

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

Complaint no.:	1467 of 2021
First date of hearing:	01.07.2021
Date of decision:	24.09.2021

1. Mrs Sunita,  
2. Mr. Rohtas Kumar Tokas,  
R/o House No. 199, Village Munirka, New Delhi-  
110067.

**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:**

Rohan Agarwal (Advocate)  
Meena Hooda (Advocate)

Complainants

Respondent

**EX- PARTE ORDER**

1. The present complaint dated 16.03.2021 has been filed by the complainants/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 as provided 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*.

**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 Heights, 86", Sector-86, Gurugram
2.	Project area	12.843 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	48 of 2011 dated 29.05.2011 valid up to 28.05.2017
5.	Name of licensee	Resolve Estate Pvt. Ltd.
6.	RERA registration details	Not registered
7.	Unit no.	A-502
8.	Unit measuring	2780.00 sq. ft.
9.	Date of execution of flat buyer agreement	25.07.2012
10.	Payment plan	Construction link
11.	Total consideration	₹ 1,00,65,770.50/-

		(As per Builder Buyer Agreement dated 25.07.2012 at pg. 36 of complaint)
12.	Total amount paid by the complainants	₹ 29,00,810/- (As alleged by the complainants on pg-44-47 of complaint)
13.	Due date of delivery of possession as per clause 31 of the flat buyer's agreement 42 months from the date of execution of agreement or within 42 months from date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later + 6 months grace period.  [Page 28 of complaint]	25.01.2016 (42 months from date of Execution of Builder Buyer Agreement i.e., 25.07.2012)  <b>(Note: Grace period not allowed)</b>
14.	Delay in handing over possession till the date of this order i.e., 24.09.2021	5 years 7 months 30 days
15.	Status of the project	Ongoing
16.	Occupation certificate	Not obtained

17.	Offer of possession	Not Yet Offered
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**B. Facts of the complaint**

3. The complainants pleaded the complaint on the following facts:

- a. That the respondent is a company, working in field of construction and development of residential as well as commercial projects across the country by the name of Ansal Housing & Construction Ltd.
- b. That the real estate commercial project named "Ansal Heights", which is the subject matter of present complaint, situated in Sector 86 Gurugram, therefore the hon'ble authority do have the jurisdiction to try and decide the present complaint.
- c. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its real estate projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new project always commits and promises to the targeted consumer that their space will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainants that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.
- d. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of projects in India, especially in NCR, the key factor to sell any residential space, is the delivery of completed project within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing any space. Respondent, therefore used

this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that the project will be delivered within the agreed timelines.

- e. That in the month of October 2011, the respondent through its marketing executives and advertisement via various mediums & means approached the complainants, with an offer to invest and buy residential flat in the proposed real estate project of respondent, namely "Ansal Heights" situated in Sector-86 Gurugram (hereinafter referred to as "Said Project"). The respondent had also shown the brochures and advertisement material of the said project to the complainants given by the respondent and assured that the allotment letter and flat buyer agreement for the said project would be issued to the complainants within one week of booking to be made by the complainants. The complainants while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of respondent to book the space in the project of respondent.
- f. Thereafter, the respondent did not do anything for nearly 2 years and keep sitting with the amount collected from the complainants and his family members. As per the said agreement the total sale consideration for the said residential flat was agreed as Rs. 90,31,670/- and the complainants had transferred from her bank account paid a total sum of Rs. 29,00,810/- to the respondent as follows Rs. 5,00,000 on 25.10.2011, Rs. 7,43,850 on 30.12.2011, Rs. 8,26,960 on 20.3.2012 and Rs. 8,30,000 on 19.7.2012.

- g. Since the respondent failed to adhere to the timely construction of the project, the complainants have stopped making further payments to respondent from 19.7.2012 onwards.
- h. On 14.06.2020 the complainants visited the site of the respondent to see the progress of the project but was completely shocked and surprised to see that respondent has not completed even the structural construction of building in which the flat was booked.
- i. That as per the clause 31 of the said flat buyer agreement dated 25.7.2012, the respondent had agreed and promised to complete the construction of the flat space and deliver its possession within a period of 42 months from the date of execution of the said buyer's agreement. The relevant portion of clause - 31 of the flat agreement is reproduced herein for the kind perusal of the hon'ble authority:

*"The developer shall offer possession of the unit any time, within a period of 42 months from date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later."*

However, the respondent has breached the terms of said buyer's agreement and failed to fulfill its obligations and has not delivered possession of said flat even today as on the date of filing of this compliant.

