

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

Complaint no. : 1294 of 2021
First date of hearing : 06.05.2021
Date of decision : 24.09.2021

Deepti Singh

R/o:- A – 2/54, Kothi, Paschim Vihar, West Delhi,
Delhi

Complainant

Versus

Ansal Housing Limited

Address:- 606, 6th Floor, Indra Prakash, 21,
Barakhamba Road, New Delhi - 110001

Respondent

CORAM:

Shri Samir Kumar

Member

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Pallavi Parmar

Advocate for the complainant

Ms. Meena Hooda

Advocate for the respondent

ORDER

1. The present complaint dated 16.03.2021 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 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 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.	Heads	Information
1.	Project name and location	Estella, Sector-103, Gurugram
2.	Project area	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid upto 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	N-1301,
8.	Unit measuring	1945 sq. ft.
9.	Date of execution of Apartment Buyers Agreement	25.08.2012 (Page 14 of the complaint)
10.	Due date of delivery of Possession as per clause 30 i.e. 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of	25.08.2015 (grace period is not allowed)

	construction, whichever is later subject to timely payment of all the dues by buyer and subject to force majeure circumstances as described in clause 31	
11.	Total sale consideration	Rs. 75,25,675/- (As per payment plan page no. 34 of the complaint)
12.	Amount received from the complainant	Rs. 71,81,612.39/- (As per customer ledger on page 51 of the complaint)
13.	Nomination Letter/Transfer of Ownership letter	08.02.2019 (on page no. 41 of the complaint, annexure -5)
14.	Delay in handing over possession till the date of decision i.e 24.09.2021	6 years and 30 days
15.	Occupation Certificate	Not received
16.	Offer of possession	Not offered

B. Facts of the complaint

- (i) That Sh. Yoginder Chhikara, late husband of the complainant, believing upon the representation and advertisement given the promoter company in good faith decided to invest in the project and to have house of their own. That 20th April 2011, the husband of the complainant booked a flat with the respondent in Project- Estella N-1301 in the project " Estella" at Revenue Estate, Village Dhanwapur & Tikampur, Tehsil and district gurgaon, Sector-103, Haryana for which the total cost was Rs.6544925/- @ Rs. 3265 per sq. ft. for super area of 1945 sq. ft.

- (ii) That allotment of the unit was done vide an allotment letter dated 3.09.2012 and Unit no. N-1301 was allotted to the complainant which was 105-3BHK+SQ apartment with a super area of 1945 sq.ft. The unit was changed to N-1201 later on.
- (iii) A builder buyer agreement dt. 25.08.2012 was signed between the Husband of the complainant and the respondent wherein vide clause 30, the respondent committed to provide the offer of possession within 36 months from the date of the agreement subject to payment of timely payments of all dues by the buyer. There was an additional grace period of 6 months. The detailed payment plan has been set out in payment schedule at the end of the buyer's agreement.
- (iv) That on the bare perusal of the customer ledger dated 20.08.2020, the total payable sale consideration including other charges raised by developer was Rs. 76,16,551/= (Seventy-Six lacs and sixteen thousand five hundred and fifty-one rupees Only.). That the complainant has paid till date a total amount of Rs. 71,81,612.54/- which amount to approximately 95% of the total price to be paid.
- (v) The complainant had been most diligent in complying with the terms of the buyer's agreement and has been making regular payments towards the payment of the instalments as and when raised by the respondents with respect to the stages of construction.
- (vi) That the Clause 30 of the buyer's agreement provided for the provisions for the transfer of the possession of the Unit booked

within 36 months of the date of execution of the agreement that is within 36 months from 25.08.2012 and further a grace period of 6 months was given. The said clause is reproduced here under for the sake of brevity:

“30. The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of this agreement or within 36 months of obtaining all the required sanctions and approvals necessary for commencement for construction, whichever is later subject to timely payment of all the dues.....Further, there shall be a grace period of 6 months as allowed to the Developer over and above the said period of 36 months as above in offering the possession of the Unit.”

- (vii) That the due date for the delivery of the possession was **25.02.2016** (inclusive of the grace period of 6 months). But to the utter surprise and dismay of the complainant no possession has been delivered to her.
- (viii) That the complainant vide an email dated 20.07.2020, sought information as to the status quo of the project and deliver of possession Mr. Harpreet Kaur, Deputy manager –Sales and accounting of the respondent. However, a reply dated 21.07.2020 stated that the delivery of the of the possession would be starting soon and before that electrical wiring works are left to be done.
- (ix) That from the above reply it could be not wrong to assert that the unit is yet not ready for the possession which is in turn causing a great hardship to the complainant and her family. That during this delayed period of almost 4.8 years in handing over possession, the complainant has suffered a huge monetary loss on account of interest on his money for making timely payment

to the respondent. The complainant is so much moved by it and is not in a position to afford to wait for any more time his money to be held up like this and paying even more money towards future payments.

(x) That as on 3.02.2021 a total delay of about **5 yrs has been caused**. To add on the misery of the complainant, the cause of delay is unreasoned and unexplained. Further, the respondents are not certain with the estimated date of delivery and are keenly keeping things in abeyance. Thus, the respondent have failed to deliver the possession of the said unit to the complainant and has not fulfilled their committed liability as on date.

(xi) The complainant submits that the act of the respondents herein have caused severe harassment both physical and mental and that the respondent has breached the trust of the complainant through not handing over of the possession within the stipulated time period 3 years and 6 months and delaying it by almost double the time of completion of project.

C. Relief sought by the complainant: -

3. The relief claimed by the complainant :-

- 1) To give the possession of the said unit.
- 2) Direct the respondent parties to pay interest at the rate of 12% for every month of delay from due date of possession till the handing over the possession, on paid amount along with possession

4. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds.
 - i. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this hon'ble authority. The complainant have filed the present complaint seeking refund, interest and compensation. It is respectfully submitted that complaint pertaining to interest, compensation and refund are to be decided by the adjudicating officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this authority. The present complaint is liable to be dismissed on this ground alone.
 - ii. That even otherwise, the complainant have no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions the Act as well as an incorrect understanding of the

terms and conditions of the allotment letter/ buyer's agreement dated 18.09.2012, which is evidentiary from the submissions made in the following paragraphs of the present reply.

- iii. That the respondent is a public limited company registered under the Companies Act, 1956 having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi-110001. The above said project is related to licence no.48 of 2011 dated 29.05.2011 received from DTCP, Chandigarh.
- iv. That the complainant have approached the respondent in the year 2011 for the purchase of 2 BHK Flat bearing unit no. H - 1004, tower-C in residential project "Ansals Heights 86", Sector-86, Gurugram, Haryana. It is submitted that complainant prior to approaching the respondent had conducted extensive and independent inquiries regarding the project and it was only after the complainant was being fully satisfied with regard to all aspects of the project, including but limited to the capacity of the respondent to undertake development of the same and the complainant took an independent and informed decision to purchase the unit, uninfluenced in any manner.
- v. That it is pertinent to mention here that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed

within prescribed time period as given by the respondent to the authority.

- vi. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

- vii. That the respondent is carrying his business in letter and spirit of the builder buyer agreement but due to COVID 19 the lockdown was imposed throughout the country in March, 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- viii. That the present complaint filed by the complaint, who himself allegedly claiming the allottee, therefore, the complainant are not entitled to have any relief which this authority in terms of Act of 2016 which provides that

"Rights and Duties of Allottees"

Though the Act is pro-consumer, yet it has struck a balance by specifying the duties of the Allottees. Allottees who do not pay their instalments, maintenance dues in time will also be subjected to the rigours of this Act.

Every allottee, who has entered into an agreement for sale totake an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

- ix. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the complainant have not approached this authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainant, thus, have approached the authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very

maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as ***S.P. Chengalvaraya Naidu Vs. Jagan Nath*** reported in 1994 (1) SCC Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as **Tata Motors Vs Baba Huzoor Maharaj** bearing RP no. 2562 of 2012 decided on 25.09.2013.

- x. That it is submitted that several allottees, have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible.

- xi. That the central government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the buyer's agreement, vide which complainant were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC. IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
5. Copies of all relevant documents have been duly filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

- i. 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.

E.II Subject matter jurisdiction

The 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.

- ii. 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.

F. Findings on the objections raised by the respondent

F.I Objection regarding delayed payments, demonetization and various ban by NGT.

- iii. Though an objection regarding force majeure due to above stated circumstances have been raised but it is pertinent here to mention that as per clause 30 of buyer's agreement, due date of possession comes to 25.08.2015 and the events such as demonetization (08.11.2016) and various NGT orders barring extractions of water (June & July 2012) were either before execution of agreement between the parties or after the due date of possession. Hence, plea advanced in this regard is devoid of merit.

G. Findings on the reliefs sought by the complainant

Reliefs sought by the complainant:

- i. Direct the respondent to handover the possession of the said flat to the complainant.
- ii. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges at 12% p.a. interest on the amount paid and 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."

- iii. Clause 30 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"30. POSSESSION

Time of handing over the possession

The developer shall offer possession of the unit anytime, within a period of 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by the buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."

- iv. As per clause 30 of buyer's agreement the respondent-promoter has proposed to handover the possession of the subject apartment within a period of 36 months from the execution of the agreement or the date of approval of and sanctions necessary for commencement of construction, whichever is later subject to timely payment by the buyer(s) and subject to force majeure circumstances. Further, the authority in the present case observed that, the respondent has misused its powers and stated an ambiguous clause where, possession is subject to various approvals and sanctions. This practice is not admissible. There must be specific description as to from what or which approval period of due date of possession is to be calculated. Moreover, in the present case buyer's agreement was executed on 25.08.2012 and no date

of any approval such building plan approvals and environment clearance are placed on record either by the complainant or by the respondent. Mere starting of construction does not fulfil the criteria specified under clause 30, as there is no documents that can prove that construction was started as and when required sanctions or approvals are obtained. Therefore, in present case due date of possession is calculated from the date of agreement between the parties i.e.; 25.08.2012, which comes out be 25.08.2015.

- v. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 25.08.2015 and further provided in agreement that promoter shall be entitled to a grace period of 6 months. Such grace period of 6 months is asked for offer of possession to the allottee(s). As a matter of fact, the promoter has not obtained the occupation certificate till now and thus, no offer of possession can be made. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 6 months cannot be allowed to the promoter at this stage.
- vi. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant are seeking delay possession charges at the prescribed rate. 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.

- vii. 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.
- viii. 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%.
- ix. 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;"

- x. 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.
- xi. On consideration of the documents available on record and submissions made by both the parties 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 30 of the agreement executed between the parties on 25.08.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by 25.08.2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 25.08.2015. 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., 25.08.2015 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.

H. Directions of the authority

6. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function 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., 25.08.2015 till the date of handing over possession, as per proviso to section 18(1) of the Act read with rule 15 of the rules.

(ii) The arrears of such interest accrued from 25.08.2015 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 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 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.
- (vi) The cost imposed during the proceeding on either of the parties to be included in the decree sheet.

7. Complaint stands disposed of.

8. 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 20.12.2021