

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

Complaint no. : 985 of 2021
First date of hearing: 09.04.2021
Date of decision : 01.07.2021

Dr. Badruddin
R/o: F 2516 SF, Ansal Escencia
Sector-67, Gurugram-122004

Complainant

Versus

M/s Ansal Properties and Infrastructure Ltd.
Office at- 115, Ansal Bhawan, 16 Kg Marg,
New Delhi - 110001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri V.K Goyal

**Chairman
Member
Member**

APPEARANCE:

Complainant in person with
Shri Saifuddin
None

Advocate for the complainant
Advocate for the respondent

Ex- PARTE ORDER

1. The present complaint dated 04.03.2021 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 allottee as per the flat buyer's agreement executed inter se them.

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:

S.no	Heads	Information
1.	Name and location of the project	"Versalia", Sector-67A, Gurugram
2.	Project area	38.262 acres
3.	RERA Registered/ not registered.	Registered vide no. 154 of 2017 dated 28.08.2017
4.	Nature of the project	Residential colony
5.	DTCP license no.	81 of 2013 dated 19.09.2013
	DTCP license validity status	19.09.2019
	Name of licensee	Lord Krishna Infra Projects Ltd. and others
6.	Plot no.	3154
7.	Plot measuring	270 sq. yds.
8.	Date of Allotment Letter	21.09.2018
9.	Date of execution of plot buyer's agreement	05.11.2019
10.	Date of execution of MOU	31.08.2018
11.	Date of execution of new plot buyer's agreement [As per both the parties averments]	29.07.2020
12.	Payment plan	N/A
13.	Total consideration	Rs.77,30,325 (as per the ledger on page 66 of complaint)
14.	Total amount paid by the complainant till date	Rs. 32,50,420/-(as alleged by the complainant on page 14 of complaint)

15.	Part Occupation Certificate	Not obtained
16.	Offer of possession	Not offered
17.	Due date of delivery of possession as per clause 5.1 of PBA dated 29.07.2020 – <i>“Subject to Clause 5.2 the company shall execute the sale deed and provide possession of the ploy to the buyer within six months positively i.e. 28.01.2021 as agreed upon between the parties on 29.07.20.”</i>	28.01.2021
18.	Delay in handing over possession till date of order dated 01.07.2021	5 months 3 days

A. Facts of the complaint

3. The complainant submitted that the respondent company allotted two properties FF-3186 (originally FF-3028) (hereinafter, ‘property 1’) in the project “Versalia” having super area 1685 sq. ft. for consideration of Rs. 1,17,55,500 and C-301 (hereinafter, ‘property 2’) in “The Fernhill” having super area 1618 sq. ft. situated at Gurugram for a consideration of Rs. 52,96,700/- vide allotment letter dated 23.06.2014 and a flat buyer agreement was executed on 20.07.2013.

4. That the complainant made part payments of Rs.10,50,000/- and Rs.22,00,420/- for property 1 and 2, to the respondent and as such the total payment comes to Rs. 32,50,420/-. That despite clear terms and conditions, the respondent/company did not hand over possession and ownership rights of the said properties to the complainant within the stipulated period. The respondent continued to delay the same on one pretext or the other over the period of time.
5. That instead of handing over possession of the above stated two properties, the respondent made an offer to the complainant to accept plot no. 3154 (hereinafter, 'the said plot') admeasuring 270 sq. yd. at Versalia, Sector-67, Gurugram, Haryana in lieu of both the properties. The complainant accepted the offer of the respondent. Accordingly, 'Memorandum of Understanding'(hereinafter, 'MOU') dated 31.08.2018 was mutually agreed and signed by both the parties. through MOU, the complainant allottee surrendered the allotment of both the properties.
6. That in the MOU, the respondent further offered to the complainant to deduct the interest amount calculated thereupon on both the properties as paid-up amount at the rate of 13% p.a. in the form of discount from the total sale consideration of the said plot. The total sale consideration was mutually decided to Rs. 1,02,60,000/- (One

crore two lakhs sixty thousand only) including EDC, IDC and PLC etc.

