

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

Complaint no. :	4835 of 2020
First date of hearing:	23.02.2021
Date of decision:	24.09.2021

1. Mrs. Sushma Arora
2. Mr Rakesh Kumar
3. Mr Rishi Arora

**R/o:** - B-302, Tower-3 Palm Grover Heights, Ardee City,  
Sector-52, Gurugram-122009

**Complainants**

Versus

Ansal Housing Limited

**Address:** - 2<sup>nd</sup> Floor, Ansal Plaza, Sector-1, Near  
Vaishali Metro Station, Vaishali, Ghaziabad, Uttar  
Pradesh-201010

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member  
Member**

**APPEARANCE:**

Ms. Priyanka Agarwal (Advocate)  
Ms. Meena Hooda (Advocate)

Complainants  
respondent

**ORDER**

1. The present complaint dated 23.12.2020 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 allottees as per the agreement for sale executed inter se them.

**A. Project and unit 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.	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 up to 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
6.	HRERA registered/ not registered [extension granted vide no.-09 of 2019, dated:25.11.2019 Valid till:17.08.2020 (Validity of registration has expired)]	Not registered
7.	Occupation certificate granted on	Not obtained
8.	Unit no.	0-0901,
9.	Unit measuring	1945 sq. ft.
10.	Date of execution of buyer's agreement	30.04.2012 (Page 22 of the complaint)
11.	Payment plan	Construction link plan
12.	Total sale consideration	Rs. 79,22,170/- (As per payment plan page no. 42 of the complaint)
13.	Total amount paid by the complainants as per	Rs. 78,36,908/-

	statement of account dated 29.11.2019	(As per SOA on page 58 of the complaint)
14.	Due date of delivery of possession as per clause 30 of the said agreement i.e., 36 months from the date of execution of this agreement or within 36 months from the date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later + 6 months grace period.  [Page 33 of complaint]	30.04.2015  <b>(Note: grace period not allowed)</b>
15.	Offer of possession	Not offered
16.	Delay in handing over possession till 24.09.2021	6 years 4 months 25 days

**B. Facts of the complaint**

3. The complainants have made the following submissions in their complaint:
- a. That the complainants are a law-abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project and the complainants had needed an own home for their family.
  - b. That the complainants were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which will be forcedly

imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the executed BBA between respondent and complainants mentioned in developer's representations, DTCP given the licence 17 of 2011 dated 08.03.2011. That the based-on promises and commitment made by the respondent, complainants booked a 3 BHK+ flat admeasuring 1945 sq. ft. along with one covered car parking in the unit no. O-0901 in residential project "ESTELLA", Sector 103, Gurugram, Haryana. That the total sum of the said flat is Rs. 71,66,420/-including PLC, one car parking. The initial booking amount of Rs 1034251.42/-(Including Tax) was paid through draft/ pay order no-203358 dated 05/01/2012. (More than 7 year back).

- c. That the respondent to dupe the complainants in their nefarious net even executed flat buyer agreement Signed between M/S Ansal Housing Ltd. and Mrs. Sushma Arora, Mr. Rakesh Kumar & Mr. Rishi Arora (complainants) dated 30.04.2012. Respondent created a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants. As per clause 23 of the flat buyer agreement the buyer was charged very high interest rate i.e., 24% per annum, compounded quarterly. Furthermore, according to clause 24 of agreement if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.

- d. The complainants further submits that as per clause 35, the respondent had very cleverly and specifically accepted a meagre liability to pay Rs. 5/- per sq. ft. per month on the super area for the delay in offering of possession of the apartment beyond 42 months. That the total cost of the said flat is Rs. 71,66,420/- including P.I.C. one car parking and sum of Rs. 78,36,908.15/- paid by the complainants in time bound manner. That the complainants booked apartment dated 05.01.2012 for a total cost of Rs. 71,66,420/-. The complainants were lured into paying Rs. 78,36,908.15/- within a short time by 28.05.2015. This amount constituted 100% of the total sum taken from the complainants within 3 years. This amount was taken by the respondent through fraudulent means by erecting a bare structure within 2015. The respondent declined to complete the project after collecting money and there has been little progress in construction from 2015 onwards. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainants have fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein are not in breach of any of its terms of the agreement.
- e. That the complainants had paid all the instalments timely and deposited Rs. 78,36,908.15/- that respondent in an endeavour to extract money from allottees devised a payment plan under which respondent linked more than 35% amount of total paid against as advance. Rest 60% amount linked with the construction of super structure only of the total sale consideration to the timelines, which

is not depended or co-related to the finishing of flat and Internal development of facilities amenities and after taking the same respondent have not bothered to any development on the project till date as a whole project not more than 50 % and in term of particular tower just built a super structure only. Extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation. That complainant's booked apartment dated 05.01.2012 and as per flat buyer agreement, respondent is liable to offer possession on before 30.04.2015.

