


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

Complaint no. :	1549 of 2024
Date of filing complaint:	29.04.2024
Date of decision	30.05.2025

1. Renu Kaushik**2. Rahul Kaushik**R/o: Flat No. 373, Sector-3, Pocket & 2, DDA Flats,
Dwarka, New Delhi-110075**Complainants**
Versus**M/s Ansal Housing and Construction Limited**Regd. Office: 15-UGF, Indraprakash, 21, Barakhamba
Road, New Delhi-110001**Respondent****CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Sanjeev Kumar Sharma (Advocate)

Complainants

Sh. Amandeep Kadyan (Advocate)

Respondent**ORDER**

1. The present complaint dated 04.07.2023 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 to the allottees as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Estella", Sector-103, Manesar, Gurugram
2.	Total area of the project	15.743 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no.	17 of 2011 dated 08.03.2011
5.	Registered/not registered	Not registered
6.	Unit no.	L-1202 A [pg. 25 of complaint]
7.	Area of the unit	1725 sq. ft. [pg. 25 of complaint]
8.	Date of execution of BBA	30.05.2012 [Pg. 20 of complaint]
9.	Possession clause	Clause 30. <i>30. The Developer shall offer possession of the Unit any time within a period of 36 months from the date of obtaining all the required sanctions and approval for 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 31. Further, there shall be a grace period of 6 months allowed to Developer over and above the period of 36 months as above in offering the possession of the Unit.</i>



		(Emphasis supplied) [Page 32 of complaint]
10.	Due date of possession	30.11.2015 (Note: 36 months from date of BBA i.e., 04.08.2018 as the date of start of construction is not known + 6 months grace period is allowed unconditionally)
11.	Sale consideration	Rs.50,02,500/- [Page 25 of complaint]
12.	Total amount paid by the complainant	Rs. 59,28,854/- [As per receipts at page 43-48 of complaint]
13.	Offer of possession	Not offered
14.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in their complaint:
 - a. Upon the representation by the respondent and advertisement done in said on behalf the respondent was to construct and develop residential group housing colony namely "Estella" and piece & parcel of land admeasuring 15.743 acres located/situated in the revenue estate Village Dhanwapur & Tikampur, Sector 103, Gurgaon, Haryana for which the respondent has obtained licence dated 08.03.2011 bearing licence no. 17 of 2011 from DGTCP.
 - b. The original allottee i.e. Mr. Faisal Rafi booked a residential flat/unit No. L - 1202 A, on 08.01.2011, having tentative area 1725 sq. ft. and



paid an amount of Rs. 16,33,507/- to the developer/builder till 25.05.2011.

- c. As per letter dated 13.02.2012 i.e. (request for change in right to purchase) the same flat No. L-1202A was transferred from original allottee i.e. Mr. Faisal Rafi to complainant i.e. Mrs. Renu Kaushik & Rahul Kaushik on the same terms & conditions. The transfer letter was issued to complainant by the developer/respondent on 22.02.2012 and an amount of Rs. 16,33,507/- credited in the complainant's name which was paid by the original allottee i.e. Mr. Faisal Rafi.
- d. The apartment buyer's agreement was executed on 30.05.2012 between the both parties i.e. complainant and respondent wherein the total sale consideration of Rs. 50,02,500 of the said unit has been provided to the complainants.
- e. As per clause 30 of the apartment buyer's agreement, the physical possession of the flat/unit in question was to be handed over within 36 months and with grace period of 6 months from the date of execution of the apartment buyer agreement i.e. by November 2015, however, the construction work was very far away.
- f. The complainant has made a total payment of Rs. 59,28,854/- as and when demanded by the respondent without any delay. The complainant entered into a tri-partite agreement with respondent i.e. M/s. Ansal Housing & Construction Ltd. and the Housing

Development Finance Corporation Limited for finance of the amount against instalment to be paid to the respondent.

- g. The complainant after an exorbitant delay of 8.4 years, despite making payment of the requisite amount, the complainant has not been offered possession of the unit in question even till today and therefore, the complainant has approached the Hon'ble Authority and filed a complaint relating to issue handover the possession of said unit and along with delay of possession charges, by invoking the jurisdiction of this Hon'ble Authority under section 18.

C. Relief sought by the complainant:

4. The complainant is seeking the following relief:

- a. Direct the respondent to pay interest every month of delay at prevailing rate of interest as per the RERA Act- Rs. 53,91,221/- @ 10.85% per month interest Rs. 53,607/-.

5. On the date of hearing, the authority explained to the respondent /promoter about 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:

6. The respondent contested the complaint on the following grounds:-

- a. The present complaint is not maintainable as this Hon'ble Authority has no jurisdiction to hear the cases of paying a penalty on the existing deposit of the amount with the answering respondent once the builder buyer agreement already provides for such an exigency.

- b. The complainants had approached the answering respondent for booking a flat no. L 1202A in an upcoming project Estella, Sector 103, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 30.05.2012 was signed between the parties.
- c. 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 2012. 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.
- d. 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.
- e. 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 2024 and the cause of action accrue on 30.05.2016 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.
- f. 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. 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.

