

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 4649 of 2020

Date of decision : 11.10.2021

VINEET MATHUR,
KIRTI MATHUR AND
KUMKUM MATHUR
R/O : Flat No. 419,
B5, Ashiana Anmol,
Sector-33, Sohna
Gurugram-122103

Complainants

Versus

ASHIANA DWELLINGS PVT. LTD.
ADDRESS: 5F, Everest 46/C,
Chowrinhgee Road, Kolkata,
W.B.- 700071

Respondent

APPEARANCE:

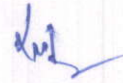
For Complainants:

Mr. Amit Kumar (Advocate)

For Respondent:

Mr. S. M. Ansari (Advocate)

ORDER


A.O.

11/10/21



1. This is a complaint filed by Vineet Mathur, Kirti Mathur and Kumkum Mathur (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainants, they jointly booked a flat in respondent's project "**Ashiana Mullbery**", situated at sector-2, Sohna Road, Gurugram on 08.04.2018, and made payment of Rs 9,44,227 as booking amount. The respondent allotted unit No. A-011 in Tower T 3 admeasuring 1730 sq. ft. for a total sale consideration of Rs 88,15,054 including BSP, EDC, IDC with taxes etc. A builder buyer agreement (BBA) was executed on 04.05.2018.
3. As per the Clause 7.1 of buyer's agreement, the possession of the unit was proposed to be delivered by 30th June 2019 with 6 months grace period. The respondent failed to complete the construction work and consequently failed to deliver the possession of the unit till date.
4. The complainants have paid all dues as demanded by the respondent from time to time. The complainant enquired about the progress of the construction, but the respondent failed to provide any clear date of completion of the project

21
A.O.
11-10-21



to the complainants. The complainants visited the project site on 06.11.2020 and found that the construction work of the tower in which their unit is situated is far from completion. The respondent has failed to obtain the occupation certificate. The complainants have paid Rs 47,63,746 i.e. 54 % of entire agreed consideration along with miscellaneous and additional charges etc on time.

5. The respondent has not constructed the project as per sanctioned construction plan submitted with the authority and there are major deviations in the construction of the project which is majorly affecting the complainants.
6. The complainants vide email dated 23.12.2019 sought refund of their money with interest as there was no communication from the side of respondent about delivery of apartment and construction work was far from completion.
7. As per the details available on website of MCA/ROC, there were two directors of the company Rohit Raj Modi and Mayank Raj Modi, and after resignation of both the directors, there is no active director in the company, which is violation of the statutory requirement.
8. As respondent has committed gross violation of the provisions of section 18(1) of the Act by not handing over the timely possession of the unit in question, the

[Handwritten signature]

A.O.

11-10-20



complainants have prayed for refund of entire amount of Rs 47,63,746 along with interest at prescribed rate.


9. The particulars of the project are reproduced here as under in tabular form:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Ashiana Mullbery ", Sector 2, Sohna, Gurugram, Haryana
2.	Project area	10.25 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	16 of 2014 dated 10.06.2014 valid upto 09.06.2019
5.	RERA Registered/ not registered	Registered vide no. 44 of 2017 dated 11.08.2017
UNIT DETAILS		
1.	Unit No.	A-011
2.	Unit measuring	1730 sq. ft.
3.	Date of Booking	08.04.2018
4.	Date of Buyer's Agreement	04.05.2018.
5.	Due Date of Delivery of Possession	30.06.2019

ky
A.D.
11-10-21


	Clause 7.1 of buyer's agreement, the possession of the unit was proposed to be delivered by 30 th June 2019 with 6 months grace period	
6.	Delay in handing over of possession till date	2 year 04 months
PAYMENT DETAILS		
7.	Total sale consideration	Rs 88,15,054
8.	Amount paid by the complainants	Rs 47,63,746
9.	Payment Plan	Performance linked payment plan

10. The respondent contested the complaint by filing a reply dated 15.02.2021. It is averred complainants applied for loan and on 14.05.2018, a permission to mortgage was issued by respondent to HDFC Ltd. and tripartite agreement was executed among complainants, respondents and HDFC Ltd. The complainants failed to make payment as per the payment plan opted by them and have made several defaults in the payment of instalments towards the subject unit. The possession of unit was to be delivered by 30th June 2019 with grace period of 6 months subject to timely payment by the allottee as well as force majeure circumstances. The construction work was stopped several


A.O.
11-12-21

times during the year 2016, 2017, 2018, 2019 and 2020 by the order of EPCA, HSPCB, NGT and Supreme Court. Due to increase in level of pollution, hon'ble Supreme Court vide its order dated 14.11.2019 in the matter of **M.C. Mehta v Union of India & others, writ petition (c) No. 13029/1985**, had imposed complete ban on construction and excavation work which was uplifted completely on 14.02.2020.

11. The construction work is going on its full swing and major part of it, is already completed, despite the financial obstacles due to economic slowdown. Due to current pandemic covid-19 situation the construction at the site is slowed down. Moreover, on 30.09.2020 a team appointed by hon'ble authority duly inspected the project site and was satisfied with the construction activities. The money paid by allottees have been utilised for the construction of the project and it is not feasible to pay back the amount as sought by the complainants.
12. It (respondent) had always kept complainants aware of the status of the project, and to avoid contractual obligation complainants have filed frivolous which is liable to be dismissed.
13. I have heard the counsels for the parties and have perused the record


A.O.
11/10/21


14. It is an admitted position that occupation certificate for the said tower has not been obtained by the respondent. In compliance of the order dated 30.07.2021, respondent has filed an affidavit of Mr. Ramphal Yadav, authorised representative of respondent company wherein it has been mentioned that due to several court orders and other force majeure conditions the construction work was halted for 37 weeks. As per the table of status of construction and photographs filed by the respondent, the project is almost 85 % complete.
15. As per terms of buyer's agreement possession of the apartment in question was to handed over to complainant till 30th June 2019 plus a grace period of 6 months unless there is delay due to force majeure. Even if contention of the respondent that construction was halted for 37 weeks due to various orders, is accepted, the construction work ought to have been completed by 30.03.2020. when respondent is allowed 37 weeks time as force majeure circumstances i.e. orders passed by courts, ² same is not entitled to further grace period of 6 months. As per the status report filed by the respondent the project is 85 % complete but no fixed date has been given by the respondent as to when it will deliver the possession of the unit to the complainants.
16. As per clause 9.2 of the buyer's agreement, in case promoter fails to provide ready to move in possession within time specified in clause 7.1, the allottee shall have the option to terminate the agreement and claim refund of the amount paid by him with interest at the rate prescribed in the Rules.

terminate the agreement and claim refund of the amount paid by him with interest at the rate prescribed in the Rules.

17. When buyers have made timely payment towards the allotted unit, same are well within their right to claim possession as per agreement. A buyer cannot be made to wait indefinitely, for his/her dream unit. It is not claimed on behalf of respondent that it has received the occupation certification for the tower in which the allotted unit is situated.

18. Considering facts stated above, complaint in hands is accordingly allowed and respondent is directed to refund Rs Rs 47,63,746 to complainants within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. Litigation cost of Rs 50,000 is also imposed upon respondent to be paid to complainants.

11.10.2021


(RAJENDER KUMAR)
Adjudicating Officer
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 14.10.2021.