


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

|                               |                     |
|-------------------------------|---------------------|
| <b>Complaint no.:</b>         | <b>1258 of 2021</b> |
| <b>First date of hearing:</b> | <b>01.07.2021</b>   |
| <b>Date of decision:</b>      | <b>30.03.2022</b>   |

Binoo Sehgal  
R/o House No. 8/28, New Campus, CCSHAU, Hisar,  
125004

**Complainant**

  
Versus

M/s Ansal Housing Ltd.  
**Office address:** 2<sup>nd</sup> floor, Ansal Plaza, sector-1, near  
Vaishali metro station, Vaishali, Ghaziabad-201010.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairperson  
Member**

**APPEARANCE:**

Mr. Gaurav Bhardwaj (Advocate)  
None

**Complainant  
Respondent**

**EX PARTE ORDER**

1. The present complaint dated 12.03.2021 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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| <b>Sno.</b> | <b>Heads</b>                                 | <b>Information</b>                                 |
|-------------|--|--|
| 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.                                     | H-12A01,<br>[page 29 of complaint]                 |
| 8.          | Revised unit no.                             | H-1301<br>[page 88 of complaint]                   |
| 9.          | Unit measuring                               | 1360 sq. ft.<br>[super area]                       |
| 10.         | Date of execution of builder buyer agreement | 21.12.2012<br>[page 26 of complaint]               |



|     |                                      |   |
|-----|--------------------------------------|---|
| 11. | Payment plan                         | Construction link   |
| 12. | Total consideration                  | ₹ 54,35,696/-<br>[As per builder buyer agreement dated 21.12.2012 at pg. 42 of complaint]   |
| 13. | Total amount paid by the complainant | ₹52,01,264/-<br>[as per receipt information page 43 to 87 of complaint]   |
| 14. | Possession clause                    | <b>31.</b><br><i>The developer shall offer possession of the unit any time, <b>within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later</b> subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be <b>a grace period of 6 months allowed to the developer over and above the period of 42 months</b> as above in offering the possession of the unit."</i><br>(Emphasis supplied)<br>[pg 34 of complaint] |
| 15. | Due date of delivery of possession   | 21.12.2016<br><b>Note: Due date calculated from date of agreement as the date of</b>  |



|     |   |  |
|-----|---|--|
|     |   | <b>construction is not known. Grace period allowed</b> |
| 16. | Delay in handing over possession till the date of this order i.e., 30.03.2022 | 5 years 3 months 9 days                                |
| 17. | Status of the project   | Ongoing  |
| 18. | Occupation certificate  | Not obtained   |
| 19. | Offer of possession   | Not Yet Offered  |

**B. Facts of the complaint**

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

- a. That somewhere around 2010-2011, the respondent advertised about its new group housing project namely "ANSAL HEIGHTS, 86" (*hereinafter called as the "project"*) located at Sector-86, District Gurugram. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing world class amenities and said project is strategically located on main 60-meter sector road with easy access from both NH-8 & Dwarka expressway. It was also represented that the project shall have facilities like convenient shopping, primary & nursery school, clubhouse with swimming pool/gymnasium/yoga/aerobics lounge, amongst several others
- b. That believing the false assurances and misleading representations in the advertisement pertaining to the project in question and relying on the strong market hold of the respondent company, on 10.12.2011, the complainant booked a residential apartment in the



