BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**1064 of 2023**
Date of complaint:	**20.03.2023**
Date of order:	**14.08.2026**

1. Samir Chitkara
2. Suman Chitkara.
Both R/o: H.no: 3040, Sector A, Vasant Kunj, New Delhi-110070 — **Complainants**

Versus

M/s Ansal Phalak Infrastructure Pvt. Ltd.
Registered Office: 115, Ansal Bhawan, 16 K.G.Marg, New Delhi-110001. — **Respondent**

CORAM:

Shri Arun Kumar — **Chairman**

APPEARANCE:

Sh. Anshul Yadav (Advocate) — Complainants
Sh. Tushar Bahmani — Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 thereunder or to the allottee 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:

S.No.	Particulars	Details
1.	Name of the project	Esencia, Sector 67, Gurugram.
2.	Nature of project	Group Housing Colony
3.	Project area	2.156 acres
4.	DTCP license no.	26 of 2012 issued on 27.03.2012 valid upto 26.03.2018
5.	Name of licensee	Ansal Properties & Infrastructure Ltd.
6.	RERA Registered/ not registered	Registered vide no. 313 of 2017 dated 17.10.2017
7.	Allotment Letter	06.08.2012 (Page no. 29 of complaint)
8.	Agreement	21.08.2012 (page no. 35 of complaint)
9.	Tripartite agreement	07.01.2013 (Page no. 101 of complaint)
10.	Unit no.	Sovereign Floors Esencia D1561 SF (page no. 39 of complaint)
11.	Area admeasuring	1572 sq. ft. (page no. 39 of complaint)
12.	Possession clause	***5. Possession of Floor*** *5.1 Subject to Clause 5.2 infra and further subject to all the buyers of the Floors in the Residential Colony making timely payment, the Company shall endeavor to complete the development of Residential Colony and the Floor as far as possible within* ***36 months with an extended period of 6 months from the date of execution of this Floor buyer agreement*** *subject to the receipt of requisite building/ revised building plans/ other approvals & ....*

13.	Due date of possession	21.02.2016 (36 months from the date of agreement including grace period of 6 months being unqualified)
14.	Total sale consideration	Rs.1,25,07,700/- (as per payment plan on page no. 97 of complaint)
15.	Amount paid	Rs.1,04,86,215/- (as alleged by complainants) Rs.24,69,412/- (as per the payment receipts on record)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

I. That the complainants booked a residential floor in Sovereign Floors, Esencia, Sector 67, Gurugram, bearing No. D1561SF, admeasuring approximately 1,572 sq. ft. The complainants, namely Sh. Samir Chitkara and Smt. Suman Chitkara, have nominated Sh. Nitin Bali, R/o H. No. B-19A, third floor, Kalkaji, South Delhi – 110019, through a Special Power of Attorney to file and pursue the present matter on their behalf.

II. That the complainants, based on the promises made by the respondent, applied to the company for allotment of a unit in the said project, and an allotment letter dated 06.08.2012 was executed between the complainants and the respondent. Pursuant thereto, the respondent allotted a unit bearing No. D1561SF, admeasuring approximately 1,572 sq. ft., in the said complex.

III. That at the time of the aforesaid allotment, the complainants were required to pay an amount of Rs. 12,16,462/- through cheque no. 475536 dated 04.08.2012, which was to be treated as the booking amount for the aforesaid unit. The respondent acknowledged the said payment by issuing a payment acknowledgement receipt in the names of the complainants dated 06.08.2012.

IV. That on 06.08.2012, the builder issued a duly signed allotment letter to the complainants in respect of the aforesaid unit, subject to the fulfilment of the terms and conditions contained in the application form. Simultaneously, an agreement to sell, which was pre-drafted by the builder, was executed between the complainants and the respondent on 21.08.2012.

V. That, at the time of execution of the said agreement to sell, the complainants availed a home loan from Indiabulls Housing Finance Ltd. (hereinafter referred to as "IHFL") towards the balance amount payable for the said unit. IHFL was to disburse the loan amount directly to the respondent from time to time, as and when demanded by the respondent. The complainants applied for a home loan of Rs. 70,00,000/-.

VI. That the respondent failed to adhere to the promises and commitments made under the agreement to sell and delayed the construction of the project. The complainants, being vigilant purchasers, enquired about the progress of construction at the project site. However, in an attempt to silence the complainants and conceal its lapses, the respondent raised an unwarranted demand for payment. As per the agreement to sell, the said payment was payable only upon completion of the structure. Despite being fully aware of the delay in construction of the said project, the respondent, with an intention to deceive the complainants, raised the said demand prematurely.

VII. That the complainants have made all payments in a timely manner, as and when demanded by the builder, in accordance with the terms and conditions agreed upon between the parties at the time of execution of the said agreement to sell.

VIII. That the complainants have made a total payment of Rs.1,04,86,215/- from the time of booking and execution of the builder-buyer agreement till date.

IX. That, as per clause 5.1 of the terms and conditions of the said buyer agreement, relating to the possession of the floor, the respondent had promised to deliver possession of the said unit to the complainants within 36 months from the date of execution of the said agreement.

X. That the complainants have made all payments in a timely manner, as and when demanded by the respondent. However, the respondent has failed to fulfil the promises and commitments made under the terms and conditions of the said agreement. The respondent failed to deliver possession of the said unit within the stipulated period of 36 months, along with the additional grace period of 6 months, which expired on 21.02.2016.

XI. That the said builder has been alleged to have committed fraud and made misrepresentations before various forums. One such allegation is that the builder has not yet deposited the EDC and IDC charges with the appropriate government authorities, despite having already received the said amounts from the complainants.

