

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

Complaint no.:	2850 of 2021
First date of hearing:	19.08.2021
Date of decision:	24.09.2021

Pritam Pal
R/o: -Flat no. 201, Tower 3,
Pyramid UB 2, Gurugram

Complainant

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

Complainant
Respondent

EX-PARTE ORDER

1. The present complaint dated 20.07.2021 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 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 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.	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-B-P/0301 Tower P	
8.	Unit measuring	1675 sq. ft.	
9.	Date of execution of flat buyer agreement	10.07.2013	
10.	Payment plan	Construction link	
11.	Total consideration	₹ 56,35,375/- (As per customer annexed at pg.51)	
12.	Total amount paid by the complainant	₹ 53,26,979/- (As per customer annexed at pg. 58)	
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 23 of complaint]	14.02.2019 (48 months + 6 months from date of commencement of construction as ascertained from customer ledger annexed at pg. 58 of the complaint) [Note: grace period allowed]	
14.	Delay in handing over possession till the date of order i.e., 24.09.2021	2 years 1 month 10 days 7 month <i>AS us.</i>	
15.	Status of the project	On-going project	

Created vide order dated 11-01-2022

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, complainant booked an apartment/flat measuring 1675 sq. ft. in the said project for a total sale consideration is ₹56,06,042/- which includes BSP, car parking, IFMS, Club Membership, PLC etc.
4. The complainant made payment of ₹53,26,979/- to the respondent vide different cheques on different dates, the details of which are as annexed.
5. That flat buyer's agreement was executed on dated 10.07.2013 and as per BBA the respondent had allotted a unit/flat bearing no. 0704-B-P/0301 in tower no. P.
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., 10.07.2013 with an extended period of 6 months.
7. That the complainant 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 complainant gave on time and the complainant 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 complainant. It appears that



respondent has played fraud upon the complainant. 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 complainant. 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 complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.

8. That it could be seen that the construction of the block in which the complainant flat was booked with a promise by the respondent to deliver the flat by 10.01.2018 but was not completed within time for the reasons best known to the respondent, which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
9. That due to this omission on the part of the respondent the complainant has 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 complainant 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 complainant 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 @ 24% per annum interest on delayed payment.

10. 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 complainant from the promise date of possession till the flat is actually delivered to the complainant.
11. That the complainant 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 complainant, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

12. The complainant has 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 complainant 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 complainant.
13. 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. The delivery reports have been placed in the file. 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.

D. Jurisdiction of the authority

15. 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

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.

D.II. Subject matter jurisdiction

- 17. 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 complainant

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.

- 18. 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."

- 19. 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."

20. 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 complainant 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.

21. **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.”

22. 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.
23. 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%.
24. 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;"

25. 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.
26. 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 10.07.2013, the possession of the subject apartment was to be delivered within 48 months plus 6 months from the date of execution of the agreement or from date of commencement of construction whichever is later. Since, the date of construction as ascertained from customer ledger, the due date of possession is calculated from the date of commencement of the construction i.e., 14.08.2013. 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 14.02.2019. 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., 14.02.2019 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

27. 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., 14.02.2019 till the date of handing over of possession.
- ii. The arrears of such interest accrued from 14.02.2019 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 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 promoters, 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 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 respondent shall not charge anything from the complainant 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: 3864-3889/2020.
- vi. The promoters are 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.
28. Complaint stands disposed of.
29. File be consigned to registry.


(Samir Kumar)

Member


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021