

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

Complaint no.:	2849 of 2021
First date of hearing:	19.08.2021
Date of decision:	24.09.2021

1. Amit Sharma  
2. Preeti Sharma  
**R/o: -612/5, Gali No. 3C,  
Patel Nagar, Gurugram**

**Complainants**

Versus

M/s Ansal Properties & Infrastructure Limited  
Having Regd. office at: 115, Ansal Bhawan, 16 K.G  
Marg, New Delhi- 110001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member  
Member**

**APPEARANCE:**

Sh. Nipun Rao (Advocate)  
None

Complainants  
Respondent

**EX-PARTE ORDER**

1. The present complaint dated 20.07.2021 has been filed by the complainants/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 as provided under the

provision of the Act or the Rules and regulations made there under 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.	Heads		Information		
1.	Project name and location		"The Fernhill", Sector 91, Gurugram		
2.	Project area		14.412 acres		
3.	Nature of the project		Group Housing Colony		
4.	DTCP license no. and validity status		48 of 2010 valid up to 20.06.2016		
5.	Name of licensee		Aravali Heights Infratech Pvt. Ltd. & ors.		
6.	RERA registration details				
	S no.	Registration No.	Registration date	Valid up to	Towers
	i.	392 of 2017	22.12.2017	31.12.2019	Tower A, B, C, D, P, EWS 2 & convenient shopping
	ii.	389 of 2017	22.12.2017	31.12.2020	Tower L, M, E, F, G, H, J, K, EWS 1, nursery school (2 nos.), community building, 28





			villas
7.	Unit no.		0704-E-0904 Tower E
8.	Unit measuring		1348 sq. ft.
9.	Date of execution of flat buyer agreement		17.07.2013
10.	Payment plan		Construction link
11.	Total consideration		₹ 38,32,860/- (As per payment plan annexed at pg.37)
12.	Total amount paid by the complainants		₹ 39,27,986/- (As calculated from pg. 55, 68, 69, 71, 72, 73 & 76)
13.	Due date of delivery of possession as per clause 5.1 of the flat buyer agreement 48 months, within an extended period of 6 months, from the date of execution of this agreement or from the date of commencement of construction of the Tower/Block in which the said unit is situated subject to sanction of the building plan whichever is later [Page 22 of complaint]		17.01.2018 (48 months + 6 months from date of execution of agreement as the date of commencement of construction cannot be ascertained from the documents on record) <b>[Note: grace period allowed]</b>
14.	Delay in handing over possession till the date of order i.e., 24.09.2021		3 years 8 months 7 days
15.	Status of the project		On-going project



**B. Facts of the complaint**

3. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "The Fernhill" located in sector 91, Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the advertisements, complainants booked an apartment/flat measuring 1348 sq. ft. in the said project for a total sale consideration is ₹38,32,860/- which includes BSP, car parking, IFMS, Club Membership, PLC etc.
4. The complainants made payment of ₹39,27,986/- to the respondent vide different cheques on different dates, the details of which are as annexed with the complaint.
5. That flat buyer's agreement was executed on dated 17.07.2013 and as per BBA the respondent had allotted a unit/flat bearing no. 0704-E-0904 in tower no. E.
6. That as per clause 5.1 of the BBA, the respondent agreed to deliver the possession of the flat within 48 months from execution of builder buyer agreement i.e., 17.07.2013 with an extended period of 6 months.
7. That the complainants used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainants gave on time and the complainants when visited to the site was shocked & surprised to see that construction work was not going on and no one was present at the site to address the queries of the complainants. It appears that respondent has played fraud upon the complainants. The only





intention of the respondent was to take payments for the flat without completing the work and not handing over the possession on time. The respondent's mala-fide and dishonest motives and intention cheated and defrauded the complainants. That despite receiving payments on time for all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period.

8. That due to this omission on the part of the respondent the complainants have been suffering from disruption on his living arrangement, mental torture, and agony and continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the flat on time. That as per clause 5.5 of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs. 10/- per sq. ft. of the area of the said flat per month. It is, however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs. 10/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of the flat even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of Rs. 10/- per sq. ft. for every month of delay which is approximately @ 2% per annum rate of



interest whereas the respondent charges @ 18% per annum interest on delayed payment.

9. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainants from the promise date of possession till the flat is actually delivered to the complainants.
10. That the complainants requested the respondent several times telephonically and also personally visiting the offices of the respondent to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainants, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainants.

**C. Relief sought by the complainants:**

11. The complainants have sought following reliefs:
  - (i) Direct the respondent to hand over the possession along with prescribed interest per annum from the promissory date of delivery of the flat in question till handing over/actual delivery of the flat.
  - (ii) The respondent shall not charge anything from the complainants which is not part of the BBA.
  - (iii) Any other relief which this Hon'ble authority deems fit and proper may also be granted in favour of the complainants.



12. The authority issued a notice dated 23.07.2021 of the complaint to the respondent by speed post and also on the given email address at [sami@ansalapi.com](mailto:sami@ansalapi.com). The delivery reports have been placed in the file. Despite service of notice, the respondent has preferred neither to put in appearance nor filed 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.
13. 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 complainants.

**D. Jurisdiction of the authority**

14. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I. Territorial jurisdiction**

15. 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.

**D.II. Subject matter jurisdiction**

16. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per





provisions of Section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**E. Findings on the relief sought by the complainants**

**E.I. Direct the respondent to hand over the possession along with prescribed interest per annum from the promissory date of delivery of the flat in question till handing over/actual delivery of the flat.**

17. In the present complaint, the complainants intend 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."

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

**"5. POSSESSION OF FLAT: -**

5.1. Subject to Clause 5.2 and further subject to all the buyers/allottees of the flats in the said residential project, making timely payment, the company shall endeavour to complete the development said residential project and the said flat as far as possible within 48(forty eight) months, with an extended period of 6 months, from the date of execution of this agreement or from the date of commencement of construction of the particular tower/block in which the said unit is situated subject to sanction of the building plan whichever is later."

19. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all





kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

**Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 48 months plus 6 months from date of execution of the agreement or commencement of construction whichever is later. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause, the authority literally interpreting the same allows the grace period.

20. **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





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%.

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.

21. 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.
22. 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., 24.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
23. 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;"*

24. Therefore, interest on the delay payments from the complainants 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 complainants in case of delayed possession charges.
25. 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 agreement executed between the parties on 17.07.2013, the possession of the subject apartment was to be delivered within 48 months plus 6 months from the date of execution of the agreement of commencement of construction whichever is later. Since, the date of construction cannot be ascertained the due date of possession is calculated from the date of execution of the agreement i.e., 17.07.2013. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 17.01.2018. The respondent has failed to handover possession of the subject apartment 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. 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., 17.01.2018 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**


26. 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 promoters 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., 17.01.2018 till the date of handing over of possession.
- ii. The arrears of such interest accrued from 17.01.2018 till the date of order by the authority shall be paid by the promoters 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 promoters to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are 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 promoters, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoters 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 respondents shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020.
- vi. The promoter is directed to furnish to the allottee statement of account within one month of issue of this order. If there is any objection by the allottee on statement of account, the same be filed with promoters after fifteen days thereafter. In case the grievance of the allottee relating to statement of account is not settled by the promoters within 15 days thereafter, then the allottee may approach the authority by filing separate application.
27. Complaint stands disposed of.
28. File be consigned to registry.

  
(Samir Kumar)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021

Judgement uploaded on 29.10.2021.