

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

Complaint no.	:	672 of 2021
First date of hearing:		16.03.2021
Date of decision	:	20.07.2021

1. Shukla Sarkar 2. Shubhamoy Sarkar <b>Both R/o:</b> H - Type- 5, Quarter no. 14, S.L.I.E.T., Longowal, District - Sangrur, Punjab - 148106	<b>Complainants</b>
Versus	
Ashiana Landcraft Realty Pvt. Ltd. Regd. office: 3H, Plaza M6, Dist. Center, Jasola, New Delhi - 110025	<b>Respondent</b>

<b>CORAM:</b>	
Shri Samir Kumar	<b>Member</b>
Shri Vijay Kumar Goyal	<b>Member</b>

<b>APPEARANCE:</b>	
Sh. Gaurav Rawat	Advocate for the complainants
Shri. S.M. Ansari	Advocate for the respondent

**ORDER**

1. The present complaint dated 02.02.2021 has been filed by the complainants/allottees in Form CRA 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 agreement for sale executed inter-se them.

**A. Unit and Project related details:**

2. The particulars of the project, the details of 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.	Name and location of the project	"The Center Court", Sector - 88A, Gurugram
2.	Nature of the project	Residential complex
3.	Project area	14.025 acres
4.	DTCP License	<b>46 of 2013 dated 08.06.2013 valid upto 07.06.2019</b>
	Name of the licensee	Gabino developers and 4 others
5.	HRERA registered/ not registered	<b>Registered</b> vide no.- 46 of 2017 dated 11.08.2017 valid upto 30.06.2020
6.	Date of execution of flat buyer's agreement	<b>16.08.2019</b> (As per page 38 of the complaint)
7.	Unit no.	B - 2305, Tower - 2 (As on page 43)
8.	Super Area	1076 sq. ft.
9.	Payment plan	Construction linked payment plan
10.	Total consideration	Rs. 1,03,69,390/- (As per payment plan on page 43 of complaint)
11.	Total amount paid by the complainants	Rs. 59,14,570/- (As per receipts page 86 - 90 of the complaint)
12.	Due date of delivery of possession (As per clause 7.1(ii) : Subject to	December 2019 <b>(page 51 of the complaint)</b> <b>(Grace period is not allowed)</b>

	<i>receipt of occupancy certificate within 60 days from the date of application, the promoter assures to hand over possession of the apartment along with parking(if applicable) by <b>December 2019 plus a grace period of 6 months as per agreed terms and conditions unless there is delay due to "force majeure" Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project.)</b></i>	
13.	Offer of possession	Not offered
14.	Occupation certificate	Not obtained
15.	Delay in delivery of possession till the date of order i.e. 20.07.2021	1 year 6 months and 20 days

### B. Facts of the complaint.

3. That respondent provided acknowledgement to the complainants acknowledging/ confirming the booking of the unit dated 19.06.2019, allotting a unit no. B-2305, Block/tower-T2, Floor-23, in Sector 88A (hereinafter referred to as 'unit') measuring 1076.40 Sq. Ft (carpet area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 1,03,69,390.00, which includes basic price, car parking charges, EDC, IDC, CBFC of Rs. 2,06,180.00 and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. That an agreement to sell was executed between the complainants and respondent on 16.08.2019.

4. That Further, the complainants having dream of its own residential unit in NCR signed the agreement in the hope that the unit will be delivered on or before December, 2019. The complainants were also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a unit of the complainants were shattered due to dishonest, unethical attitude of the respondent. That as per clause 7.1(ii) of the agreement to sell the respondent had to deliver the possession on or before December, 2019. Therefore, the due date of possession comes out to be December,2019.
5. That as per the payment plan and demand of the respondent the complainants paid an amount of Rs.50,00,000.00 vide cheque no. 012457 dated 14.08.2019 drawn on Central Bank of India, Punjab to respondent and same was acknowledged by the respondent vide receipt no. REC-TCC/00213/19-20 dated 19.08.2019..
6. That as per the payment plan and demand of the respondent the complainants paid an amount of Rs.14,570.00 vide EFT no. 923038370532 dated 18.08.2019 by electronic transfer to respondent and same was acknowledged by the respondent vide receipt no. REC-TCC/00216/19-20 dated 22.08.2019. That as per the payment plan and demand of the respondent the complainants paid an amount of rs. 4,00,000/- vide cheque no. 012455 dated 23.08.2019 drawn on central bank of India, Punjab to respondent and same was acknowledged by the respondent.

7. That as per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs. 59,14,570.00, towards the said unit against total sale consideration of Rs. 1,03,69,390.00.
8. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
9. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the site but it was never allow saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.

10. That complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc.
11. That in terms of clause 7.1(ii) of the said agreement, respondent was under dutiful obligation to complete the construction and to offer the possession on or before December, 2019. That complainants approached in person to know the fate of the construction and offer of possession in terms of the said agreement, respondent misrepresented to complainants that the construction will get completed soon. That respondent despite having made multiple tall representations to the complainants, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated Allottees. That respondent has completely failed to honour their promises and has not provided the services as promised and agreed through the brochure, BBA, and the different advertisements released from time to time.

12. That further, such acts of the respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017. It is abundantly clear that the respondent have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The Respondent had further failed to implement the FBA executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
13. That complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said Unit for residential purposes. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the buyer agreement. That respondent got the said project registered with Haryana Real Estate Regulatory Authority, Huda complex, sector - 6, Panchkula - 134109 vide regd. No. 46 of 2017 dated 11.08.2017.