- said project of the respondent by paying an amount of Rs. 4,00,000/- vide instrument no. 226753 dated 10.12.2011 towards said booking.
- c. That thereafter, the respondent kept raising payment demands without executing the flat buyer agreement. Upon inquiring from the said respondent as to when the agreement will be executed, he simply said that it shall be executed soon and asked the complainant to pay the instalments as per demands raised. Believing the fake assurances of the respondent company, the complainant kept making payment in accordance with the demands raised by the Respondent, totalling to a payment of Rs. 14,63,432/- from booking in December'2011 till December'2012, only in the hope that agreement shall be executed soon.
- d. That after one year from the date of booking, finally, on 21.12.2012, a flat buyer's agreement was executed between the parties for the 2 BHK unit bearing no. H-12A01, admeasuring sale area of 1360 sq. ft. for total basic sale price of Rs. 48,91,496/-.
- e. That as per clause 31 of the said agreement dated 21.12.2012, the Respondent undertook to complete construction and offer possession within 42 months from the date of execution of said agreement or within 42 months from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later along with a grace period of 6 months. Since the date of sanctions and approvals cannot be obtained, the due date if calculated from the date of execution of agreement. Thus, the due date of handing over possession comes out to be 21.12.2016.

- f. That at the time booking, the respondent assured that the project has all the necessary approvals and sanctions in order to commence construction and the same would be done soon and that the unit in question shall be delivered within 4 years from booking. However, vide clause 31 of the agreement dated 21.12.2012, the respondent simply extended the date of possession by 1 year. Further, few extra charges like car parking/club membership etc. were included in the payment plan which were not disclosed at the time of booking. To this, the complainant took a serious note and pointed out the said anomalies to the respondent and requested to correct the said time period and explain said extra charges. However, the respondent simply assured that the agreement is a mere formality, and they will stick to the representations made at the time of booking and they shall deliver possession soon. Having invested a big amount out of her life savings in purchasing the unit in question, the complainant continued with the booking. However, the respondent miserably failed in handing over possession of the unit in question till said due date and even till now.
- g. That, thereafter, vide letter dated 14.11.2013, the respondent informed that the unit bearing no. H-12A01 shall be read as H-1301 as it was advised by the concerned government authorities. It is pertinent to mention here that with the said letter, no government authority letter or notice from government department was attached.
- h. That thereafter, the complainant kept making payment as and when demanded by the respondent. By 2015, the complainant had made a payment of almost 70 % of the total sale consideration. Upon not



receiving any information regarding completion of construction or offer of possession from the respondent, the complainant visited the project site in January'2015 only to find out that no construction activity was being carried out and the project was in a complete stand still. This left the complainant devastated and she along with her family immediately rushed to the respondent's office seeking a concrete explanation over the pitiable construction status. However, the respondent falsely assured that the construction shall be completed soon, and possession shall be handed over as per schedule.

- i. That till date, the complainant has made a payment of Rs. 52,08,764/- as against total sale consideration of Rs. 54,35,696/-. It is pertinent to mention here that the respondent took an amount of Rs. 24,204/- towards IDC and Rs. 2,10,800/- towards EDC in January'2014 itself which the project has not been completed till date despite lapse of almost 10 years from the date of booking. The respondent also demanded and received an amount of Rs. 75,000/- towards club fees in September'2014 though till date, no club is operational in the project in question. Moreover, the respondent also arbitrarily levied an amount of Rs. 24,480/- towards labour cess charges and upon objecting to the same, said respondent simply asserted that those charges are to be paid by the allottees to the government.
- j. That, thereafter, receiving no offer of possession on the due date, i.e., 21.12.2016, somewhere around February'2017, the complainant again visited the project site but to her utter shock, there was snail paced construction going on at the project site and the project

seemed nowhere nearing completion. Accordingly, the complainant immediately contacted the respondent in order to pursue them to complete the project, but to no avail.

- k. That as per clause 24 of the agreement, upon delay in payments, the allottee could be made liable to the extent of paying 24% interest per annum compounded quarterly. On the contrary, as per clause 37, upon delay in handing over possession, the respondent company would be liable to pay compensation only to the extent of Rs. 5/- per sq. ft. of the super area of the apartment for the period of delay. It is submitted that such clauses of the agreement are clearly unfair and arbitrary thus making the agreement one-sided. Accordingly, the complainant pointed out these unfair clauses to the respondent, but to no avail as to her utter shock, the said respondent said that the complainant shall be bound to abide by the clauses incorporated in the agreement as the same was signed by her.
- l. That having already invested almost all of her life savings in order to purchase the unit in question, the complainant had no other option but to believe the representations of the respondent and continue making payment, despite the fact that the respondent had not only delayed the project inordinately but was also not giving any concrete reply to the queries of the complainant regarding the expected date of delivery of possession.
- m. That the levy of labour cess charges of Rs. 24,480/- is absolutely arbitrary and illegal as the said charges have to be borne by the builder to be paid to the concerned government department and buyer cannot be made liable for the same.

