BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4794 of 2024**
Date of filing	:	**04.10.2024**
Date of decision	:	**09.09.2025**

Aman Mathur
R/o: 8, Income Tax Colony-1, Jagatpura Road, Malviya Nagar, Jaipur

Complainant

Versus

M/s Ansal Housing Ltd. *(Formerly known as Ansal Housing & Construction Ltd.)*
Regd. Office: 2nd floor, Ansal Plaza, Sector 1, near Vaishali Metro Station, Vaishali, Ghaziabad, UP-201010

Respondent

CORAM:	
Shri Arun Kumar	**Chairperson**
Shri Ashok Sangwan	**Member**
APPEARANCE:	
Sh. Himanshu Gautam (Advocate)	**Counsel for Complainant**
Sh. Amandeep Kadyan (Advocate)	**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 complainants, 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.	Office-711 [pg. 35 of complaint]
8.	Unit measuring	569 sq. ft. [pg. 35 of complaint]
9.	Date of allotment letter in favour of original allottee	10.12.2014 [pg. 35 of complaint]
10.	Endorsement letter	18.11.2016 [pg. 53 of complaint]
11.	Date of sanction of building plans	11.09.2013
12.	Possession clause	**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." *(emphasis supplied)* *[pg. 42 of complaint]*
13.	Due date of possession	10.12.2017 [Note: Due date calculated from ***date of allotment letter*** being later.]
14.	Sale consideration as per allotment letter	₹30,72,600/- [pg. 35 of complaint]
15.	Amount paid by the complainant	₹10,84,326/-
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 in 2014 "M/s Ansal Housing & Construction Ltd." was marketing and making publicity for bookings of its ongoing commercial project named "Ansals HUB 83" situated in Sector 83, Gurugram (Haryana) for construction of shops & offices. The construction activity had already started on the project.

   b. That based on the marketing and publicity one of the applicants Mr. Gaurov Roy applied for booking a office space on dated. 31.10.2014 in the ongoing project "Ansals HUB 83", Sector 83, Gurugram (Haryana). In response M/s Ansal Housing & Construction Ltd. issued a letter dated. 10.12.2014 addressed to Mr. Gaurav Roy informing him that an office space unit No. 711 has been allotted to him measuring 569.00 sq. ft. (52.86 Sqm) @ ₹5750/-. Accordingly, the gross payable amount worked out to ₹32,71,750/- and after allowing a discount of ₹1,99,150/- the final basic price of the unit was calculated as ₹30,72,600/-.

c. That at the time of booking of the said unit Mr. Gaurav Roy deposited ₹3,62,000 & ₹2,00,000/- and "M/s Ansal Housing and Construction Ltd. "issued an acknowledgement money receipt bearing No. 593281 dated. 31.10.2014 and No. 594447 dated. 14.11.2014 respectively. Subsequently, the developer M/s Ansal Housing & Construction Ltd. Issued a letter of Mr. Gaurov Roy bearing No. 253976/3133 dated 05.01.2015 requesting him to deposit ₹5,85,865.72/- latest by 29.01.2015.

d. Therefore, in total Mr. Gaurav Roy deposited ₹3,62,000/-, ₹2,00,000/- & ₹5,22,326/- i.e., total ₹10,84,326/- which works out to approx. 30 % of the total cost of the unit which is ₹35,90,276/- (including service tax). It is relevant to mention here that the payment plan opted by Mr. Gaurav Roy was – PLP (Possession link plan) according to which 30% payment was to be paid up to the allotment and remaining 70% to be paid at the time of physical handing over of the possession and hence the criteria of making 30 % payment was met.

e. That after allotment of the office unit No.-711 M/s Ansal Housing & Construction Ltd. issued a letter dated. 14.02.2015 enclosing a set of allotment letter (containing 66 clauses) with a request to sign on each and every page in token of acceptance of the terms and conditions and return it back to the developer for signatures of his authorized signatory. On getting signed by both the parties - the allottee and the developer, the terms and conditions as mentioned in the allotment letter came into force and the allotment of the unit became confirmed (as mentioned in the form of provisional booking dated. 31.10.2014.

