

Received vide order dated 12.09.2022 20  
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Complaint No. 4139 of 2019

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

Complaint no. : 4139 of 2019  
Date of decision : 09.09.2021

RITA GUPTA AND NAVEEN GUPTA  
R/O : 602, Padma Tower-1,  
5, Rajendra Place,  
New Delhi

Complainants

Versus

1. ~~M/S ANSAL PROPERTIES AND INFRASTRUCTURES LTD.~~ Housing & Construction Ltd. A.O.  
ADDRESS : 15, UGF, Indraprastha,  
H. 21, Barakhamba road,  
New Delhi-110001
2. JSG BUILDERS  
ADDRESS : 297-A/4, Mehrauli,  
Delhi-110030
3. NCC URBAN INFRASTRUCTURE LTD.  
ADDRESS : 41, Nagarjuna Hills,  
Hyderabad-500082
4. SAMYAK PROPERTIES PVT. LTD.  
ADDRESS: 111, 1<sup>st</sup> Floor,  
Antariksh Bhawan, 22 KG Marg  
New Delhi-110001.

Respondents

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Complaint No. 4134 of 2019

**APPEARANCE:**

For Complainants: Ms. Shimpi Arman Sharma (Adv)  
 For Respondent No.1: Meena Hooda (Adv)  
 For Respondent No. 2: Mr. Arun Shokeen (Adv)  
 For Respondent No. 3: Mr. Adish Shrivastava (Adv)  
 For Respondent No.4: None

**ORDER**

1. This is a complaint filed by Rita Gupta and Naveen Gupta (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/promoter.
2. As per complainants, on 02.08.2011, they jointly booked a villa in respondent's project Aansal Heights, situated at sector-92, Gurugram and they made payment of Rs 15,00,000 as booking amount. The respondent allotted a unit No. V-020 admeasuring 5000 sq. ft. for a total consideration of Rs 1,62,00,000 including BSP, PLC, EDC and etc. A buyer's agreement was executed on 17.07.2012.
3. As per the Clause 29 of buyer's agreement, the possession of the said premisses was to be delivered by the developers to the allottee within 36 months from the date of execution of

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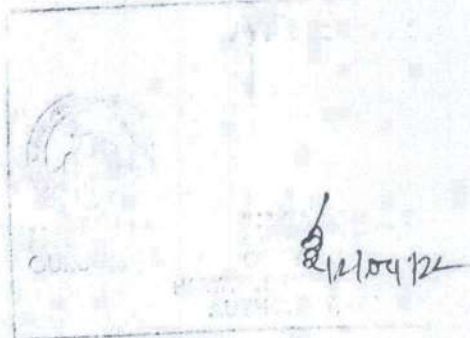




Complaint No. 4139 of 2019

buyer's agreement or from date of obtaining all required sanctions and approval necessary for commencement of construction, with grace period of 6 months. The respondents failed to complete the construction work and consequently failed to deliver the same till date.

4. As per the payment plan opted by the complainants, they made timely payment of Rs 1,60,65,816.50/- i.e. 95 % of entire agreed consideration along with miscellaneous and additional charges etc, but to their utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement.
5. The respondent no. 1, had advertised in newspaper, its brochures and it is also mentioned in BBA that it has received license from DTCP, but the project license is in the name of another developer i.e. respondent no. 2 and 3.
6. Contending that the respondents have breached the fundamental term of the contract, by inordinately delaying the delivery of the possession, the booking of the unit was made in the year 2011 and even in 2019, the project was nowhere near completion, the complainants have sought refund of entire amount of Rs 1,60,65,816.50 paid by them till now, along with interest @ 24 %, Rs 25,00,000 towards damages for mental agony, pain, loss of valuable time and money and Rs 1,10,000 as litigation charges



