

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

Complaint no. : 85 of 2019
Date of first hearing: 28.03.2019
Date of decision : 28.03.2019

Mr. Sudhir Singh Yadav

R/o flat no. F-144, DLF new town height,
Sector-91, Gurugram, Haryana

Complainant

Versus

M/s Ansal Housing Limited, (through
managing directors)

Regd. office: 606, 6th floor, Indraprakash,
21, Barakhamba road,
New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Ms. Meena Hooda

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 17.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Sudhir Singh Yadav against the respondent M/s Ansal Housing Ltd., in

respect of apartment/unit described below in the project 'Ansals Heights, 86', on account of violation of clause 31 of the flat buyer's agreement dated 30.08.2012 in respect of apartment/unit described below, for not handing over the possession by the due date which is an obligation of the promoter under section 11(4) of the act *ibid*.

2. Since the flat buyer's agreement has been executed on 30.08.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Ansals Heights, 86, Sector 86, Gurugram
2.	Project area	12.843 acres
3.	Registered/not registered	Not Registered
4.	Nature of real estate project	Group housing society

5.	Payment plan	Construction linked payment plan
6.	DTCP license number	48 of 2011 dated 29.05.2011
7.	Date of execution of flat buyer's agreement	30.08.2012
8.	Unit area	1360 sq ft.
9.	Unit no.	H-0506
10.	Total consideration (as per payment plan annexed with flat buyers agreement)	Rs 51,25,004 /-
11.	Total amount paid by the complainant as per statement of account dated 03.01.2019	Rs. 51,01,357.32/-
12.	Due date of delivery of possession as per सत्यमेव जयते (clause 31: within 42 months from date of of execution of agreement or within 42 months from date of obtaining all required sanction and approval necessary for commencement of construction, whichever is later plus 6 months grace period)	30.08.2016 (no date of building plan approval is annexed so the due date is calculated from the date of execution of agreement)
13.	Delay in delivery of possession till date of decision	2 years 6 months 29 days
14.	Penalty as per clause 37 of the flat buyer's agreement.	Rs 5/- per sq. ft. per month on super area for any delay

4. The details provided above, have been checked as per record available in the case file which has been provided by the complainant and the respondent. A flat buyer agreement is

available on record for unit no. H-0506 according to which the possession of the aforesaid unit was to be delivered by 30.08.2016. Neither the promoter has delivered the possession of the said unit to the complainant by the due date nor has it paid any compensation for delay in handing over possession in terms of clause 37 of the agreement. Therefore, the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 28.03.2019 and the respondent through its counsel appeared on 28.03.2019. The reply was filed by the respondent on 03.01.2019 which has been perused by the authority.

Facts of the case:

6. Briefly stated, the facts of the case that the complainant along with his family members and a real estate agent (Axiom Landbase Pvt. Ltd.) visited the project site. The office bearer of the respondent in collusion with real estate agent assured

that physical possession of flat will be handover within 42 months.

7. The complainant submitted that on 18.09.2011 he booked a 2BHK unit admeasuring 1360 sq. ft. and was allotted unit no H-506 in project “Ansal Heights-86” and issued a cheque of Rs. 4,00,000/- dated 18.09.2011 along with the application form. The flat was purchased under the construction link payment plan for sale consideration of Rs. 51,25,004/-.
8. The complainant further submitted that a pre-printed flat buyer’s agreement was executed between the complainant and respondent on 30.08.2012 as per clause 31 of the flat buyer’s agreement, possession of flat is to be given within a period of forty eight months from the date of obtaining all the required and approval necessary for commencement of construction. It is pertinent to mention here the required sanctions were granted to the respondent in month of October, 2013. Therefore, the due date of possession was on or before October,2017.

9. It is submitted that complainant continued to pay installments as per demand raised by respondent and as the construction stages of payment plan. Till 13.01.2015, complainant has paid 90% of total sale consideration.
10. The complainant further submitted that the alleged force majeure is not applicable in this case because timeline of commencement of construction was started from October, 2013 further, the complainant has paid instalment no 15 at construction stage of “on commencement of internal plaster” on 13.01.2015 and had paid Rs. 2,23,673/- on 16.12.2016 as per construction stage “on commencement of flooring of unit”.
11. The complainant submitted that he was always ready and willing to pay the remaining installments provided that there is progress in the construction of flat.
12. The complainant submitted that family of the complainant is living on rented accommodation in Gurugram and paying rent of Rs. 30,000/- per month. Further, it is more than 7 years from the date of booking that even the constructions of towers are not completed.

13. The complainant submitted that he does not wants to withdraw from the project. Promoter has not fulfilled its obligation, therefore as per obligation on the promoter under section 18(1) proviso the promoter is obligated to pay me interest to the complainant at the prescribed rate.

