

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

Complaint no. : 1013 of 2018
First date of hearing : 14.2.2019
Date of decision : 14.2.2019

1. Mr. Sudhish Gupta
2. Mrs. Vasudha Gupta
R/o: Ishwar children hospital, Rohtak
gate, Bhiwani, Haryana

Complainants

Versus

M/s Ansal Housing & Construction Ltd.
Office at: 15, UGF, Indra Prakash - 21
Barakhamba Road, New Delhi - 110001
Also at: Ansal Plaza, opp. Dabur Chowk,
Vaishali, Ghaziabad

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Smt. Shilpy ~~Smt. Shilpy~~ Arman Sharma Advocate for complainant
Shri Sunil Dutt Advocate for respondent

ORDER

1. A complaint dated 25.10.2018 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 complainants Mr. Sudhish Gupta and Mrs. Vasudha Gupta, against the promoters M/s



*Corrected vide order
dated 03/07/19.*

Ansal Housing & Construction Ltd., on account of violation of the clause 29 of the apartment buyer's agreement executed on 03.04.2012 in respect of apartment described below in the project 'Ansal Heights', Sector 92 for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 03.04.2012 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual 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 case are as under: -

1.	Name and location of the project	"Ansal Heights", Sector-92, Gurugram
2.	Project area	10.563 Acres
3.	RERA Registered/ not registered.	Not registered
4.	Nature of the project	Residential
5.	DTCP License no.	76 of 2010 dated 01.10.2010
6.	License valid/renewed upto	30.09.2016
7.	Applied for occupation certificate on (as stated in reply)	25.04.2017 and removed deficiencies vide letter dated 12.09.2017
8.	Apartment/unit no.	V-015.



9.	Apartment measuring	5000 sq. ft.
10.	Date of execution of apartment buyer's agreement-	03.04.2012
11.	Payment plan	Construction linked payment plan
12.	Total cost of the said flat	Rs.1,56,25,000/- (page 41)
13.	Total amount paid by the complainant till date	Rs.1,31,13,050/- (annexure P-9, page 68)
14.	Building plans approved on [as admitted by the respondent]	3.05.2012
15.	Date of delivery of possession as per clause 29 of apartment buyer's agreement (36 months + 6 months grace period from the date of execution of agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later)	3.11.2015
16.	Delay in handing over possession till date	3 years 3 month 11 days
17.	Penalty clause as per the said flat buyer's agreement	Clause 34 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area for any delay in offering possession.

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondents. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 03.11.2015. Neither the respondents have delivered the possession of the said unit till date to the



complainant nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said flat for the period of delay as per clause 34 of apartment buyer's agreement dated 03.04.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The reply has been filed by the respondent and has been perused.

Facts of the complaint

6. The complainant no. 1 along with complainant no. 2 had jointly purchased one residential villa bearing unit no. V-015 measuring about 5000 sq. ft' for a total consideration of Rs.1,39,75,000/- upon an endorsement upon an apartment buyer's agreement on dated 3rd April 2012. That the endorsement was executed between complainants and respondent in ANSAL HOUSING & CONSTRUCTION LTD. In their project namely, "ANSAL HEIGHTS" situated at Sector 92, Gurugram. The said villa bearing unit no. V-015 was initially allotted to Mr. Gaurav Pandey on 3rd April 2012 and thereafter, the two complainants bought this unit in re-sale in Feb-March 2013. The respondent had assured the complainants to hand over the possession of the said residential villa to



complainants within 36 months from the date of the said apartment buyer's agreement.