- j. That from the date of booking and till today, the respondent had raised various demands for the payment towards the sale consideration of said flat, but the fact that the respondent never adhere to the construction schedule forced the complainants to stop the payment of further instalments to respondent. Further, the scheme opted for payment of sale consideration was of construction linked payment plan within specific time. As such the complainants

were forced to stop the payment of instalments to respondent due to breach of essential condition by the respondent. The complainants were and has always been ready and willing to fulfil his part of agreement subject to timely delivery of the flat by respondent.

- k. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said shops on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said flat on the basis its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainants.
- l. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flats within the timelines agreed in the flat buyer agreement and otherwise.
- m. That the cause of action accrued in favor of the complainants and against the respondent on 22.10.11 when the complainants applied for the said flat and paid Rs 5,00,000/- as application money, again on 25.7.2012 when the complainants were given signed flat buyer agreement and it further arose when respondent failed /neglected to deliver the said flats. The cause of action is continuing and is still subsisting on day-to-day basis, as the respondent has still not paid the interest for the delayed possession to the complainants or the delivery of said flat till date.

**C. Relief sought by the complainants:**

4. The complainants have sought following reliefs:

- a. Direct the respondent parties to pay interest at the prescribed rate for every month of delay from due date of possession till the handing over the possession, on paid amount.
- b. Direct the respondent to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the flat.
- c. Direct the respondent to hand over the possession of flat to the complainants immediately and not later than six months from the date of judgment, complete in all respects and execute all required documents for transferring/ conveying the ownership of the respective flats.
- d. 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. Jurisdiction of the authority**

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

**D.I. Territorial jurisdiction**



7. 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**

8. 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.

**E. Findings on the relief sought by the complainants**

**E.I. Direct the respondent parties to pay interest at the prescribed rate for every month of delay from due date of possession till the handing over the possession on paid amount.**

9. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act.

***"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."*

10. Clause 31 of the agreement to sell provides for handing over of possession and is reproduced below:

*"31. The developer shall offer possession of the unit any time, within a period of 42 months from date of execution of agreement or within 42 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 buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit"*

11. 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 promoters. 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 promoters 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 promoters are 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 42 months plus 6 months from date of agreement or the date of obtaining all the required sanctions and approval necessary for commencement of construction

whichever is later. The period of 42 months from date of execution of agreement expired on 25.01.2016. Since in the present matter the BBA incorporates qualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. As the respondent has not filed the reply even after imposition of the costs on previous dates which was also not paid by the respondent accordingly, the defence of the respondent is struck off. Hence, there are no situation to be recorded as force majeure circumstances which can be taken into consideration by the authority. Accordingly, this grace period of 6 months shall not be allowed to the promoter at this stage.

12. **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."***

13. 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.

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 marginal cost of lending rate +2% i.e., 9.30%.

15. 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;"*

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.

**E.II. Direct the respondent to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the flat.**

**E.III. Direct the respondent to hand over the possession of flat to the complainants immediately and not later than six months from the date of judgement, complete in all respects and execute all**

**required documents for transferring/conveying the ownership of the respective flats.**

17. The respondent promoter has not obtained the OC for the subject unit till date. The issuance of occupational certificate by the competent authority in itself is a proven fact that the promoter has sought all necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. as these clearances are preconditions for grant of OC. In such situation condition the authority cannot direct the respondent promoter to offer the possession within 6 months as for a valid offer of possession OC is a prerequisite. Therefore, respondent promoter is directed to offer the possession of the subject unit once the OC for the same has been obtained by the competent authority.
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 11(a) of the agreement executed between the parties on 25.07.2012, the possession of the subject apartment was to be delivered within 42 months from the date of execution of the agreement. The period of 42 months expired on 25.01.2016. As far as grace period is concerned, the same is not allowed for the reasons quoted above. Therefore, the due date of handing over possession is 25.01.2016. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 25.01.2016 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.

**F. 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 promoters 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., 25.01.2016 till the actual handing over of the possession.
- ii. The arrears of such interest accrued from 25.01.2016 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 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent is also directed to pay the costs of ₹20,000/- as imposed by the court vide order dated 24.09.2021.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. 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 promoters 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.

- vi. The respondents shall not charge anything from the complainants which is not the part of the 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.

20. Complaint stands disposed of.

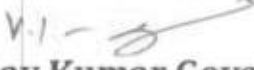
21. File be consigned to registry.

  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021

  
(Vijay Kumar Goyal)

Member

Judgement uploaded on 21.12.2021.

**HARERA**  
**GURUGRAM**