

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

Complaint no.	:	1412 of 2021
First date of hearing:		06.05.2021
Date of decision:		30.03.2022

Pinki Goyal

R/o: - A-604, Pragjyotishpur appts, Sector-10, Dwarka

Complainant

Versus

Ansal Housing Limited

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

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Mr. Nitesh Lochav (Advocate)
Ms. Meena Hooda (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 31.03.2021 has been filed by the complainant/allottee 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 allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	Estella, Sector-103, Gurugram
2.	Project area	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid up to 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
6.	HRERA registered/ not registered	Not registered
7.	Occupation certificate granted on	Not obtained
8.	Unit no.	K-0508 [annexure P1, page 18 of complaint]
9.	Unit measuring	1245 sq. ft. [super area]
10.	Date of execution of buyer's agreement	28.06.2012 [annexure P1, page 14 of complaint]
11.	Payment plan	Construction link plan
12.	Total sale consideration as per customer ledger dated 20.03.2021	₹ 48,17,239/- [annexure P2, page 35 of complaint]
13.	Total amount paid by the complainant as per customer ledger dated 20.03.2021	₹ 47,45,344/- [annexure P2, pg. 39 of complaint]



14.	Possession clause	<p>30.</p> <p><i>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."</i></p> <p>(Emphasis supplied) [page 25 of complaint]</p>
15.	Due date of possession	<p>28.12.2015</p> <p>[Note: Due date calculated from date of execution of agreement as the date on which demand was raised for commencement of construction i.e., 25.05.2012 is earlier to that of date of buyer's agreement. Grace period allowed]</p>



16.	Offer of possession	Not offered
17.	Delay in handing over possession till 30.03.2022	6 years 3 months 2 days

B. Facts of the complaint

3. The complainant has made the following submissions in their complaint:

- a. The complainant Mrs. Pinki Goyal applied for the 2 BHK flat of around 1245 sq. ft. in the Ansal Estella Project of the respondent. The complainant paid a total amount of Rs.2,06,992/- on 01.04.2011. The complainant further paid a total amount of Rs.1,56,992/- on 02.05.2011. The complainant further paid a total amount of Rs.50,000/- on 03.05.2011. The complainant further paid an amount of Rs.2,06,992/- on 30.06.2011. The complainant further paid an amount of Rs.2,06,992/- on 16.07.2011. The complainant further paid an amount of Rs.70,400/- on 19.07.2011. The complainant further paid an amount of Rs.2,06,992/- on 28.07.2011. The complainant further paid an amount of Rs.1,00,000/- on 05.03.2011. The complainant further paid an amount of Rs.3,41,345/- on 20.05.2012. The complainant further paid an amount of Rs.81,540/- on 12.06.2012. The complainant and respondent entered into the builder buyer agreement on 28.06.2012. wherein the respondent has to give the possession of the flat no. K-508 within 36 months from the date of execution of this agreement on 28.06.2012. The complainant further paid an amount of Rs.2,04,360/- on 06.04.2013. The complainant further paid an amount of Rs. 3,60,975/- on 10.07.2013. The complainant further paid an amount of Rs. 2,02,174/- on 09.10.2013. The

complainant paid an amount of Rs. 2,04,360/ on 13.11.2013. The complainant paid an amount of Rs.2,04,360/ on 04.02.2014. The complainant paid an amount of Rs.2,04,360/- on 11.04.2014. The complainant paid an amount of Rs.1,95,921/- on 19.06.2014. The complainant paid an amount of Rs.2,12,085/- on 01.10.2014. The complainant paid an amount of Rs.22,410/ on 18.12.2014. The complainant further paid an amount of Rs. 2,04,360/- on 24.12.2014. The complainant further paid an amount of Rs. 2,07,798/ on 07.08.2015. The complainant further made a payment of Rs. 2,37,200/ between to 01.03.2017. The complainant has paid all the payments as asked by the respondent including interest wherever applicable. The total amount paid by the complainant till 01.03.2017 is Rs.48,06,157/ as per the statement of account provided by respondent which confirms that the respondent received a total amount of Rs. 48,06,157/- and as per that, the outstanding amount is NIL. However, the respondent failed to give the possession of the flat within three years (i.e., by 28.06.2015) from the date of execution of agreement which is 28.06.2012.

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:

- a. Respondent may be directed to give the possession of the flat bearing no. K-508 to the complainant immediately as the respondent was bound to deliver the possession of the flat to the complainant by 28.06.2015.
- b. Respondent may be directed to make payment of interest @18 % p.a. and damages/compensation @ 18% p.a. from the date of



payment till the delivery of possession of the flat as the respondent is bound to compensate the complainant under the present laws, rules and regulations of HARERA.

c. That the respondent may be directed to pay the cost incurred by the complainant for filling 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 filed by the respondent

6. The respondent contented the complaint on the following grounds:

a. That the present complaint is neither maintainable nor tenable by both law and facts the complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the apartment buyer's agreement dated 28.06.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.

b. That the respondent is a Public Limited Company registered under the Companies Act, 1956, having its registered office at 606, 21 Barakhamba Road, New Delhi - 110001. The present reply is being filed by the respondent through its duly authorized representative, namely, Mr. Vaibhav Chaudhary whose authority letter is attached



herewith. The above said project is related to licence no.17 of 2011 dated 08.03.2011, received from the Director General, Town and Country Planning, Chandigarh, Haryana (DGTCP) over the land measuring 15.743 acres comprised in Rect. No.9, Killa No.3/1/1, 2/1, 4/1 area 12 Kanal 1 Marla, Rect. No.3, Killa No.10, 11/1, 26/1 area 9 Kanal 14 Marla, Rect. No.4, Killa No.181, 17/2, 23/2 & 24/1 area 11 Kanal 14 Marla, Rect. No.4, Killa No.13/2/2, 14/1, 29, area measuring 9 Kanal 6 Marla, Rect. No.7 & 8, Killa No.5/2,6/1 & 25/2 area 15 Kanal 16 Marla, Rect. No.4, Killa No.6, 7/1, 14/2 & 15/1 area 10 Kanal 5 Marla, Rect. No.9 & 10, Killa No.1, 2/1, 9/1/2, 26, 21, 22/1 area 27 Kanal 2 Marla, Rect. No.4, Killa No.8/2 & 13/2/1 area 4 Kanal 15 Marla, Rect. No.4, Killa No.13/1, 19/1, 18/2, 22 & 23/1 area measuring 25 Kanal 14 Marla falling in the revenue estates of Village Dhanwapur and Tikampura, Tehsil & District Gurugram presently the part of residential Sector-103 of the Gurugram-Manesar Urban Plan - 2021. The building plans of the project have been approved by the DTCP Haryana vide memo no. ZP-7333/JD(BS)2011/17636 dated 28.11.2011. Thereafter, the respondent herein was granted the approval of firefighting scheme from the fire safety point of view of the housing colony measuring 15.743 acres by the Director, Haryana Fire Service, Haryana, Chandigarh.

- c. That the relief sought in the complaint by the complainant is based on false and frivolous grounds; thus, is not entitled to any discretionary relief from this Hon'ble Authority, as the person not coming with clean hands may be thrown out without going into the merits of the case. However, the true facts of the case are that the landowners under the project had entered into agreements with erstwhile owners of the project land to obtain licence from Government of Haryana for setting up of a Group Housing project on the project land to develop and market the same. After receipt of the licence, the landowners have purchased the entire project land from the erstwhile owners of land through various sale deeds after taking necessary permission from the Director General, Town and Country Planning, Haryana for such purchase. The landowners had entered into an agreement with the developer whereby the landowners have assigned the complete right to develop, build and market sanctioned FSI area of 5,00,000 Sq. ft. and the developers in exercise of the rights so acquired are developing and marketing a part of the project and more specifically the built-up area comprised in towers K, L, M, N, O and P the remaining area of the project is being developed, built and marketed by the landowners themselves.
- d. That, it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into



the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period had there been no force majeure.

- e. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the flat buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.
- f. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the



project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the authority of the said project by giving afresh date for offering of possession. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed.

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. 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.

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

F. Findings of the authority on relief sought by complainant

F.I. Respondent may be directed to give the possession of the flat bearing no. K-508 to the complainant immediately as the respondent was bound to deliver the possession of the flat to the complainant by 28.06.2015.

11. 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.

F.II. Respondent may be directed to make payment of interest @18 % p.a. and damages/compensation @ 18% p.a. from the date of payment till the delivery of possession of the flat as the respondent is bound to compensate the complainant under the present laws, rules and regulations of HARERA.

12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges @ 18%. 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."

13. 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 complainant 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: According to clause 30 of the agreement dated 28.06.2012 the developer was entitled to offer the possession of the apartment within 36 months from date of execution from 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 from the date of execution of agreement i.e., 28.06.2012 as the date on which demand was raised for commencement of construction i.e., 25.05.2012 is earlier to that of date of buyer's agreement. The period of 36 months expired on 28.06.2015. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.

14. **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.

15. 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.
16. 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 MCLR +2% i.e., 9.30%.
17. 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;"

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **9.30%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
19. 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 28.06.2012, 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 28.06.2015. 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 28.12.2015. 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., 28.12.2015 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.

F.III. That the respondent may be directed to pay the cost incurred by the complainant for filing the present complaint.


20. The complainant is claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G. Directions of the authority

21. 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 complainant from due date of possession i.e., 28.12.2015 till the actual handing over the possession of the unit to the complainant.
 - b. The arrears of such interest accrued from 28.12.2015 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.



- c. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- d. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the 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 allottee then the balance delay possession charges shall be paid after adjustment of the outstanding dues against the allottee.
- f. The respondent shall not charge anything from the complainant 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.
22. Complaint stands disposed of.
23. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.03.2022