7. The complainants bought this luxurious villa for their residential purposes, so accordingly, the complainants applied for a home loan from the bank and they got sanctioned of a home loan of Rs. 80,00,000/- under a loan agreement with HDFC Bank, account no. 615736009 and a sum of Rs. 73,01,250/- has been disbursed till date. The said payment has been duly acknowledged by the respondent. As such, complainant had paid a total amount of Rs.1,27,38,050/- towards the total consideration amount of the said residential plot and the remaining amount was to be paid at the time of possession. Till date the complainant no. 1 is paying regular EMIs of Rs. 68,535/- and these instalments are being deducted from the account of complainant no. 1 every month.
8. As and when, the complainant used to enquire over the phone and through emails, he used to get a reply that construction is going on and soon they will get the possession. In fact the complainants were getting regular demand/call notices from the respondent demanding the dues towards basic, external development charges, Internal development charges, service tax, club charges etc. Whereas the truth was that the complainant used to start the work of one wall or plaster and





thereafter leave the construction work in between and again sending a fresh call notice. Since the payment plan was construction based, thus, as and when a demand was made by respondent, the complainants used to make the payment. In fact, more than sufficient payment had already been made under the impression that construction is going on war level.

9. The villa was supposed to be completed and possession to be given by April 2015 which is not completed yet. The respondent always demanded for their part payments and without confirming the progress of construction on site, the complainants were regularly paying the money through their own resources as well as monthly EMIs and till now has paid almost 90% of the total cost of the said residential villa. Initially in February 2016, the complainants visited the Delhi office as well as did a site visit and they were shocked to see the construction level, changed building plan and no development of infrastructure of roads, lights and other development etc.

10. The complainants even made some payments in 2016 for Rs. 20 lakh and Rs. 5.86 lakh from loan account with a hope that they will get the possession, but it was of no use. Again, when the complainant visited in December 2016, again same thing



happened. There was hardly any construction work going on at the site.

11. The respondent has failed to finish as of now the civil construction, plumbing work ,electrical work , wooden work, taps fittings, and many more works according to their agreement and as shown in their brochure. Even the cheapest part of construction i.e the brick work was not completed. No cost bearing work has been started and illegal demands were being raised by the respondents. Even without prior permission and informing the complainant, the respondent changed the entry side of the said villa. In fact, the site plan has been changed without seeking consent from all buyers. The front side area has been removed and has been converted to back area. The kitchen garden has been removed from the new site plan. The backyard has been converted into front side area. The plot area has been reduced considerably as to what was shown in brochure at the time of booking. All this has been communicated to them through mail vide dated 12.02.2016, 18.02.2016, 08.12.2016, 28.12.2016, 19.01.2017 etc.

12. Consequently, complainant had approached respondent and enquired from them about the reason for the delay in the development work at the site as well as delay in handing over the possession. However, respondent had failed to give any





specific reply and tried to avoid the complainant on one pretext or the other till date. In fact, vide mail dated 12.02.2016, the respondent even offered the complainants to pay 50% of the balance at that point of time and 50% remaining within 3 months, but it could not be materialised as the respondent was calculating the interest on payment for the period of non-completing the construction at their end.

13. The complainants also through mails and telephonic conversation to the respondent demanded for their money back but respondent denied giving their money. In fact, the respondent is demanding more money under the garb of increased cost which is totally illegal and are baseless demands.

14. Thereafter, the complainants also got to know from the market that the respondent i.e. Ansal Housing & Construction Ltd has collected money from the buyers on the name of project named "ANSAL HEIGHTS" situated at Sector 92, Gurugram, but the project license was in the name of another developer, JSG Builder Pvt Ltd and NCC Urban Infrastructure Ltd. That the building plan for the project was approved on 3, March, 2015 by DTCP but the respondent had not only advertise false advertisements in its brochures and agreement as well as in the newspapers and their brochures, catalogues etc but has



also accepted the payments from the home buyers from 2011 itself by mentioning specifically in buyer's agreement clause "A" that they had received license no. 76 of 2010 dated 1.10.2010 from Director Town & Country Planning Haryana.

15. Recently, the complainants also got to know that an FIR has been registered against them in sector 10 Gurugram police station Haryana under sections 3,7,10 of H-RERA and Section 3 of Haryana Development and Regulations of Urban Areas Act,1975, on recommendations of DTCP(Enforcement).
16. The respondent has falsely mis-represented itself in front of complainants and many other buyers that they have licence of their said project in their, which itself is a blatant lie and a false statement and illegal act on the part of respondent.
17. The respondent has failed to comply the terms agreed as per buyer's agreement with their agreement as to not provide the possession with in a period of 36 months from the date of signing of buyer's agreement i.e. from 3rd April 2012 as mentioned in clause 29 of buyer's agreement which itself got over in year 2015, and till now in year 2018 the respondent has failed to give the possession of the said property and also illegally sold their property to the complainant by false misrepresentation of license. That the complainant due to the



delay on the hand of respondent suffering a lot of interest from the bank because of the home loan agreement.

18. The respondent as having the status of the ongoing projects, are duty bound to furnish within a period of registration of the project with the authority, deposit in a separate bank account, 70% of the amount already realized from the allottees, which shall be utilized for meeting the land and construction cost of the project according to the HRERA but the respondent has failed to comply the same. Rule 4 of Haryana Real Estate (Regulation and Development) Rules, 2017 clearly says that

" (1) The promoter of an ongoing project shall make an application to the Authority to furnish the following information, namely:-

- (a) the total money collected from the allottees, money spent on development of the project and the balance/ unspent amount lying with the promoter;*
- (b) status of the project (extent of the development carried out till date and the extent of the development pending) including the original time period disclosed to the allottees for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending*



project, which shall be commensurate with the extent of development already completed, and this information shall be certified by an engineer, an architect and a chartered accountant.

19. The respondent has violated the section 12 of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) which clearly states that where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act.
20. Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.



21. The complainant has the right to appear before this authority against respondent as the respondent has not complied with conditions prescribed under RERA.

Issues to be decided

22. The complainants have raised the following issues:

- i. Whether the respondent has violated the rules and regulations as prescribed under rules 4 and 12 of Haryana RERA?
- ii. Whether the complainant is entitled to refund of entire amount of Rs. 1,31,13,050 along with interest @24% p.a.?

23. Reliefs sought

The complainants are seeking the following reliefs:

- i. To register an FIR against the respondent for non-compliance section 3, 7 and 10 of RERA and section 3 of Haryana Development and Regulations of Urban Areas Act, 1975.
- ii. To register an FIR against respondent under sections 420, 406, 465 and 468 of IPC, 1860.
- iii. To direct the respondent to pay the amount of Rs.1,31,13,050/- along with interest @24% from the date of payment till realization.



Reply on behalf of respondent

24. The respondent submitted that the project namely 'Ansal Heights' is being developed by the M/s Ansal Housing & Construction Ltd. under license no. 76 of 2010 dated 01.10.2010 received from DTCP, Haryana on a land area of about 10.563 acres in Village Wazirpur of Gurugram, Haryana presently part of residential Sector-92 of the Gurugram Manesar Urban Plan 2021.
25. The respondent submitted that the land of the project is owned by M/s JSG Builders Pvt. Ltd. which owns a part land of 43 kanal and 14 marla and NCC Urban Infrastructure Ltd. which owns the balance area of 40 kanal and 16 marla. The landowners had under an arrangement granted, conveyed and transferred all its rights, entitlement and interests in the development, construction and ownership of the total permissible FSI to M/s Samyak Projects Pvt. Ltd. The respondent has entered into an arrangement with the confirming party to jointly promote, develop and market the proposed project being developed on the land as aforesaid. The respondent further represents that in view of the agreement entered into between the landowners and the confirming party and subsequent agreement between the respondents and the confirming party, the respondent has



undertaken the development and marketing of the project and has offered for sale residential apartment of various types and sizes.

26. The respondent submitted that the DTCP, Haryana has granted the approval/ sanction to develop the project vide license no. 76 of 2010 dated 01.10.2010. that the building plans of the project has been approved by the DTCP, Haryana dated 03.05.2012.
27. The respondent submitted that it has already completed the development work and has applied for occupancy certificate for part occupancy of the project vide application dated 25.04.2017 and further removed the objections raised by the department vide letter dated 12.09.2017.
28. The respondent submitted that he would hand over the possession to the complainant within the time scheduled had there been no force majeure circumstances beyond the control of the respondent. The respondent submitted that due to several unforeseen events such as ban by NGT, jaat agitation and demonetization, etc. the pace of construction has slowed down but the respondent has put great efforts in completing the project. The respondent stated that it has diligently performed its part.