- g. 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.
- h. 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.

- i. 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. 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.
- j. The respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. 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.
- k. Respondent has clearly provided in clause 35 the consequences that follow from delayed possession. The complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.

- l. The delay has been occasioned on account of force majeure events and the same has been regularly intimated to the complainant. It is however submitted that the reading of the provisions under section 19(6) of the RERA, 2016 are erroneous. The delay has not been occasioned on account of events beyond the control of the answering respondent. The construction is on-going and there has been significant progress made after with every passing year and is nearing completion. The averments made in the reply above are reiterated. It is submitted that admittedly the cause of action accrue in the year 2017 in that event the complaint is clearly barred by limitation. Further, GST charges and government taxes have to be borne by the complainant and not the developer as the same has been expressly provided for in the builder buyer agreement. Therefore, it is wrong to pray for shifting the onus of payment of governmental charges onto the developer by virtue of the current complaint. The legal precedents relied upon by the complainant do not apply to facts of the present being differential in nature.
- m. The respondent has not appreciated the fact that the downward spiral in property prices has propelled him to file a complaint before the HRERA, Gurugram.
- n. In the interest of justice and under the cited circumstances, this Hon'ble Authority may graciously be pleased to dismiss the complaint as the same is based on false and vexatious grounds with costs.



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 these undisputed documents and submissions made by the complainants-allottees.

E. Jurisdiction of the authority:

8. The authority observed 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purpose with offices situated in Gurugram. 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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;

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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.

F. Finding on objections raised by the respondent

F.I Objections regarding Force Majeure

12. 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 buyer's agreement was executed on dated 30.05.2012 and as per the possession clause 30 of the buyer's agreement the respondent-developer proposes to handover the possession of the allotted unit within a period of 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Further there shall be a grace period of 6 months above the period of 6 months. In the present case, the date of commencement of construction is not known therefore, due date is calculated from the date of execution of agreement i.e., 30.05.2012 so, the due date of subject unit comes out to be 30.11.2015 including the grace period of 6 months. The events such as various orders by Punjab



and Haryana High Court were prior to execution of agreement and NGT ban and demonetization were for a shorter duration of time and were not continuous as there is a delay of more than 9 years. Even today no occupation certificate has been received by the respondent. Therefore, said plea of the respondent is devoid of merit.

13. 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 (30.11.2015) 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. Hence, the plea taken by the respondent stands rejected.

G. Findings of the authority on relief sought by the complainant:

G.I Direct the respondent to pay interest every month of delay at prevailing rate of interest as per the RERA Act- Rs. 53,91,221/- @ 10.85% per month interest Rs. 53,607/-.

14. The complainants booked a unit L-1201 A in the project of the respondent namely, "Estella" admeasuring super area of 1725 sq. ft. for an agreed sale consideration of Rs. 50,02,500/- against which complainant allegedly paid an amount of Rs. 59,28,854/- and the respondent has failed to hand over the physical possession till date. That the complainants intend to continue with the project and is seeking delayed possession charges against the paid-up amount as





provided under the 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, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

(Emphasis supplied)

15. In the present complaint, the complainant is seeking delayed possession charges along with interest on the amount paid. Clause 31 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

The Developer shall offer possession of the Unit any time, within a period of 36 months from the date of execution of this Agreement or within 36 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 36 months as above in offering the possession of the Unit.

16. The buyer's agreement was executed between the parties on 30.05.2012. As per possession clause 31 of the agreement, the promoter has proposed to handover the possession within a period of 36 months from the date of execution of this agreement or within 36

months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The due date of possession is calculated from the date of execution of agreement (in absence of date of commencement of construction on record) i.e., 30.05.2012. The period of 36 months expired on 30.05.2015. Since in the present matter the agreement incorporates unqualified reason for grace period / extended period of 6 months in the possession clause accordingly, the grace period of 6 month is allowed to the promoter being unqualified. Hence, the due date comes out to be 30.11.2015.

17. **Admissibility of delay possession charges at prescribed rate of interest:** 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. 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.

18. The legislature in its wisdom in the subordinate legislation under 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.

19. 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., 30.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 11.10%.

20. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(z) 'interest' means the rates of interest payable by the promoter or the allottees, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default;

(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

21. On consideration of the documents available on record and submissions made regarding contravention of 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 builder buyer agreement. That the BBA was executed with original allottee on 30.05.2012. The due date of possession comes





out as 30.11.2015 (3 months from date of execution of agreement + 6 months grace period is allowed unconditionally). The respondent did not offer possession of the subject unit on time. It is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the builder 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. As such the allottee is liable for interest for every month of delay from due date of possession i.e., 30.11.2015 till offer of possession plus 2 months or actual handover whichever is earlier after obtaining the occupation certificate from the competent authority, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.

H. Directions of the authority


22. 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 interest to the complainant against the paid-up amount of Rs 59,02,500/- at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 30.11.2015 till the date of offer of possession plus two months after obtaining the occupation certificate or actual handing over possession whichever is earlier, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.

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- b. The respondent is directed to offer the valid offer of possession of the allotted unit within 2 months after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- c. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period
- d. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.05.2025