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7. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name and location	" Ansal Heights", Sector 92, Gurugram,
2.	Project area	10.563 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	76 of 2010 dated 01.10.2010 valid upto 30.09.2020
5.	REKA Registered/ not registered	Not registered
<b>UNIT DETAILS</b>		
1.	Unit no.	V-020
2.	Unit measuring	5000 sq. ft.
3.	Date of Booking	02.08.2011
4.	Date of Buyer's Agreement	17.07.2012 (Annexure-A-6)
5.	Clause 29 of buyer's agreement: the possession of the said premisses was to be delivered by the developer to the allottee within 36 months from the date of execution of buyer's agreement or from the date of	17.01.2016 (Calculated from the dated of agreement)



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	obtaining all required sanctions and approval necessary for commencement of construction whichever is later, with grace period of 6 months.	
6.	Delay in handing over of possession till date	5 years 08 months
<b>PAYMENT DETAILS</b>		
7.	Total sale consideration	Rs 1,62,00,000
8.	Amount paid by the complainant	Rs 1,60,65,816.50
9.	Payment Plan	Construction Linked Plan

10. Respondent no. 1 contested the complaint by filing a reply dated 09.10.2019. It raised preliminary objection with respect to maintainability of complaint before adjudicating officer. It is contended that provisions of the Act of 2015 cannot operate retrospectively, and it cannot undo or modify the terms of agreement duly executed prior to coming into effect of the Act. The land of the project is owned by respondent no. 2 and 3 and landowners under an agreement agreed to grant, convey, and transfer all their rights, entitlements and interests in development, construction, and ownership of total permissible FSI on the land to M/s Samyak Projects Pvt. Ltd.

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11. As per said respondent, the construction work of the project is in full swing and it will be completed within prescribed time period as given in the application for registration of project with the RERA, Gurugram.
12. Moreover, there had been various force majeure circumstances which were beyond the control of respondent. The Hon'ble Punjab and Haryana High Court vide its orders dated 16.07.2012, 31.07.2012 and 21.08.2012 banned the extraction of water of water. NGT vide its various orders at different dates restrained the excavation work causing Air Quality Index being worse.
13. It is further averred that demonetisation also caused abrupt stoppage of construction work in many projects since the payments to the workers were to be made in cash. Adjudicating Officer in various cases have held that when construction work is 35 % complete then allottee cannot claim refund and compensation from the builder. Again that this complaint is barred by limitation as complainants themselves have alleged that possession of the unit was supposed to be given by 2015 thus cause of action accrued in the year 2015.
14. Contending all this respondent no.1 prayed for dismissal of complaint.
15. The respondent no. 2 and 3 have filed separate applications ~~and~~ through which they prayed for striking out their name from the array of parties. It is averred that respondent no. 2 and 3 are

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joint owners of land and had obtained license from DTCP for development of multi-storied group housing complex. The land owners had entered into agreement to sell dated 01.11.2010 with respondent no. 4 and JMD Ltd. The possession of land was handed over to respondent no. 4 vide possession letter dated 26.05.2011 (Annexure A-1) and General POA was executed for limited purpose of facilitating and obtaining requisite permissions/permits for land. The permission for transfer of license was obtained from DTCP on 15.07.2013 in favour of respondent no. 1 and respondent no. 4. Registered sale deed was executed on 08.11.2013 whereby absolute landowners are now respondent no. 1 and 4.

16. It is further contended that respondent no. 4 has misused the POA and in connivance with respondent no. 1, has illegally entered into flat buyers agreement, such as with present complainants, for which it (respondent no. 4) was not authorised. No stamp or seal for respondent no. 2 has been affixed on flat buyer's agreement and respondent no. 2 will take legal recourse against the same. No allegations have been made out against respondent no. 2 and 3. Considering the submission made by respondent no. 2 and 3, National Consumer Disputes Redressal Commission in its order dated 10.05.2019 in CC. No. 1021 of 2017, had deleted their names from array of parties.

