

Complaint No. 1083 of
2020

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

Complaint no. : 1083 of 2020
First date of hearing: 03.04.2020
Date of decision : 23.02.2021

Raj Kumar Vatsa
R/o: House No. 668, Ward No. 18,
Advocates Colony, Hansi, Distt. Hissar -125033

Complainant

Versus

M/s Ansal Housing & Construction Ltd.
Office at:- Ansal Plaza Mall, 2nd Floor, Near
Vaishali Metro Station, Sector-1, Vaishali,
Ghaziabad, U.P.-201010

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Ms. Vridhi Sharma
Ms. Meena Hooda

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 28.02.2020 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 to the allottee as per the flat buyer's agreement executed inter se them.

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:

1.	Name and location of the project	"Ansal Heights, 86", Sector-86, Gurugram
2.	Project area	12.843 acres
3.	RERA Registered/ not registered.	Not registered
4.	Nature of the project	Residential project
5.	DTCP license no.	48 of 2011 dated 29.05.2011
	DTCP license validity status	28.05.2017
	Name of licensee	Resolve Estate
6.	Unit no.	D-0201 [Page 67 of complaint]
7.	Apartment measuring	1895sq. ft.
8.	Booking Date	30.04.2012 [page 19 of complaint]
9.	Date of execution of apartment buyer's agreement	26.07.2012
10.	Payment plan	Construction linked payment plan [page 80 of complaint]
11.	Total consideration	Rs.75,17,419.50/- as per customer ledger dated 22.02.2019 at page 32 of complaint
12.	Total amount paid by the complainant till date	Rs.74,52,188.95/- as per customer ledger dated 22.02.2019 at page 36 of complaint
13.	Due date of delivery of	26.07.2016

03-09-2017

	possession as per clause 31 of flat buyer's agreement i.e. 42 months from the date of execution of agreement or within 42 months from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later + 6 months grace period.	Note: date of commencement of construction has not been placed on record by either of the parties so the due date of possession has been calculated from the date of execution of agreement <i>approved by Building Plan no. 03-09-2013 being later</i>
14	Date of Approval of Building Plan	03.09.2013
15	Delay in handing over possession	

A. Brief facts of the complaint:-

3. The complainant submitted that the complainant was in need of a residential accommodation with good infrastructure and basic facilities for residing with family, was fascinated by the advertisement in national newspapers about the project promoted by the respondent "Ansal Heights" in sector-86 Gurugram. He contacted the respondent and upon their assurance to complete this project within 2/3 years, booked a flat with them in year, 2012, costing Rs. 79,51,800/- measuring 1895 square feet super area on 2nd floor of D-Tower which was treated as prime floor, facing park and east side which was comprising of three bed rooms plus servant room and drawing cum dining room and was numbered as flat no. D-201 in this project with two covered parking on the

ground floor. The cost price of this flat was settled to be paid in construction linked instalment payments and the complainant paid the 95% of the cost price as and when so the demanded by the respondent; which amounts to Rs. 79,75,654/- upto 16-11-2016; and further paid a sum of Rs. 50,000/- more on 14-03-2017 as vat charges, and additional amount of Rs. 25,000/- was paid to the respondent as interest on 25-06-2012 at the rate of interest 24% for delay of approximately one month caused in one instalment payment amounting to Rs. 6,53,465/- (This delay was result of signature differences on cheque amount); thus, the total payments made by now amounts to Rs. 80,50,654/-. In addition, GST and labour cess and service charges have also been charged by the respondent extra on the above amount.

4. The complainant submitted that as per clause 31 of the agreement which was executed by the respondent with the complainant on 26 July, 2012, the possession of this flat was to be handed over to the complainant within 42 months of the agreement plus 6 months grace period from the date of agreement thus within 48 months duly completed in all respects with all facilities as were agreed upon between the parties.. It was further agreed that the

respondent shall be liable to pay Rs. 5 per square feet per month of super area to the complainant for the period of delay in handing over the possession within the time stipulated in the agreement. But despite the fact that the above 48-month period including the grace period of six months has already expired on 26-07-2016, the respondent has not completed this project and has not offered the possession of the allotted flat to the complainant and thus has violated the terms of agreement. The complainant having already paid 95% payment to the respondent is suffering the loss of interest over this amount for the delayed period on account of the default of the respondent. The respondent has neither paid the agreed delayed amount of Rs. 5 per square feet of the super area, nor has paid the interest which he is liable to pay for the delayed period as per provisions of RERA Act, and HARERA rules. The complainant recently visited the site to verify the position of construction at site and found it miserably deficient and was told by the respondent that it will still take long period to complete the same; and when asked to make payment of the interest and super area delayed costs as were agreed upon, they have not obliged the complainant, and have paid nothing on this

count. And therefore, the complainant has been forced to file this complaint before this authority to seek redressal of his grievances against the respondent and this authority may be pleased to direct the respondent, to make payment of the interest over the entire amount paid to them including the service charges and vat tax charges and interest charged by them from the complainant at the stipulated rates which were made applicable in exactly the similar case "**complaint no. 863 of 2018**" titled as "**Dharampal Singh Versus M/s Ansal Housing and Construction Ltd.**" decided on 19-03-2019 whereby this authority had directed the respondent to make payment of interest for the delayed period over the entire amounts deposited by the complainant at the rate of Rs. 10.75%. A copy of authority/decision passed in complaint no. 863 of 2018, decided on 19-03-2019 by this Hon'ble Authority .

B. Relief sought by the complainants.

- i. Direct the respondent to hand over the actual physical possession of the flat to the complainant.
- ii. Direct the respondent to pay interest at the prescribed rate on the amounts paid by the complainant for the

delayed period of handing over possession till handing over of possession.

C. Reply by the respondent:-

5. The respondent in its reply has submitted that the delay caused was due to reasons beyond its control. The respondent contests the complaint on the following grounds:-

6. That the respondent is a public limited company registered under the Companies Act, 1956 having its registered office at 606, Indraprakash, 21, Barakhamba Road, New Delhi -110001. The said project is related to licence no. 48 of 2011 dated 29.05.2011 received from Director General Town and Country Planning (DGTCP), Haryana, Chandigarh over the land measuring 12.843 acres situated within the revenue estate of Village Nawada-Fatehpur, Gurugram, which falls within sector-86, Gurugram. The building plans of the project have been approved by the DGTCP, Haryana vide memo no. ZP-781/D /(BS)/2013/50373 dated 03.09.2013. Thereafter, the respondent herein was granted the approval of fire fighting scheme from the fire safety point of view of the housing colony measuring 12.843 acres by the Director,

Haryana Fire Service, Haryana, Chandigarh vide letter memo no. DFS/F.A./2015/326 /66492 dated 24.11.2015.

7. The respondent submitted that without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent shall hand 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 & Haryana High Court at Chandigarh 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 at 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. The payments especially to workers to only buy liquid cash. The sudden restriction on

withdrawals led the respondent unable to cop with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies and autonomous bodies of Haryana Government.

8. 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 proposed allottee default in their payment as per schedule agreed, 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 Real Estate Regulatory 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.

D. Findings of the authority.

Issue: Whether the complainant is entitled to delay possession charges? if so, at what rate of interest and what period?

The present complaint has been filed seeking delay possession charges as provided under the proviso to section 18(1) of the Act and hence the complaint is maintainable. Sec. 18(1) proviso reads as under.

"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."

9. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the

Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 31 of the flat buyer's agreement 26.07.2012, the possession was to be handed over within 42 months plus 6 months grace period, from the date of execution of agreement or from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. Clause 31 of the flat buyer's agreement is reproduced below:

"31. The developer shall offer possession of the unit any time, 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 subject to timely payment of all 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".

10. As per clause 31 of the agreement which was executed by the respondent with the complainant on 26.07.2012, the possession of this flat was to be handed over to the complainant within 42 months ^{from the date of approved of building plan} of the agreement + with 6 months grace period ^{approved of building plan} from the date of agreement ^{also} thus within 48 months duly completed in all respects with all facilities as were agreed upon between the parties.

11. 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.

12. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.

13. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 31 of the flat buyer's agreement 26.07.2012, the possession was to be handed over within 42 months plus 6 months grace period from the date of execution of agreement or from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. The grace period of 6 month is allowed to the respondent due to exigencies beyond the control of the respondent. In present case, the date of commencement of construction ~~has not been~~ *is taken*

~~placed on record by either of the parties so the due date of possession has been calculated from the date of execution of agreement. Hence, the due date is being calculated from the date of approval of building plan, which comes out to be 26.07.2016. The last demand raised by the promoter does not seem to be justified as the same is applicable at the time of offer of possession. Occupation certificate has not yet been obtained by the respondent.~~
as the date of approval of building plan accordingly,
03-09-2017
do

14. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 26.07.2012 executed between the parties. As such this project is to be treated as an on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

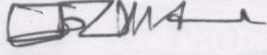
15. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at rate of the prescribed interest @ 9.30% p.a. w.e.f. ~~26.07.2016~~ *03-09-2017* till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

16. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 09.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 03.09.2017 till the offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainant which is not part of the flat buyer's agreement.
- iv. Interest on the delay payments from the complainant shall be charged at the prescribed rate @09.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

17. Complaint stands disposed of.


18. File be consigned to registry.



(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram


(Samir Kumar)

Member

Dated: 23.02.2021



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