29. The respondent submitted that the present complaint is not maintainable for non-joinder of parties as M/s Resolve estate Pvt. Ltd., M/s Optus Corona Pvt Ltd. and M/s Samyak Properties Pvt. Ltd. are the necessary parties and the complainant has not made them necessary parties.
30. The complainant submitted that no cause of action has arose against the respondents as in terms of RERA Act. The respondent has changed the completion date and has undertaken to complete the project on or before 30.06.2019.

Determination of issues

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:

31. With respect to the **first issue** raised by the complainant, the complainant has made baseless allegations without any supportive documents and hence, this issue has become infructuous.
32. With respect to the **second issue**, the authority came across clause 29 of the apartment buyer's agreement which is reproduced below:

"clause 29 - 36 months + 6 months grace period from the date of execution of agreement or from the date of obtaining all the required sanctions and approvals



necessary for commencement of construction, whichever is later."

Accordingly, the due date of possession was 3.11.2015 and hence, the period of delay in delivery of possession is computed as 3 years 3 months 11 days till the date of decision.

33. The possession of the apartment was to be delivered by 3.11.2015, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. The complainant made a submission before the authority under section 34(f) to ensure compliance/ obligations cast upon the promoter as mentioned above. 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 its obligation.

34. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that complainant be refunded the deposited amount along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

35. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to refund the amount and pay interest to the complainants, at the



prescribed rate, for every month of delay till the handing over of possession. Therefore, as per section 18(1) proviso read with rule 15 of the Rules ibid, the complainant is entitled to prescribed rate of interest i.e. State Bank of India highest marginal cost of lending rate plus two percent, per annum.

Findings of the authority

36. The authority has complete jurisdiction to decide the complaint in regard to 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 Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.



Directions of the authority

37. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- (i) Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
- (ii) As per clause 29 of the builder buyer agreement dated 3.4.2012 for unit no.V-015, in project "Ansal Heights" Sector-92, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of buyer's agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction whichever is later + 6 months grace period which comes out to be 3.11.2015. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,31,13,050/- to the respondent against a




total sale consideration of Rs.1,56,25,000/-. Till date the respondent has failed to deliver the unit to the complainant. Complainant has sought for refund of the deposited amount along with prescribed rate of interest.

- (iii) Keeping in view the facts and circumstances of the matter, the authority is of the considered view that complainant be refunded the deposited amount alongwith prescribed rate of interest. i.e. 10.75% per annum within a period of 90 days from the date of this order.

38. The order is pronounced.

39. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.2.2019

Corrected judgement uploaded on 04.07.2019



PROCEEDINGS OF THE DAY

Day and Date	Thursday and 14.02.2019
Complaint No.	1013/2018 Case Titled As Sudish Gupta V/S M/S Ansal Housing & Construction Limited
Complainant	Mr. Soji Ram Meena
Represented through	Ms. Shilpy Arman Sharma Advocate for the complainant.
Respondent	M/S Ramprastha Group
Respondent Represented through	Shri Sunil Dutt Advocate for the respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S. L. Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

As per clause 29 of the Builder Buyer Agreement dated 3.4.2012 for unit No.V-015, in project "Ansal Heights" Sector-92, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of BBA or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction

whichever is later + 6 months grace period which comes out to be **3.11.2015**. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,31,13,050/- to the respondent against a total sale consideration of Rs.1,56,25,000/-. Till date the respondent has failed to deliver the unit to the complainant. Complainant has sought for refund of the deposited amount alongwith prescribed rate of interest.

Keeping in view the facts and circumstances of the matter, the authority is of the considered view that complainant be refunded the deposited amount alongwith prescribed rate of interest. i.e. 10.75% per annum within a period of 90 days from the date of this order.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
14.02.2019

Subhash Chander Kush
(Member)

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Ansal Housing & Construction Ltd., on account of violation of the clause 29 of the apartment buyer's agreement executed on 03.04.2012 in respect of apartment described below in the project 'Ansal Heights', Sector 92 for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 03.04.2012 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
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4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondents. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 03.11.2015. Neither the respondents have delivered the possession of the said unit till date to the



complainant nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said flat for the period of delay as per clause 34 of apartment buyer's agreement dated 03.04.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

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Facts of the complaint

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14. Thereafter, the complainants also got to know from the market that the respondent i.e. Ansal Housing & Construction Ltd has collected money from the buyers on the name of project named "ANSAL HEIGHTS" situated at Sector 92, Gurugram, but the project license was in the name of another developer, JSG Builder Pvt Ltd and NCC Urban Infrastructure Ltd. That the building plan for the project was approved on 3, March , 2015 by DTCP but the respondent had not only advertise false advertisements in its brochures and agreement as well as in the newspapers and their brochures, catalogues etc but has



also accepted the payments from the home buyers from 2011 itself by mentioning specifically in buyer's agreement clause "A" that they had received license no. 76 of 2010 dated 1.10.2010 from Director Town & Country Planning Haryana.

15. Recently, the complainants also got to know that an FIR has been registered against them in sector 10 Gurugram police station Haryana under sections 3,7,10 of H-RERA and Section 3 of Haryana Development and Regulations of Urban Areas Act,1975, on recommendations of DTCP(Enforcement).
16. The respondent has falsely mis-represented itself in front of complainants and many other buyers that they have licence of their said project in their, which itself is a blatant lie and a false statement and illegal act on the part of respondent.
17. The respondent has failed to comply the terms agreed as per buyer's agreement with their agreement as to not provide the possession with in a period of 36 months from the date of signing of buyer's agreement i.e. from 3rd April 2012 as mentioned in clause 29 of buyer's agreement which itself got over in year 2015, and till now in year 2018 the respondent has failed to give the possession of the said property and also illegally sold their property to the complainant by false misrepresentation of license. That the complainant due to the



delay on the hand of respondent suffering a lot of interest from the bank because of the home loan agreement.

18. The respondent as having the status of the ongoing projects, are duty bound to furnish within a period of registration of the project with the authority, deposit in a separate bank account, 70% of the amount already realized from the allottees, which shall be utilized for meeting the land and construction cost of the project according to the HRERA but the respondent has failed to comply the same. Rule 4 of Haryana Real Estate (Regulation and Development) Rules, 2017 clearly says that

“ (1) The promoter of an ongoing project shall make an application to the Authority to furnish the following information, namely:-

- (a) the total money collected from the allottees, money spent on development of the project and the balance/ unspent amount lying with the promoter;*
- (b) status of the project (extent of the development carried out till date and the extent of the development pending) including the original time period disclosed to the allottees for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending*



project, which shall be commensurate with the extent of development already completed, and this information shall be certified by an engineer, an architect and a chartered accountant.

19. The respondent has violated the section 12 of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) which clearly states that where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act.
20. Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.



21. The complainant has the right to appear before this authority against respondent as the respondent has not complied with conditions prescribed under RERA.

Issues to be decided

22. The complainants have raised the following issues:

- i. Whether the respondent has violated the rules and regulations as prescribed under rules 4 and 12 of Haryana RERA?
- ii. Whether the complainant is entitled to refund of entire amount of Rs. 1,31,13,050 along with interest @24% p.a.?

23. Reliefs sought

The complainants are seeking the following reliefs:

- i. To register an FIR against the respondent for non-compliance section 3, 7 and 10 of RERA and section 3 of Haryana Development and Regulations of Urban Areas Act, 1975.
- ii. To register an FIR against respondent under sections 420, 406, 465 and 468 of IPC, 1860.
- iii. To direct the respondent to pay the amount of Rs.1,31,13,050/- along with interest @24% from the date of payment till realization.



Reply on behalf of respondent

24. The respondent submitted that the project namely 'Ansal Heights' is being developed by the M/s Ansal Housing & Construction Ltd. under license no. 76 of 2010 dated 01.10.2010 received from DTCP, Haryana on a land area of about 10.563 acres in Village Wazirpur of Gurugram, Haryana presently part of residential Sector-92 of the Gurugram Manesar Urban Plan 2021.
25. The respondent submitted that the land of the project is owned by M/s JSG Builders Pvt. Ltd. which owns a part land of 43 kanal and 14 marla and NCC Urban Infrastructure Ltd. which owns the balance area of 40 kanal and 16 marla. The landowners had under an arrangement granted, conveyed and transferred all its rights, entitlement and interests in the development, construction and ownership of the total permissible FSI to M/s Samyak Projects Pvt. Ltd. The respondent has entered into an arrangement with the confirming party to jointly promote, develop and market the proposed project being developed on the land as aforesaid. The respondent further represents that in view of the agreement entered into between the landowners and the confirming party and subsequent agreement between the respondents and the confirming party, the respondent has



undertaken the development and marketing of the project and has offered for sale residential apartment of various types and sizes.

26. The respondent submitted that the DTCP, Haryana has granted the approval/ sanction to develop the project vide license no. 76 of 2010 dated 01.10.2010. that the building plans of the project has been approved by the DTCP, Haryana dated 03.05.2012.
27. The respondent submitted that it has already completed the development work and has applied for occupancy certificate for part occupancy of the project vide application dated 25.04.2017 and further removed the objections raised by the department vide letter dated 12.09.2017.
28. The respondent submitted that he would hand over the possession to the complainant within the time scheduled had there been no force majeure circumstances beyond the control of the respondent. The respondent submitted that due to several unforeseen events such as ban by NGT, jaat agitation and demonetization, etc. the pace of construction has slowed down but the respondent has put great efforts in completing the project. The respondent stated that it has diligently performed its part.



29. The respondent submitted that the present complaint is not maintainable for non-joinder of parties as M/s Resolve estate Pvt. Ltd., M/s Optus Corona Pvt Ltd. and M/s Samyak Properties Pvt. Ltd. are the necessary parties and the complainant has not made them necessary parties.
30. The complainant submitted that no cause of action has arose against the respondents as in terms of RERA Act. The respondent has changed the completion date and has undertaken to complete the project on or before 30.06.2019.

Determination of issues

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:

31. With respect to the **first issue** raised by the complainant, the complainant has made baseless allegations without any supportive documents and hence, this issue has become infructuous.
32. With respect to the **second issue**, the authority came across clause 29 of the apartment buyer's agreement which is reproduced below:

"clause 29 - 36 months + 6 months grace period from the date of execution of agreement or from the date of obtaining all the required sanctions and approvals



necessary for commencement of construction, whichever is later.”

Accordingly, the due date of possession was 3.11.2015 and hence, the period of delay in delivery of possession is computed as 3 years 3 months 11 days till the date of decision.

33. The possession of the apartment was to be delivered by 3.11.2015, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. The complainant made a submission before the authority under section 34(f) to ensure compliance/ obligations cast upon the promoter as mentioned above. 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 its obligation.

34. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that complainant be refunded the deposited amount along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

35. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to refund the amount and pay interest to the complainants, at the



prescribed rate, for every month of delay till the handing over of possession. Therefore, as per section 18(1) proviso read with rule 15 of the Rules ibid, the complainant is entitled to prescribed rate of interest i.e. State Bank of India highest marginal cost of lending rate plus two percent, per annum.

Findings of the authority

36. The authority has complete jurisdiction to decide the complaint in regard to 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 Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.



Directions of the authority

37. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- (i) Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
- (ii) As per clause 29 of the builder buyer agreement dated 3.4.2012 for unit no.V-015, in project "Ansal Heights" Sector-92, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of buyer's agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction whichever is later + 6 months grace period which comes out to be 3.11.2015. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,31,13,050/- to the respondent against a



total sale consideration of Rs.1,56,25,000/-. Till date the respondent has failed to deliver the unit to the complainant. Complainant has sought for refund of the deposited amount along with prescribed rate of interest.

- (iii) Keeping in view the facts and circumstances of the matter, the authority is of the considered view that complainant be refunded the deposited amount alongwith prescribed rate of interest. i.e. 10.75% per annum within a period of 90 days from the date of this order.

38. The order is pronounced.

39. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.2.2019

Judgement uploaded on 26.02.2019

