

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

<b>Complaint no.</b>	:	<b>523 of 2021</b>
<b>First date of hearing:</b>		<b>19.03.2021</b>
<b>Date of decision:</b>		<b>30.03.2022</b>

1. Hira Singh Bisht
2. Anita Bisht

**R/o:** - 101, Block A, Seema Group Housing Society,  
Limited, Plot no. 7, Sector-11, Dwarka-1100075

**Complainants**

**Versus**

Ansal Housing Limited

**Address:** - 606, 6<sup>th</sup> floor, Indra Prakash 21,  
Barakhamba Road, New Delhi-110001

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Mr. Riju Mani (Advocate)  
Ms. Meena Hooda (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint dated 03.02.2021 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	Not registered
7.	Occupation certificate granted on	Not obtained
8.	Unit no.	L-0102 [annexure C4, page 40 of complaint]
9.	Unit measuring	1725 sq. ft. [super area]
10.	Date of allotment letter	25.01.2012 [annexure C3, page 30 of complaint]
11.	Date of execution of buyer's agreement	12.05.2012 [annexure C4, page 36 of complaint]
12.	Payment plan	Construction link plan
13.	Total sale consideration as per BBA	₹ 61,46,875/- [annexure C4, page 56 of complaint]

14.	Total amount paid by the complainants as per customer ledger dated 15.12.2015	₹ 61,73,067/- [annexure C10, pg. 99 of complaint]
15.	Possession clause	<p><b>30.</b></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 47 of complaint]</p>
16.	Due date of possession	<p>12.11.2015</p> <p><b>[Note: Due date calculated from date of execution of agreement as the date of commencement of</b></p>

		<b>construction is not known. Grace period is allowed]</b>
17.	Offer of possession	Not offered
18.	Delay in handing over possession till 30.03.2022	6 years 4 months 18 days

**B. Facts of the complaint**

3. The complainants have made the following submissions in their complaint:

- a. The in the year 2011-2012, the respondent company had launched new project in the name of "Estella" situated at Sector 103, Gurugram, Haryana. The project was promoted as a premium project that offer plush apartments and lavish penthouses. That the project has A- Star qualities designed immaculately to offer a sophisticated and sumptuous lifestyle. Further, claims were made that the project is a heavenly dwelling which culminates into an artistic masterpiece that incorporates intricate detailing and modern technologies.
- b. Some other highlights of the project are mentioned below:
  - 100% power back up
  - 3 tier security system with access cards for vehicles and personnel
  - Provision of wifi connectivity of any category
  - Walking track with ample green area and water bodies
  - Children's play area
  - Landscaping with exotic plants
  - Water bodies and fountains
  - Swimming pool

- Gymnasium state of the art club house
  - Insulated roofs
  - High speed elevators in all buildings
  - Convenience stores
  - Centralized facility to be run by a facility management company
- c. That the agents/ representatives informed the complainant that an allottee of flat no. L-0102 was interested in selling his unit and that as the booking was previously made, the possession of the same would be delivered comparatively faster. That the complainants were represented that the work of that particular tower had already started and thus, the complainants were highly impressed by not only the highlights of the project but also the promised on-time delivery of possession by the respondent company and agreed to buy the unit from the original allottee namely, Mr. Joginder Singh. Thus, in December 2011 the complainants herein stepped into the shoes of the original allottee and were accordingly allotted unit no. L-0102.
- d. That thereafter, an apartment buyer's agreement dated 12<sup>th</sup> May 2012 was executed between the complainants and the respondent company. That the agreement had the following details of the apartment:

<b>Unit No.</b>	L-0102
<b>Type</b>	3 BHK
<b>Sale Area</b>	1725.00
<b>Total Consideration</b>	Rs. 61,46,875.00/-

