. 14 of complaint)	09.07.2014 (Page no. 14 of the complaint)	09.07.2017 (Calculated from the date of agreement)	TSC: - Rs. 41,75,299/- AP: - Rs. 41,97,138/-

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/promoter and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.



5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/3451/2023 case titled as Poonam Verma V/s Ansal Housing Limited*** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire paid-up amount along with interest and others.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/3451/2023 case titled as Poonam Verma V/s Ansal Housing Limited

S.N.	Particulars	Details
1.	Name of the project	Ansals HUB 83, Sector 83, Gurugram.
2.	Project area	2.46 acres
3.	Nature of project	Commercial Colony
4.	DTCP License no.	87 of 2009 dated 30.12.2009 valid upto 29.12.2023
5.	Name of licensee	Mr. Virender Singh & Mrs Meena Devi c/o Aakansha Infrastructure Pvt. Ltd.



6.	Rera Registration details	Not registered
7.	Date of booking	15.07.2011 (Page 13 of complaint)
8.	Unit no.	108 (page 12 of complaint)
9.	Area admeasuring	904.18 sq. ft. (Page no. 12 of complaint)
10.	Endorsement of unit	FF-108, 393 sq. ft. (page no. 30 of complaint)
11.	Date of allotment/ agreement to sell	23.11.2011 (Page 12 of complaint)
12.	Date of sanction of building plans	Cannot be ascertained
13.	Possession clause	<i>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.....</i>
14.	Due date of possession	23.11.2014 (calculated from date of allotment)
15.	Total sale consideration	Rs. 33,62,818/- (As per customer ledger on Page 31 of complaint)
16.	Paid up amount	Rs. 38,98,676/- (as per customer ledger on page 33 of complaint)
17.	Occupation certificate	Not obtained

18.	Offer of possession	Not offered
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B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. That on 15.07.2011, the complainant Mrs. Poonam Verma booked a shop in the project named "Ansals Hub 83" in Sector 83, Gurugram.
 - II. That the complainant was allotted a shop in the said project bearing unit no. SHOP-108 admeasuring 904.18 sq. ft.
 - III. 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.
 - IV. That in October 2013, the respondent informed the complainant that the unit no. of the said shop has been changed to SHOP-FF108 from SHOP-108 and the area of the said shop has also been reduced to 393 sq. ft. from 904 sq. ft. and accordingly basic cost of the shop has also been reduced.
 - V. That as per the builder buyer agreement, the committed date of offering the possession was 03.11.2014 but even after payment of more than 75% of total consideration, the respondent is still not offering the possession. Moreover instead of offering possession, the respondent suspended the shop, which is illegal and arbitrary and breach of the builder buyer agreement.
 - VI. That despite repeated calls and meetings with the respondent, 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 complainant.

VII. That repeated calls, meetings and correspondences with the respondent and multiple visits to know the actual construction status not only caused loss to the complainant in terms of time, money and energy but also caused mental agony to him.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
 - a. Direct the respondent to pay interest for every month of delay @24% p.a. since 03.11.2014 as per provisions of clause 2(za) and as per section as 18(1) of the Real Estate and Regulation and Development Act, 2016.
 - b. Direct the respondent to complete the project in expeditious manner and to offer the possession of the unit.
10. On the date of hearing, the authority explained to the respondent /promoter on the contravention 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

11. The respondent contested the complaint on the following grounds: -
 - I. That the complainant had approached the answering respondent for booking a unit no. 109FF in an upcoming project Ansal Hub, Sector-83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 03.11.2011 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 2015 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 34 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.
- 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.

12. 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 these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

14. 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

15. 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.

16. 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.

F. Findings on the objections raised by the respondent

F.I. Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

17. The respondent has contended that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will 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 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."

18. 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."

19. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the 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, statutes, instructions, directions issued 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:

20. 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. In the present matter the allotment was executed on dated 23.11.2011 and as per the possession clause 26 of the allotment the respondent-developer proposes to handover the possession of the allotted unit within a period of 36 months from the date of sanction of building plans or execution of allotment letter, whichever is later. In the present case, the date of sanction of building plan is not available therefore, the due date is calculated from the date of allotment letter. So, the due date of subject unit comes out to be 23.11.2014. 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. Findings on the relief sought by the complainant.

- a. Direct the respondent to pay interest for every month of delay @24% p.a. since 03.11.2014 as per provisions of clause 2(z) and as per section 18(1) of the Real Estate and Regulation and Development Act, 2016.
- b. Direct the respondent to complete the project in expeditious manner and to offer the possession of the unit.

21. 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."

22. Clause 26 of the allotment letter provides the time period of handing over possession and the same 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 or 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 Authorities, delay in grant of part/full completion (occupancy) certificate by the Government and/or any other public or competent authority or intervention of Statutory Authorities, or any other reason beyond the control of the Developer."

23. **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.

24. 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.

25. 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.
26. 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. 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;"*

27. 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.
28. 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/allotment letter duly executed between the parties. It is a matter of fact that allotment letter duly executed between the parties on 23.11.2011. As per the clause 26 of the allotment letter dated 23.11.2011, the possession of the booked unit was to be delivered within a period of 36 months from the date of sanction of building plans or execution of allotment letter, whichever is later. In the present case, the date of sanction of building plan is not available therefore, the due date is calculated from the date of allotment letter. So, the due date of subject unit comes out to be 23.11.2014. 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.

29. 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., 23.11.2014 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.

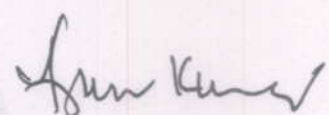
30. The respondent is also directed to handover possession of the subject unit allotted to the complainant within a period of 60 days after obtaining valid occupation certificate.
31. The Authority observes that in the present complaint, it is evident that Ansal Housing Limited executed the agreement with the complainant and received consideration towards the same, for which receipts have been issued. Moreover, the counsel for the respondent appeared and stated that Samyak Project Pvt. Ltd. is only a landowner in the said project. In view thereof, Ansal Housing Limited is held liable.

H. Directions of the authority

32. 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 respondent is directed (in all the above mentioned complaints) to pay interest to the complainant (s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession (as detailed in para 3 of this order) 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.
 - ii. The arrears of such interest accrued from due date of possession shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.

- iii. The respondent is also directed to handover possession of the subject unit allotted to the complainant within a period of 60 days after obtaining valid occupation certificate.
 - iv. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoters would be liable to pay 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 to charge anything which is not part of allotment letter/buyer's agreement.
33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
34. Complaint stands disposed of.
35. File be consigned to registry.

Dated: 02.05.2025



(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram