

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

Complaint no.:	4998 of 2020
First date of hearing:	29.01.2021
Date of decision:	24.09.2021

1. Mr. Mohan lal Sharma,
2. Mr. Arvind Bhardwaj,
R/o 1747/5, Jyoti Nagar, Kurukshetra, Haryana-
136118

Complainants

Versus

M/s Ansal Housing and Construction Ltd.
Office address: 15 UGF, Indraprakash, 21, Barkhamba
Road, New Delhi- 110001.

Respondent**CORAM:**

Shri Vijay Kumar Goyal
Shri Samir Kumar

**Member
Member****APPEARANCE:**

Sanjeev Dhingra (Advocate)
Meena Hooda (Advocate)

**Complainants
Respondent****ORDER**

1. The present complaint dated 12.01.2021 has been filed by the complainants/allottees 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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sno.	Heads	Information
1.	Project name and location	"Ansal Hub", Sector-83, Gurugram
2.	Project area	2.46875 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	87 of 2009 dated 30.12.2009 valid up to 29.12.2013
5.	Name of licensee	Smt. Mina Devi
6.	RERA registration details	Not registered
7.	Unit no.	219
8.	Unit measuring	319.00 sq. ft.
9.	Date of allotment letter	05.05.2012
10.	Date of sanction of building plans	11.09.2013
11.	Payment plan	Construction link payment plan
12.	Total consideration	₹ 19,42,343.09/- (As per allotment letter dated 05.05.2012 at pg. 19 of complaint)
13.	Total amount paid by the complainants	₹ 19,83,747/-

		(As per customer ledger at pg-36 of complaint)
14.	Due date of delivery of possession as per clause 26 of the allotment letter 36 months from the date of sanction of building plan or date of execution of allotment letter, whichever is later subject to force majeure conditions. [Page 26 of complaint]	11.09.2016 (36 months from date of sanction of building plan i.e., 11.09.2013)
15.	Delay in handing over possession till the date of this order i.e., 24.09.2021	5 years 13 days
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

(Note: No BBA has been executed between the parties yet. Moreover, the unit as allotted according to the allotment letter is 217 with super area of 352.18 sq. ft. whereas there is no document to show on record with regard to change of unit. According to the customer ledger attached at pg.36 of the complaint the unit allotted to the complainants is 219 with default area 319.00 sq. ft.)

B. Facts of the complaint

3. The complainants have pleaded the complaint on the following facts:
 - a. That on 07.03.2011 the complainants were approached by the respondent in relation of booking of shop/office space bearing no. sf- 219, second floor in the project "ANSAL HUB" situated at Sector 83, District Gurgaon, Haryana and in pursuance of the same, on 07.03.2011 complainants issued a cheque no. 015028 dated 10.03.2011 drawn on Central Bank of India for amount of Rs.2,38,286/- in favor of respondent.
 - b. That on 10.04.2012 the respondent issued the letter of provisional allotment of shop/office space bearing no. SF- 219, second floor in

the project "ANSAL HUB" situated at Sector 83, District Gurgaon, Haryana.

- c. That on 05.05.2012 complainants entered into a buyer's agreement/allotment letter with the respondent. A legal, buyer's agreement/allotment letter total sale consideration price was Rs. 19,42,343/- after discount. As per clause 26 of the said buyer's agreement/allotment letter, respondent was liable to handover the possession of the said shop within 36 months from the date of sanction of building plans or date of execution of allotment letter whichever is later. The clause 26 of the agreement is reproduced as under:

"The developer shall offer possession of the unit any time within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter whichever is later, subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy, labour equipments facilities material or supplies, failure of transportation, strike, lock outs, action of labour union. Any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any court/tribunal and/or authorities, delay in grant of part/full completion (occupancy) certificate by the government and or any other public or competent authority or intervention of statutory authorities, or any other reasons beyond the control of developer. The allottees shall not be entitled to any compensation on the ground of delay in offering possession due to reason beyond the control of the developer."