- e. It is submitted that as per clause 30 of the agreement executed between the parties, the respondent was liable to complete the project 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 approvals necessary for commencement of construction, whichever is later. It is pertinent to mention herein that as per **Clause A** and **Clause B** of the agreement, under the heading "*Developer's Representations*", it was represented to the complainants that the respondent had all the necessary sanctions and approvals from the requisite authority. Thus, the due date of delivery of possession is to be calculated from the date of execution of the agreement i.e., 12.05.2012. It is submitted that in light of the above-mentioned facts, the respondent ought to have handed over the possession of the booked unit to the complainants on 12.05.2015.
- f. That the respondent company drew an unfair and arbitrary agreement which was totally one-sided, illegal, unfair, unjust and arbitrary. All the clauses regarding possession, compensation, etc. were drawn in their own favour and the complainant had no say in anything whatsoever. In the agreement, the complainant was being denied fair scope of compensation, in case of delay possession and was supposed to pay heavy penalty in case of delay in payment of the instalments. It is submitted that the arbitrariness and unfairness of the apartment buyer agreement can be derived from the perusal and comparison of clauses 35 and 23 of the agreement. That as per clause 23 of the agreement, the respondent company had the unilateral right to charge high interest at the rate of 24%

per annum compounded quarterly in case of delay payments, however, as per clause 35 of the agreement in case of delay in offering possession of the unit, the respondent company was only liable to pay a meagre compensation amount of Rs. 5/- per sq. ft. per month on super area to the complainants.

- g. That the complainant had opted for a construction linked payment plan, the very essence of which is that the payment will only fall due as and when the respondent meets the particulars construction milestones. It is submitted that the respondent company regularly raised demands and the complainants diligently kept making the payments under the impression that the construction was going on in full swing and the complainants will be provided with the possession within time. Further, it is pertinent to mention herein that at no point of time did the respondent company informed the complainants that the construction was at a halt or there was any delay.
- h. That it is pertinent to mention herein that in order to pay the total consideration the complainants had availed the loan facility from HDFC Bank Ltd. and availed a housing loan of Rs. 19,00,000/- from HDFC Bank Ltd. Later on, the sanctioned loan amount was enhanced to Rs. 22,00,000/- (Rupees Twenty-Two Lakh Only).
- i. That it is pertinent to mention herein that the complainants had invested their life savings to the tune of Rs. 41,46,875/- (Rupees forty-one lakh forty-six thousand eight hundred and seventy-five only) and the remaining amount of Rs. 20,00,000/- (Rupees twenty lakh only) was paid via loan taken by the complainant no. 2.

- j. That the complainants are diligent, respectable and hardworking citizens of India. It is indispensable to mention that the complainant no. 1 is serving in the border security force as an inspector, 115 battalion and is currently deployed in Srinagar, Jammu & Kashmir. It is submitted that the complainants had invested all their hard-earned money in the project of the opposite party with the hope of obtaining the booked unit but were deeply aggrieved when the possession was not given. It is noteworthy to mention that the opposite party had managed to collect substantial amount of the money in advance by resorting to unfair trade practices.
- k. That helpless and aggrieved, the complainants approached the respondents on multiple occasions and through various mediums asking them to handover the possession, however, to no avail. The respondent company has miserably failed to handover the possession and even complete the construction within the stipulated time period.

**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. 62,56,947/- for every month of delay.
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. 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 12.05.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.
7. 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.

8. 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.

9. 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.
10. 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.

11. 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 earnestly 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**

12. 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**

13. 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**

14. 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.

15. 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 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. 62,56,947/- for every month of delay.**

16. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges. 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."*

17. 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 12.05.2015. 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.

18. **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.

19. 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.
20. 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%.
21. 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;"*
22. 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.



23. 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 12.05.2012, 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 12.05.2015. 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 12.11.2015. 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., 12.11.2015 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**

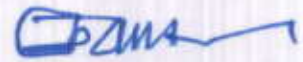
24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- 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., 12.11.2015 till the actual handing over the possession of the unit to the complainants.
- b. The arrears of such interest accrued from 12.11.2015 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.

25. Complaint stands disposed of.
26. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.03.2022



**HARERA**  
**GURUGRAM**