- f. That the builder started construction work almost 7 years back and quickly erected a bare structure within two and half years with the sole intention of taking money from buyer on construction-linked instalments. Respondent is not completing the project and intend to delay for undefined times to complete the project. That as the delivery of the apartment was due on 30.04.2015 which was prior to the coming into of force of the GST Act, 2016 i.e., 01.07.2017, the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainants but just reversed builder collected the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation.
- g. That respondent has indulged in all kinds of tricks and blatant illegality in taking money through booking and drafting of flat buyer agreement with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and their family. That the complainants communicate with respondent and asked for delayed

possession respondent show problem of financial crunch other side builder extracted huge amount from complainants and given loan to others, and project development abundant create suspicion on builder intentions. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the apartment which is the subject matter of this complaint is situated in Sector 103 Gurugram which is within the jurisdiction of authority.

**C. Reliefs sought by the complainants**

4. The complainants are seeking the following relief:

- a. Direct the respondent to pay delay interest on paid amount of Rs. 7836908.15/- of 24% till the handing over the physical possession. As per flat buyer agreement builder liable to offer possession on before 30th April 2015.
- b. Direct the respondent to complete the project immediately and hand over the possession of the flat with all basic amenities which mention in brochure.
- c. Pass the order for forensic audit of builder because builder extracts more than 100% but project still incomplete.
- d. Direct the respondent to quash the one-sided clauses from flat buyer agreement.
- e. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.
- f. Pass such other and further order(s) as this hon'ble regulatory authority may deem fit and proper in the facts and circumstances of the present case.

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 filed by the respondent**

6. Notice to the promoter/respondent through speed post and through e-mail address ([customerconnect@ansals.com](mailto:customerconnect@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. Despite this the respondent has not chosen to file any reply accordingly, the defence of the respondent is struck off

**E. Jurisdiction of the authority**

7. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. 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**

8. 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**

9. 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 of the authority on relief sought by complainants**

**F. I Direct the respondent to pay delay interest on paid amount of Rs. 7836908.15/- of 24% till the handing over the physical possession. As per flat buyer agreement builder liable to offer possession on before 30th April 2015.**

10. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges @24%.
11. Clause 30 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*"30. The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the 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 dues by 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."*

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 allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

**Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months from date of agreement. The period of 36 months expired on 30.04.2015. Since in the present matter the BBA incorporates qualified reason for grace period/extended period in the possession clause for obtaining occupation certificate subject to force majeure. Since, there is no reply from promoter quoting such reasons neither any such reason has been contested by the respondent during the hearing. Accordingly, the authority disallows this grace period of 6 months to the promoter at this stage.

13. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the 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.

The legislature in its wisdom in the subordinate legislation under 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.

14. 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 MCLR +2% i.e., 9.30%.

15. The definition of term 'interest' as defined under section 2(z a) 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;"*

16. 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.

**F.II Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.**

17. In this context, attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

*"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices"*

18. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should

reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him.

19. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST, but builder has to pass the benefit of input tax credit to the buyer. That in the event the respondent-promoter has not passed the benefit of ITC to the buyers of the unit which is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter. The concerned SGST Commissioner is advised to take necessary action to ensure that the benefit of ITC is passed on to the allottee in future. Section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017 is produced as under:

*"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices"*

20. The final tax liability is to be re-fixed after considering the benefit u/s 171 of the SGST/CGST Act. However, the respondent-promoter shall not recover the amount charged towards GST from the allottee till the final calculation by the profiteering committee is provided and shall be payable only till the due date of possession subject to the decision and calculation of the profiteering committee.
21. 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 30 of the agreement executed between the parties on 30.04.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement. The period of 36 months expired on 30.04.2015. 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 30.04.2015. 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., 30.04.2015 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**

22. 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):
- a. The respondent is directed to pay the 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.,

- 30.04.2015 till the actual handing over the possession of the unit to the complainants.
- b. The arrears of such interest accrued from 30.04.2015 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 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
  - c. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - d. The rate of interest chargeable from the complainants /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 delay possession charges as per section 2(za) of the Act.
  - e. If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.
  - f. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
  - g. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is

entitled to charge GST, but for the projects where due date of possession is before 01.07.2017 the promoter shall not charge GST from the complainants. As the due date of possession is 30.04.2015 therefore the respondent shall not charge GST from the complainants and shall refund the amount if already charged.

23. Complaint stands disposed of.
24. 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.