7. That the respondent agreed to calculate the simple interest @ 13% p.a. on the total paid-up amounts Rs. 5,66,195/- and Rs. 14,63,480/- as on 31.08.2018 on property-1 and property-2 respectively on account of inordinate delay on part of the respondent in transferring the ownership rights and handing over physical possession of the said properties within the stipulated period of time to complainant. It was also agreed that both the amounts and agreed interest accrued thereon shall be deducted from total sale consideration of the said plot-3154.
8. That the total cost of plot no. 3154 offered to allottee after deducting Rs. 20,29,675/- (Rs. 5,66, 195 + Rs. 14,63,480) was calculated to be Rs. 82,30,325/- inclusive of all charges i.e. EDC, IDC, and PLC etc. The sum total of paid-up amount on property-1 and property-2 i.e. Rs. 32,50,420/- (Rs. 10,50,000+ Rs. 22,00,420) shall be adjusted against the basic cost of plot no. 3154 at Versalia. The remaining amount of Rs. 49, 79, 905/- shall be payable by the complainant/buyer/allottee at the time of transfer of ownership rights and possession in favour of the complainant. Accordingly, the said plot was allotted to the complainant vide allotment letter dated 21.09.2018 for a total sale consideration of Rs. 82,30,325/- inclusive of EDC, IDC, and PLC etc. That on 05.11.2019, both the

parties entered into a 'plot-buyer agreement' whereby the total sale consideration was calculated to Rs. 82,30,325/- including EDC, IDC and PLC etc. above after deducting discounted amount of Rs. 20,29,675/- from sale consideration of Rs. 1,02,60,000/- of the said plot.

9. That as per clause 4.5 of the PBA dated 05.11.2019, it was mutually agreed that in case the respondent fails to deliver possession within the stipulated time as stated in MoU i.e. within 16 month from the date of signing of MoU, the respondent shall be required to pay an interest @ 12% p.a. from the due date i.e. 31.08.2018. That the respondent addressed a letter dated 05.11.2019 to the complainant whereby it agreed to transfer the ownership rights and physical possession within the stipulated timeline i.e. within 16 months from the date of signing of MOU on 31.12.2019. On the same day, the respondent sent another letter and extended the date of offering physical possession to the complainant from 31.12.2019 to 31.01.2020. That the respondent further extended the date of registration and execution of sale deed and handing over possession from 31.01.2020 to 31.03.2020 vide its letter dated 30.01.2020 and again from 31.03.2020 to 30.09.2020 through its letter dated 29.05.2020.
10. That the complainant made several personal visits time and again to office of the respondent, repeatedly requesting it to transfer the

ownership rights and possession by way of execution and registration of sale deed and transfer of physical possession of the said plot but all in vain for the reasons best known to the respondent. That the respondent once again offered a rebate of Rs. 4,50,000/- as a token of delay in transferring ownership and possession vide its letter dated 29.07.2020. Accordingly, a fresh 'PBA' dated 29.07.2020 was signed between the parties whereby total sale consideration of the said plot was calculated to Rs. 77,30,325/- including EDC, IDC & PLC and the final amount payable by the complainant turns out to be Rs. 45,25,905/- after deducting rebate of Rs. 4,50,000/-. That respondent once again extended the date of registration of sale deed in favour of the complainant from 30.09.2020 to 28.01.2021 through its letter dated 29.07.2020.

