

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

Complaint no. : 590 of 2020
Date of first hearing : 03.04.2020
Date of decision : 01.07.2021

Ramesh Kumar Sidhar
R/o: 221, Deed Plaza Complex, Opp. Civil
Court, Gurugram

Complainant

Versus

1. Ansal Properties & Infrastructure Ltd.
Regd. Office: 115, Ansal Bhawan, 16,
K.G. Marg, New Delhi-110001

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Samir Kumar
Shri Vijay Kumar Goyal

**Chairman
Member
Member**

APPEARANCE:

Sh. Sanjeev Sharma
None

Advocate for the complainant
Advocate for the respondent

EX-PARTE ORDER

1. The present complaint dated 11.02.2020 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 allottees as per the flat buyer's agreement 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no	Particulars	
1.	Name and location of the project	"The Fernhill" [Phase-I], Sector 91, Gurugram
2.	Project area	14.412 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	48 of 2010 dated 21.06.2010
	DTCP license validity status	20.06.2016
	Name of licensee	Aravali Heights Infratech Pvt. Ltd. Vikram Singh SRP Builders Pvt. Ltd.
5.	HRERA registered/ not registered	Registered vide no. 392 of 2017 [Phase-I] 389 of 2017 [Phase- II]
	RERA registration valid up to	31.12.2019 [Phase-I] 31.12.2020[Phase- II]
6.	Unit no.	0704-M-0103 Tower- M [As per page 19 of complaint]
7.	Unit area	1618 sq. ft. [As per page 19 of complaint]
8.	Payment plan	Construction linked plan [As per page 31 of complaint]

9.	Date of execution of flat buyer agreement	10.07.2013 [As per page 18 of complaint]
10.	Total consideration as per customer ledger account dated 15.01.2019	Rs. 56,20,300/- [As per page 35 of complaint]
11.	Total amount paid by the complainant as per customer ledger account dated 15.01.2019	Rs. 50,66,863.02/- [As per page 40 of complaint]
12.	Amount on which delayed possession charges has been granted vide order 611 of 2019	Rs.19,60,551.29/-
13.	Commencement of construction	14.08.2014 (As per customer ledger dated 15.01.2019 at page 41 of complaint)
14.	Date of delivery of possession. (Clause 5.1 – 48 months + 6 months grace period from date of execution of agreement or commencement of construction of particular tower, whichever is later)	14.02.2019 (Note: As per order dated 17.12.2019, in complaint bearing no. 611 of 2019)
15.	Delay in handing over possession till date of decision i.e. 01.07.2021	2 years 4 months 17 days

B. Facts of the complaint.

3. That the complainant booked a unit no. 704-M-0103 admeasuring a super area of 1618 sq. ft. at the rate of Rs.2949/- per sq. ft. amounting total to Rs. 47.70,850/- plus other charges which amounts to a total price of Rs.56,20,300/- on the assurance that construction shall be complete in time and possession would be

handed over in time. The complainant paid booking amount of Rs. 12,79,195.29/-on 17.01.2012.

4. That the flat buyer's agreement dated 10.07.2013 was signed between both the parties i.e. M/s Ansal Properties & Infrastructure Ltd. and the complainant. That as per the flat buyer agreement the possession of the unit in question was to be handed over within 48 months from the date of the said agreement with a grace period of 6 months as provided under clause 5 (1) of the agreement.
5. That all the instalments were paid by the complainant as and when demanded by the respondent-company. Till September 2017, an amount of Rs. 50,66,863/- has been paid to promoter/developer.
6. That as per clause 5 (1) of flat buyer's agreement the possession of the flat/unit in question was to be handed by January 2018, however at that time the completion of the project was far from completion.
7. That after the repeated visits of the complainant, the respondent has neither offered handing over of the possession nor any satisfactory reply.
8. That the complainant has filed a complaint no. 611 of 2019 dated 18.02.2019 before the authority. The complainant has submitted a customer ledger dated 01.03.2016 and as per that, an amount of Rs. 19,60,551.29 along with this complaint. The authority has passed a judgement on 17.12.2019 as per submission of customer ledger

dated 01.03.2016 and considered the same amount of Rs. 19,60,551.29 against the said complaint. While as per customer ledger dated 15.01.2019, the complainant had paid an amount of Rs.50,66,863/- to the promoter/developer till date. Hence a fresh complaint to be file to the authority for consideration of Rs. 50,66,863/- instead of Rs. 19,60,551.29.

9. That the promoter had not given the possession of apartment/unit no. 704-M 0103. As per BBA the possession was to be handed over to complainant in January 2018 while it was not handed over till date. Hence promoter liable to pay interest @ 24% to complainant.

C. Relief sought by the complainant:

10. The complainant has sought following relief:
- i. Direct the respondent to provide declaration including that of common area u/s 19 (5) of the act along with declaration on affidavit to be submitted with Director Town and Country Planning or the declaration with Real Estate Regulatory Authority at the time of registration.
 - ii. Direct the respondent to pay interest for the delayed period of possession as arrears of DPC and further ordered to pay interest for each month till the possession is handed over on the total amount of Rs. 50,66,863/- instead of interest on the amount of Rs.