17. The respondent no. 3 filed a reply <sup>also to</sup> dated 03.10.2019 and raised preliminary objection stating that there is no privity of contract

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between complainants and respondent no. 3. The complainants have sought relief of refund and interest on amount deposited with respondent no. 1. As respondent no. 1 failed to fulfil its obligations to deliver possession of unit within the time as stipulated in buyer's agreement, all obligations as stated in the agreement between buyer and developer are casted upon respondent no. 1 and 4. No relief is maintainable against it (respondent no. 3). Complainants have admitted in their complaint that neither any assurance has been given by respondent no. 3 nor it is liable for any breach. Same (respondent no. 3) is not promoter and it has alienated all its rights vide registered sale deed and transfer of license by DTCP.

18. I have heard the learned counsels for parties and perused the record.

19. Respondent no. 1 referred various orders passed by Hon'ble High Court of Punjab and Haryana, restraining extraction of water and orders of National Green Tribunal stopping construction work, respectively. Copy of no such order has been placed on record. Learned counsel for complainants disputed any such orders. Moreover, it is not clear as till when extraction of ground water remained banned or excavation remained stopped due to order of NGT. It is not clarified when NGT passed such orders. Its worth mentioning that respondent got DTCP license in 2010. The delay cannot be justified on such bald allegations, without substantiating the same through evidence

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20. As far as demonetization of some currency notes is concerned, same very remotely affected the construction work, there was no restriction on electronic payments. Moreover, the demonetization came to force w.e.f. 08.11.2016, much after the <sup>due</sup> ~~last~~ date stipulated for completion of the construction had already expired.

21. I find no substance in plea of respondent no. 1, claiming that present complaint is barred by limitation. When respondents have failed to deliver possession as per agreement, the complainants have cause of action, recurring every day.

22. When a buyer has made payment of almost 95 % of total consideration of unit, same was well within his/her right to claim possession of his/her dream unit. Same cannot be made to wait indefinitely. Project/unit is not complete even till today.

23. Section 18 of the Act, obliges 'the promoter' to refund the amount received from buyer, under certain circumstances, well enumerated therein. Word 'promoter' is defined in section 2(zk) of Act as ~~person who~~—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any



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of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or  
(iii) any development authority or any other public body in respect of allottees of--

a. buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government or

b. plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its members or in respect of the allottees of such apartments or buildings;

24. Apartment Buyer's Agreement (ABA) in this case was entered among parties i.e. JSG Builders Pvt. Ltd, NCC Urban Infrastructure (both called as land owners), Samyak Projects Private Ltd. (referred as conforming party), Ansal Housing - (mentioned as developer) and Mrs Rita Gupta and Mr. Naveen Gupta (called as joint purchasers). The agreement starts with words, "the project namely 'Ansal Heights' is being developed by developer i.e. Ansal Housing

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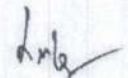


(respondent no. 1). It is reminded in ABA that developer has entered into an arrangement with confirming party i.e. respondent no. 4 to jointly promote, develop market the proposed project. It is not disputed that said agreement (ABA) is signed by/on behalf of all respondents, apart from complainants. In this way, both of respondent no. 1 and 4 can be termed as 'promoters' in view of section 18 of Act. Both of these promoters i.e. respondent no. 1 and 4 are jointly and severally responsible towards the complainants. From the contentions of parties and record on file it is established that payments from complainant were received by respondent no. 1.

25. The latter (respondent no.1) is primarily liable to pay, failing which, the complainants can claim recovery from respondent no. 4 also.

26. Considering facts stated above, complaint in hands is accordingly allowed and respondents no. 1 and 4 are directed to refund entire amount paid by complainants to latter within 90 days from today, with interest @ 9.3 % p.a. from the date of payment, till realisation of amount. A cost of Rs 1 lac is also imposed upon respondents to be paid to complainants.

09.09.2021

  
(RAJENDER KUMAR)  
Adjudicating Officer

Haryana Real Estate Regulatory Authority  
Gurugram