11. That on 25.01.2021, the complainant sent a reminder with a request to the respondent to execute and register the sale deed and deliver the physical possession of the said plot to complainant. A request to convey the mode of depositing balance amount of Rs. 45,25,905/- was also made. The complainant received no answer from the respondent. That the complainant reached the Tehsildar's office at 10 a.m. with the balance amount on the date fixed for the registration of sale deed but to his surprise neither the respondent nor any person authorised by it reached the office of the Tehsildar for execution and registration of sale deed. The complainant

marked his attendance in the Tehsildar's office through his letter dated 28.01.2021 and also filed an affidavit clearly stating his attendance. The same was identified by Advocate J P Sharma and attested by Tehsildar/Executive Magistrate, Badshahpur, Gurugram on the date fixed for execution and registration of sale deed.

B. Relief sought by the complainant

12. The complainant is seeking the following reliefs:

- i. The respondent may be directed to transfer ownership rights and physical possession by way of execution and registration of sale deed of the said plot/plot no. 3154 as expeditiously as possible in favour of the complainant.
- ii. The respondent may be directed to pay an interest of 12% p.a. to the complainant as mutually agreed upon as per clause 4.5 of the PBA dated 29.07.2020 from the due date i.e. from 31.08.2018 till the date of execution and registration of sale deed on the total amount of Rs. 57,30,095/- [Rs. 32,50,420(paid-up) + Rs. 20,29,675 (13% discount on account of interest vide MoU dated 31.08.2018) + Rs. 4,50,000 (Rebate on account of delay vide letter dated 29.07.2020)].

13. The authority issued a notice dated 10.03.2021 of the complaint to the respondent by speed post as well as by email dated 12.03.2021 on the given email address at **ansalampireraharyana@gmail.com**. The delivery reports have been placed in the file. Thereafter, a reminder notice dated 17.06.2021 for filing reply was sent to the respondent on email address at **ansalampireraharyana@gmail.com**. Despite service of notice, the respondent have preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.

14. 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 based on these undisputed documents and submission made by the complainant.

C. Jurisdiction of the authority

15. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

C.I Territorial jurisdiction

16. 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.

C.II Subject matter jurisdiction

17. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per the provisions of section 11(4) (a) of the act of 2016 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

D. Findings on the relief sought by the complainant

18. 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.

19. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of Act, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 5.1 of the PBA 29.07.2020, the company shall execute the sale deed and provide possession of the plot to the buyer within six months positively i.e. 28.01.2021 as agreed upon 29.07.2020.

E. Findings on the relief sought by the complainant

Relief sought by the complainant: Direct the respondent to pay an interest of 12% p.a. to the complainant as mutually agreed upon as per clause 4.5 of the PBA dated 29.07.2020 from the due date i.e. from 31.08.2018 till the date of execution and registration of sale deed on the total amount.

20. In the present complaint, the complainant intends to continue with the project and is seeking delayed 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."

21. Clause (5.1) of the PBA (in short, agreement) provides for handing over of possession and is reproduced below: -

5. POSSESSION OF PLOT: -

5.1. Subject to Clause 5.2 the company shall execute the sale deed and provide possession of the plot to the buyer within six months positively i.e. 28.01.2021 as agreed upon between the parties on 29.07.20.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 12% p.a. However, 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.

23. 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.
24. 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., **01.07.2021** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
25. 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;"*

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **9.30%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

27. 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 agreement. By virtue of clause 5.1 of the PBA executed between the parties on 29.07.2020, the possession of the plot was to be delivered by 28.01.2021 as agreed upon between the parties. Therefore, the due date of handing over possession is 28.01.2021. The respondent has failed to handover possession of the plot till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil their obligations and responsibilities as per the 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 shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 28.01.2021 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F. Directions of the authority

28. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 28.01.2021 till the date of handing over of possession.
- ii. The arrears of such interest accrued from 28.01.2021 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 allottee before 10th of the subsequent month as per rule 16(2) of the rules.

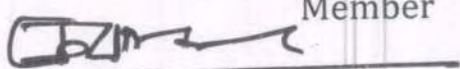
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant which is not the part of the agreement.

29. Complaint stands disposed of.

30. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.07.2021