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





4. The complainant has sought following reliefs:
  - a. Direct the respondent to obtain occupation certificate and offer possession of the unit in question.
  - b. Award delay interest at the prescribed rate for every month of delay from the due date of possession, i.e., 25.02.2017 till handing over of possession after receipt of occupation certificate.
  - c. Direct the respondent to refund the labour charges of Rs. 24,480/- unjustifiably levied from the complainant.
  - d. Direct the respondent to charge delay payments, if any, at the prescribed rate in accordance with the Haryana Real Estate (Regulation and Development) Rules, 2017.
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.
6. The authority issued a notice dated 05.06.2021 of the complaint to the respondent by speed post and also on the given email address at [ahl@ansals.com](mailto:ahl@ansals.com). Thereafter, a reminder dated 17.06.2021 was issued to the respondents for filing reply. The delivery reports have been placed in the file. The counsel for respondent has also put in appearance in previous dates of hearing but the reply has not been filed despite imposition of costs amounting to ₹ 30,000/-. Despite service of notice, the respondent has preferred not to file reply to the complaint within the stipulated period failing which the defence of the respondent is struck off. None on behalf of respondent appeared on date of decision. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.

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 based on these undisputed documents and submission made by the complainant.

**D. Jurisdiction of the authority**

8. 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.

**D.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.

**D.II. Subject matter jurisdiction**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

**Section 11**

.....

(4) The promoter shall-

(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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

**E.I. Direct the respondent to obtain occupation certificate and offer possession of the unit in question.**

12. The respondent is legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is unsatisfied that even after the lapse of more than 5 years from the due date of possession the respondent has failed to apply for OC to the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC.

**E.II. Award delay interest at the prescribed rate for every month of delay from the due date of possession, i.e., 25.02.2017 till handing over of possession after receipt of occupation certificate.**

**E.III. Direct the respondent to charge delay payments, if any, at the prescribed rate in accordance with the Haryana Real Estate (Regulation and Development) Rules, 2017.**

13. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges @ 24% interest on the amount paid. 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.

***"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."*

14. 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"*

15. 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 authority calculated due date of possession according to clause 31 of the agreement dated 21.12.2012 i.e., within 42 months from date of execution as there is no document on record regarding approval necessary for commencement of construction. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage.

16. **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."*

17. 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.
18. 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., **30.03.2022** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
19. The definition of term 'interest' as defined under section 2(z) 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:

*"(z) "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;"*

20. 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 complainant in case of delayed possession charges.

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 11(a) of the agreement executed between the parties on 21.12.2012, 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 21.06.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 21.12.2016. 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., 21.12.2016 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.

**E.IV. Direct the respondent to refund the labour charges of Rs. 24,480/- unjustifiably levied from the complainant.**



22. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled **Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

**F. Directions of the authority**

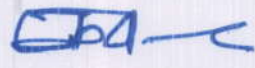
23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- 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., 21.12.2016 till the actual handing over of the possession.
- ii. The arrears of such interest accrued from 21.12.2016 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the 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.
  - v. The respondent is directed to pay the cost of ₹ 30,000/- to the complainant as imposed upon the respondent by the authority on 01.07.2021, 19.08.2021 & 24.09.2021.
  - vi. The respondent shall not charge anything from the complainant 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.
24. Complaint stands disposed of.
25. File be consigned to registry.

  
**(Vijay Kumar Goyal)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.03.2022