XII. That the complainants, time and again, requested the respondent to hand over possession of the said dwelling unit, as promised at the time of execution of the said agreement, and to adjust the penalty payable by the builder towards the delay in completion of the project. However, the respondent, being an affluent and influential player in the real estate sector, chose neither to respond to nor to take any action upon the said requests. The officials of the respondent repeatedly assured the complainants that possession would be handed over within the stipulated time and that the construction was progressing at a satisfactory pace. Due to their professional obligations, the complainants generally had limited time to follow up on such issues. Taking advantage of the same, the respondent started harassing the complainants by issuing false and baseless letters, including demands for payment. Despite this, the complainants repeatedly requested the respondent to hold meetings to resolve the issue; however, all efforts made by the complainants proved futile.

XIII. That the respondent has not yet offered possession of the said unit, and the same remains far from complete. As per the commitment made by the builder, the construction was to be completed by February 2016. However, despite a delay of more than six years, the respondent has neither completed the construction nor obtained the Occupation Certificate from the concerned authority.

XIV. That all the requests and representations made by the complainants to the respondent for handing over possession of the said dwelling unit fell on deaf ears. The unwarranted conduct of the officials of the respondent has caused considerable mental agony and harassment to the complainants. When, despite all efforts made by the complainants, no concrete action was taken by the respondent, the complainants were left with no other option but to approach the Authority. Hence, this present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief:
   I. Direct the respondent to pay delay interest for the period of delay of more than 6 years till the handover of possession (calculated @10.30% per annum) of the amount of Rs. 64,80,480/-, and additional delay compensation till the time of actual realisation of the amount.
   II. Direct the respondent to pay a sum of Rs.30,000/- as cost of litigation/present proceedings to the complainants.
   III. Directing the respondent to pay a sum of Rs. 5,00,000/- for the harassment and mental agony suffered by the complainants.

5. The Authority issued a notice dated 28.03.2023 of the complaint to the respondent by speed post and also on the given email address at advsachinbali@gmail.com,ansalapireraharyana@gmail.com,ans.dagar@gmail.com. The delivery reports have been placed in the file. Despite service of notice through email, the respondent preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the Authority proceeded the matter ex-prate against the respondent vide order dated 22.08.2025. On 14.08.2026 Sh. Tushar Bahmani (Advocate) appeared before the

Authority and has placed on record only memo of appearance on behalf of respondent.

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 those undisputed documents and oral as well as written submissions made by the complainants.

E. Jurisdiction of the Authority.

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11....*** *(4) 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.*

10. 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 pay delay interest for the period of delay of more than 6 years till the handover of possession (calculated @10.30% per annum) of the amount of Rs. 64,80,480/-, and additional delay compensation till the time of actual realisation of the amount.

11. The complainants booked a unit in the project of the respondent, namely, Esencia, Sector 67, Gurugram. A builder-buyer agreement was executed between the parties on 21.08.2012, pursuant to which unit no. Sovereign Floors Esencia D1561SF admeasuring 1572 sq. ft., was allotted to the complainants for a total sale consideration of Rs.1,25,07,700/-.

12. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by her as provided under the proviso to Section 18(1) of the Act which 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 5 of the buyer's agreement (in short, the agreement) provides the time period for handing over possession and the same is reproduced below:

> *"5. Subject to Clause 5.2 infra and further subject to all the buyers of the Floors in the Residential Colony making timely payment, the Company shall endeavor to complete the development of Residential Colony and the Floor as far as possible within **36 months with an extended period of 6 months from the date of execution of this Floor buyer agreement** subject to the receipt of requisite building/ revised building plans/ other approvals &..........)."*

14. **Due date of handing over possession:** As per clause 5 of the buyer's agreement dated 21.08.2012 the possession of the subject unit was to be offered within 36 months with an extended grace period of 6 months from the

date of signing of the agreement. Therefore, the due date of possession comes out to be 21.02.2016 calculated from the date of buyer's agreement inclusive of six months grace period being unqualified.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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%.:*
> *(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.*

16. 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.

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., 14.08.2026 is **8.80%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%.**

18. 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;"*

19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to them 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 BBA, the possession of the subject unit was to be delivered by 21.08.2015. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession was 21.02.2016.

21. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 21.08.2012. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

22. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 21.02.2016 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 at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

23. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the said respondent has applied for Occupation Certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining Occupation Certificate from the competent authority.

F.II Direct the respondent to pay a sum of Rs.30,000/- as cost of litigation/present proceedings to the complainants.

F.III Directing the respondent to pay a sum of Rs. 5,00,000/- for the harassment and mental agony suffered by the complainants.

24. The complainants are seeking above mentioned relief w.r.t. mental agony , harassment and litigation cost. ***Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357*** held that an allottee is entitled to claim compensation & litigation charges under Sections 12,14,18 and Section 19

which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority.

25. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

I. The respondents/promoters is directed to pay interest at the prescribed rate of 10.80% p.a. for every month of delay from due date of possession 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 at prescribed rate i.e., 10.80% p.a. as per proviso to 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 till the date of order by the Authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per Rule 16(2) of the Rules

III. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants 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.

IV. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.

V. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% 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.

VI. The respondent shall not charge anything which is not the part of buyer's agreement.

VII. The respondent-promoter is not entitled to charge holding charges from the complainant-allottees at any point of time even after being part of the builder buyer's agreement as per law settled by ***Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.***

26. Complaint as well as applications, if any, stands disposed of.

27. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
14.08.2026