- 19,60,551.29. Where interest has been ordered to be paid by the developer / promoter.
- iii. Direct the respondent to recalculate the interest on equitable basis from the beginning and reimburse, if charged extra than MLCR.
 - iv. Direct the respondent not to charged extra without providing Garage and on common areas or basements.
 - v. The promoter be ordered to get the conveyance deed made in the name of Association of allottees for common areas etc and hand over the complex to them in three months' time.
 - vi. Direct the respondent to reimburse the amount of VAT charged @ 1% of the total amount which is against the Government policy and notification issued in this regard.
 - vii. The interest, if any, becomes due on allottee for the payments not made after the date of possession expires, shall not be charges from him.
11. The authority issued a notice dated 14.02.2021 of the complaint to the respondent by speed post and also on the give email address at fernhillgrievancesgurgaon@ansalapi.com and manansanjeev2004@yahoo.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 fernhillgrievancesgurgaon@ansalapi.com and customerconnect@ansals.com. Despite service of notice, the respondent has 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.

12. 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

D.I Territorial jurisdiction

13. 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

14. 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 complainant at a later stage.

E. Findings on the relief sought by the complainant

Relief sought by the complainant:

- i. Direct the respondent to pay interest for the delayed period of possession as arrears of DPC and further ordered to pay interest for each month till the possession is handed over. On the total of Rs. 50,66,863/- instead of interest on the amount of Rs. 19,60,551.29. Where interest has been ordered to be paid by the developer / promoter.
- ii. Direct the respondent to recalculate the interest on equitable basis from the beginning and reimburse, if charged extra than MLCR.
- iii. The interest, if any, becomes due on allottee for the payments not made after the date of possession expires, shall not be charges from him.

F. Findings on relief sought

F.I Whether delayed possession charges to be paid to the complainant.

15. 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."

16. 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 Flats in the said residential project, making timely payment, the company shall endeavour to complete the development of said Residential Project and the said Flat as far as possible within 48 (Forty Eight) months, with an extended period of 6(six) 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 building plan whichever is later."

17. **Admissibility of delayed possession charges:** The counsel for the complainant had filed complaint bearing no. 611 of 18.02.2019 before the authority. He has submitted a consumer ledger dated 01.03.2016 and as per that, an amount of Rs.19,60,551.29 has been paid. The authority had passed a judgment on 17.12.2019 as per submission of the consumer ledger dated 01.03.2016 and considered the same amount of Rs.19,60,551.29 against the said complaint bearing no. 611 of 2019. Since the rectification application could not be made to the authority as there was no error or mistake apparent on the face of the record. Hence, the complainant preferred to file fresh complaint before the authority which is maintainable.

18. While as per present complaint, customer ledger dated 15.01.2019 shows that an amount of Rs.50,66,863/- has been paid by the complainant to the promoter/developer up to date. Hence, fresh complaint is filed before the authority for acknowledgement of consideration of Rs.50,66,863/- instead of Rs.19,60,551.29/-.
19. The authority deliberated on the admissibility of the complaint. When the earlier complaint was made, there was an amount of Rs.19,60,551.29/- was shown in the customer ledger and based on that amount the authority allowed delayed possession charges on the amount paid by the complainant vide order dated 17.12.2019. Now as per copy of the customer ledger submitted by the complainant, the revised amount of Rs.50,66,863/- has been shown and same has been perused by the authority. Keeping in view the principles' of natural justice, the authority decided to entertain the claim of the complainant for the balance amount and allow delayed possession charges on the balance amount in terms of the order dated 17.12.2019 passed in complaint no. 611 of 2019.
20. The promoter has proposed to hand over the possession of the flat within 48 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 building plan whichever is later. As per order dated 17.12.2019 in complaint

bearing no. 611 of 2019, the complainant has already been granted delayed possession charges from due date of possession i.e.; 14.02.2019.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession. 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.

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., **01.07.2021** 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(z a) 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 respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

26. In the present case, as per order dated 17.12.2019 delayed possession charges have already been provided as relief to the

complainant and the matter is already decided. Therefore, the complainant shall be entitled to delayed possession charges as per order dated 17.12.2019 on the amount paid by the complainant (*emphasis laid*) till handing over of possession. Moreover, interest on the delay payments from the complainant shall be charged at the prescribed rate as per order dated 17.12.2019, 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 agreement executed between the parties on 10.07.2013 and order dated 17.12.2019 in complaint bearing 611 of 2019,, 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 as per order dated 17.12.2019 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% per annum for every month of delay from the due date of possession i.e., 14.02.2019 till the date of handing over of possession on the amount received by the respondent till date.
 - ii. The arrears of such interest accrued so 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(z) of the Act.

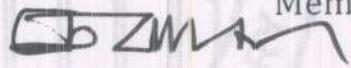
v. The respondent shall not charge anything from the complainant which is not the part of the agreement.

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

JUDGEMENT UPLOADED ON 10.12.2021