- d. That present complaint before this hon'ble authority arises out of the consistent and persistent non-compliance of the respondent herein with regard to the deadlines as prescribed under the flat buyer agreement executed between the parties.
- e. That in view of the above, it is submitted that according to the said agreement, the complainants ought to have received the physical possession of the flat/unit within 36 months from the date of

sanction of building plans or date of execution of allotment letter but the respondent failed to handover of physical possession of the unit/flat as per buyer's agreement/allotment letter dated 05.05.2012, booked by the complainants in the project of respondent till 05.11.2015, including the six month extension period.

- f. That till 25.11.2020 respondent did not offer the possession to the complainants and till date the total amount of Rs. 19,83,747/- was paid by the complainants to the respondent in installments towards the payment of the shop/unit in accordance with buyer's agreement/allotment letter dated 05.05.2012 and when the demand was raised by the respondent.
- g. That on 30.07.2020 complainants sent an email regarding offer of possession of unit/shop, but no reply has been received from the respondent. That respondent two times changed the unit number and area of the shop and at present SF-219 is the unit no. as per statement of account.
- h. That it is submitted that acts of the respondent here in above caused severe harassment both physically and mentally and that respondent has duped the complainants of the hard-earned money invested by the complainants here in by its act of not handing over the physical possession within time period, stipulated the builder buyer agreement. That the complaint filed by the complainants here in is within the limitation period and complainants has paid the fee as required under law.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:

- a. To direct the respondent to pay for delay in offer of possession by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules 2017 on the entire deposited amount which has been deposited against the property in question so booked by the complainants.
 - b. Any other relief/order or direction, which this hon'ble authority may, deems fit and proper considering the facts and circumstances of the present complaint.
5. 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

6. Notice to the promoter/respondent through speed post and through e-mail address (kushagr.ansal@ansals.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 respondent represented through Adv. Meena Hooda on behalf of the respondent company have marked attendance on 24.09.2021. This is clear evidence that the service was completed. On hearing dated 24.09.2021 the respondent misled the authority by stating that the reply has been filed today in the registry and the copy of the same has been supplied to the counsel of the complainant however, as per registry no such reply has been filed by the respondent till date in the present complaint. Accordingly, the defence of the respondent is struck off.

7. 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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. 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

9. 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

10. 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.

F. Findings on the relief sought by the complainants

- F.I. To direct the respondent to pay for delay in offer of possession by paying interest as prescribed under the Real Estate(Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules 2017**

on the entire deposited amount which has been deposited against the property in question so booked by the complainants.

11. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges at prescribed rate of interest on the amount paid. Clause 26 of the allotment letter (in short, agreement) provides for handing over of possession and is reproduced below: -

"26 The developer shall offer possession of the unit any time within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter whichever is later, subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy, labour equipments facilities material or supplies, failure of transportation, strike, lock outs, action of labour union. Any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any court/tribunal and/or authorities, delay in grant of part/full completion (occupancy) certificate by the government and or any other public or competent authority or intervention of statutory authorities, or any other reasons beyond the control of developer. The allottees shall not be entitled to any compensation on the ground of delay in offering possession due to reason beyond the control of the developer."

12. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and

the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoter are just to evade the liability towards timely delivery of subject unit and to deprive the allottees 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 allottees is left with no option but to sign on the dotted lines.

13. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottees 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."

14. 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.
15. 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%.

16. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottees, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default.

(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

17. 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.
18. 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 26 of the allotment letter executed between the parties on 05.05.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of allotment or sanction of building plans whichever is later. The due date is calculated from the date of approval of building plans


i.e., 11.09.2013 accordingly, period of 36 months expired on 11.09.2016. Therefore, the due date of handing over possession is 11.09.2016. The respondent has not yet offered the possession of the subject apartment. 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 11.09.2016 till the actual handing over of possession of the unit, 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.

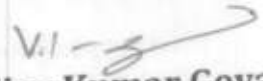
G. Directions of the authority

19. 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% p.a. for every month of delay from the due date of possession i.e., 11.09.2016 till the actual handing over of possession.
- ii. The arrears of such interest accrued from 11.09.2016 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 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 allottees, 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 the agreement.
 - vi. The cost imposed during the proceedings on either parties be included in the decree sheet.
20. Complaint stands disposed of.
21. 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 21.12.2021.