Issues raised by the complainant:

14. The complainant has raised the following issues:

- i. Whether the developer has violated the terms and conditions of the flat buyer agreement thereby delaying possession?
- ii. Whether the complainant is entitled for refund along with interest the date of booking to till the date of refund ?

15. Reliefs sought by the complainant

The complainant is seeking the following relief:

- 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.

- 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.
- iii. Direct the respondent to hand over the possession of flat to the allottee 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.

Reply by the respondent:

16. The respondent submitted that the complainant had approached the respondent sometime in the year 2011 for purchase of an independent unit in its upcoming residential project “Ansal Heights” (hereinafter “the project”) situated in Sector-86, Village Nawada, Fatehpur, Gurugram. The respondent submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project.

17. The respondent submitted that the complainant vide application form dated 18.09.2011 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no. H-0506 in tower -H. The complainant consciously and wilfully opted for a construction linked payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide intention of the complainant. The complainant further undertook to be bound by the terms and conditions of the application form.

18. The respondent 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. The respondent also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority. The respondent further

submitted that occupation certificate is awaited, as and when the occupation certificate is received by the respondent the possession of the unit in question would be delivered to the complainant, subject to the terms and conditions of the flat buyer's agreement. It is pertinent to note that once an application for grant of occupation certificate was submitted for approval in the office of the concerned statutory authority, the respondent ceased to have any control over the same. The grant of sanction to the application preferred by the complainant.

19. The respondent submitted that the true facts of the case are that the land of the project is owned and possessed by the through its subsidiary M/s Optus Corona Developers Pvt. Ltd., having registered office at J-181, Saket New Delhi and M/s Samyak Project Pvt. Ltd., having its registered office at 111, first floor, Antriksh Bhawan, K.G. Marg, and New Delhi.
20. The respondent further submitted that without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure

circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the hon'ble Punjab and Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders on different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing air quality index being worse, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factor to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects.

21. The respondent submitted that these material facts and proceedings the question of entertaining the present complaint would have not arisen in view of the case law titled as **S.P. Chengalvaraya Naidu Vs. Jagan Nath** reported in **1994(1) SCC 1** in which the hon'ble apex court opined that

non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the hon'ble authority and subsequently the same view was taken by even hon'ble National Commission in case titled as **Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012** decided on 25.09.2013.

22. The respondent submitted that it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered with RERA and as such the authority lacks jurisdiction to entertain the present complaint.

The respondent submitted that several allottees, including the complainant, has defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and cost for proper execution of the project

increase exponentially whereas enormous business losses befall upon the respondent.

Determination of issues:

23. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

- i. With respect to the **issues** raised by the complainant, as per clause 31 of the flat buyer's agreement, the respondent was under contractual obligation to deliver the possession of the unit within a period of 42 months from the date of execution of flat buyer's agreement or from the date of obtaining all the required sanctions plus 6 months grace period. Grace period of 6 months is given to the respondent due to exigencies beyond the control of the respondent. The relevant clause is reproduced as under:

“within a period of 42 months from the 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. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months”

The due date of possession (on calculation from the date of agreement) comes out to be 30.08.2016. However, the respondent has failed in handing over the possession on or before the said due date, thereby breaching the terms and conditions stipulated in the flat buyer's agreement. Further, the authority is of the view that the promoter has failed to fulfil its obligations under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. However, on account of failure in handing over possession on the due date, the respondent is liable to pay delayed possession charges at the prescribed rate of 10.75% per annum.

Findings of the authority

24. **Jurisdiction of the authority-** The authority has complete subject matter jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & 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.

25. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the act ibid The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligations.
26. The complainant reserve his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
27. As per clause 31 of the flat buyer's agreement dated 30.08.2012 for unit no.H-506, in project "Ansal Heights 86" Sector-86, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of

obtaining all the required sanction plans and approvals i.e. October 2013 + 6 months grace period which comes out to be 30.08.2016. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 51,01,357/- to the respondent against a total sale consideration of Rs. 51,25,004/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 30.08.2016, as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

Decision and directions of the authority:-

28. The authority exercising its power under section 37 of the Act hereby issues the following directions to the respondent:-
- i. The respondent shall be liable to pay delay possession charges at prescribed rate i.e 10.75% per annum w.e.f 30.08.2016, as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of his order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. As the project is registrable and has not been registered by the promoter, the authority has decided to take suo moto cognizance for not getting the project registered and for that separate proceedings will be initiated against the respondent by the registration branch. A copy of this order be endorsed to registration branch for further action in the matter.
29. Complaint stand disposed of.
30. Case file be consigned to the registry. A copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2019

Judgement Uploaded on 30.05.2019