14. That as per clause (iii) of the registration respondent committed to complete the construction of the said unit on or before 30.06.2020 (The registration shall be valid for a period commencing from 11.08.2017 to 30.06.2020). It is pertinent to mention here that above said registration of the respondent stands expired and till date respondent has failed to get the said registration renewed. Therefore, the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainants have suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
15. That a residential group housing project "The Center Court" at Sector - 88A, Village Harsaru, Gurugram was launched by M M/s. Ashiana Landcraft Realty Pvt. Ltd, under the license no. 46 of 2013 dated 08.06.2013, issued by DTCP, Haryana, Chandigarh. It is pertinent to note here that the above said licence of the respondent also got expired on 07/06/2019 but till date respondent has failed to get the said licence renewed.



16. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.
17. That it is pertinent to note here that no construction is going on since 2019, December and construction has been abandoned in the project. That the complainants are the ones who have invested their life savings in the said project and are dreaming of a home for themselves and the respondent have not only cheated and betrayed them but also used their hard earned money for their enjoyment.
18. That it is submitted that such clauses of agreement are totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case titled as Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015) as also in the judgment of Hon'ble Supreme Court in Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017).

19. That the complainants being an aggrieved person filing the present complaint under section 31 with the authority for violation/ contravention of provisions of this Act as mentioned in the preceding paragraph. That as per section 18 of the RERA Act, 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. 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.
20. That the complainants are entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act. The complainants are also entitled for any other relief which they are found entitled by this Hon'ble authority.
21. That the project in question is ongoing as defined under Rule 2(o) of the rules ibid and does not fall in any of the exception provided under the Rules.
22. That the complainants after losing all the hope from the respondent company, having their dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the center court project and also losing considerable amount, are constrained to approach this Hon'ble authority for redressal of their grievance.

23. That the complainants have not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court

**C. Relief sought by complainants**

24. In light of the present facts and circumstances and in the interest of Justice, it is most humbly prayed that this Hon'ble Forum may graciously be pleased to:

- I. Allow the complaint, directing the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.
- II. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainants by the respondent in spite of the fact that the complainants desires to take the possession.
- III. It is most respectfully prayed that this Hon'ble authority be pleased to order the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance deed/ sale deed.

- IV. It is most respectfully prayed that this Hon'ble authority be pleased to restrain the respondent from raising fresh demand for payment under any head.
- V. It is most respectfully prayed that this Hon'ble authority be pleased to order the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
- VI. It is most respectfully prayed that this Hon'ble authority be pleased to order the respondent to kindly handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.
- VII. It is most respectfully prayed that this Hon'ble authority be pleased to direct the respondent to provide the exact lay out plan of the said unit.
- VIII. It is most respectfully prayed that this Hon'ble authority be pleased to impose penalty on the respondent for not getting the registration of project renewed.
25. Notice to the promoter/respondent through speed post and through E-mail address (contact@ashiana.com) was sent the delivery report of which shows that delivery was completed. Despite service of notice, the Promoter/respondent has failed to file a reply within stipulated time period. However, the

promoter/respondent company's A.R and his advocate have marked attendance on 20.07.2021. This is a clear evidence that the service was completed.

#### **D. Territorial jurisdiction**

##### **D.I Territorial jurisdiction**

25. 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**

26. 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)(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;*

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

*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.*

27. 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.

**E. Admissibility of delay possession charges**

28. In the present complaint, the complainants 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**

*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*



29. As per clause 7.1(ii) of the flat buyer's agreement dated 16.08.2019, the possession of the subject unit was to be handed over by of December 2019. Clause 7.1(ii) of the flat buyer's agreement provides for handover of possession and is reproduced below:

*As per clause 7.1(ii) : Subject to receipt of occupancy certificate within 60 days from the date of application, the promoter assures to hand over possession of the apartment along with parking(if applicable) by **December 2019 plus a grace period of 6 months as per agreed terms and conditions unless there is delay due to "force majeure" Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. If, the completion of the project is delayed due to the above conditions, then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the apartment. The promoter shall be deemed to have completed the construction as per agreed scheduled if application for grant of occupancy certificate is filed within the schedule given above.***

30. The flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyers/allottees are protected candidly. The flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer(s) and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision about stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottee in case of delay in

possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

31. **Admissibility of grace period:** The respondent promoter has proposed to complete the construction of the said building/ unit till December 2019 , with six months grace period thereon as per terms and conditions. In the present case, the promoter is seeking 6 months' time as grace period and the respondent has failed to fulfill its obligation as per section 11(4) of the Act and has yet not applied for occupancy certificate. It is a settled principle that one cannot take advantage of his won wrong. Therefore, the said period is not allowed. Therefore, the due date of possession comes out to be December 2019.
32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges 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]**

*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.*

33. 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.
34. 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., 20.07.2021 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
35. The definition of term 'interest' as defined under section 2(z) 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— 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 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;"*

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.

36. On consideration of the circumstances, the evidence and other record and submissions made by the complainants 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 7.1(ii) of the flat buyer's agreement executed between the parties on 16.08.2019, possession of the booked unit was to be delivered by December 2019.

Accordingly, the non-compliance of the mandate contained in section 11 (4)(a) of the Act on the part of the respondent is established. As such the complainants are entitled for delayed possession charges @9.30% p.a. w.e.f. from due date of possession


i.e. December 2019 till handing over of possession as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**F. Directions of the authority:**

37. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:


- i. The respondent shall pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. December 2019, till handing over the possession as per Section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest till of handing over possession shall be paid on or before 10<sup>th</sup> of each subsequent month as per Section 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 allottees 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 complainants which is not the part of buyer's agreement.
38. Complaint stands disposed of.
39. File be consigned to registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Vijay Kumar Goyal)**

Member

Dated:20.07.2021

JUDGEMENT UPLOADED ON 10.12.2021



**HARERA**  
**GURUGRAM**