f. That later on Mr. Gaurav Roy sold the said office space unit No. 711 to Mr. Aman Mathur and all legal documentation in this regard was executed as required under the rules. The prescribed form of application for change in right to purchase a property was filled and signed by both the existing owner – Mr. Gaurov Roy and the transferee – Mr. Aman Mathur on dated. 30.10.2016, wherein it is specified that Mr. Aman Mathur has paid the full consideration amount to Mr. Gaurov Roy i.e., ₹10,84,326/- and that Mr. Gaurov Roy had received the said amount which he had earlier deposited with M/s Ansal Housing & Construction Ltd. The bond of indemnity (seller) and the bond of indemnity (Buyer) was also executed on 20.10.2016 on required stamp paper. Considering that the legal documentation between Mr. Gaurav Roy and Mr. Aman Mathur has been completed, M/s Ansal Housing & Construction Ltd. issued a letter dated. 18.11.2016 mentioning that the office space unit no. 711 measuring 569.00 sq. ft. allotted to Mr. Gaurov Roy stands transferred to Mr. Aman Mathur and the amount of ₹10,84,326/- stands credited in the name of Mr. Aman Mathur.

g. That as per clause no. 26 of the allotment letter the developer was supposed to offer the possession of the said unit anytime within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter whichever is later. Now, since the allotment letter was issued on 10.12.2014, the possession was supposed to be handed over within 36 months or latest by 10.12.2017. This proves deficiency on the part of the developer.

h. That the delay in offering the possession of the said unit attracts the provisions contained in clause no.30 of the allotment letter for imposing penalty on the developer. That it is also pointed out that the developer M/s Ansal Housing & Construction Ltd. has constructed a column in the office space unit no. 711 thereby reducing the carpet area. It is therefore requested that the carpet area should be re-measured and the payable amount should be re-calculated on the existing rates.

C. **Relief sought by the complainant**

4. The complainant has sought the following reliefs:

   a. Direct the respondent to deliver the possession of the office unit 711

   b. Direct the respondent to pay interest admissible on Rs. 10.84,326/- from 10.12.2017 onwards.

   c. Litigation cost

   d. Kindly allow re-measurement of the carpet area of the unit.

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 respondent no. 1 has contested the complaint on the following grounds.

   a. That the complainants had approached the answering Respondent for booking a shop no. office-711 in an upcoming project Ansal Boulevard, Sector 83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an allotment letter dated 14.02.2015 was signed between the parties.

   b. 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 2018. 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.

   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 2022 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 2018 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 34 of the said agreement provides for ₹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 8 years after it was agreed upon by both parties.

e. 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. 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.

f. 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. That the answering Respondent has clearly provided in clause 34 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.

g. That admittedly, the Complainant had signed and agreed on allotment letter dated 14.06.2018. That perusal of the said agreement would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd. is also a party to the said agreement.

h. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd. That in an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the answering Respondent for completion of the project and the Respondent has no locus or say in the present project.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on

the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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 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.*

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 complainants.**

F.I. Direct the respondent to deliver the possession of the office unit 711.

F.II. Direct the respondent to pay interest admissible on Rs. 10.84,326/- from 10.12.2017 onwards.

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 allotment i.e.,

10.12.2014 being later. Accordingly, the due date of possession comes out to be 10.12.2017.

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., 09.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

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., 10.85% 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 10.12.2017. In the present case, the respondent has not yet offered possession of the subject unit to the complainant.

21. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the allotment letter 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, from the due date of possession i.e., 10.12.2017 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., 10.85% 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. 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 form the date of obtaining of occupation certificate and thereafter, the complainant is obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.

F.III. Litigation cost

F.IV. Kindly allow re-measurement of the carpet area of the unit

23. The complainant is also seeking relief w.r.t. litigation cost. It is observed that the 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.*** 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation 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 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.

G. Directions of the authority

24. 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 at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 10.12.2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.

  b. The respondent is directed to hand over the actual physical possession of the unit to the complainant within 2 months after obtaining occupation certificate.

  c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

  d. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

e. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.

f. The respondent shall not charge anything which is not the part of BBA.

25. Complaint stands disposed of.

26. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.09.2025