



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

35

Day and Date	Friday and 24.02.2023
Complaint No.	CR/1493/2021 Case titled as MAHENDER KUMAR Vs ANSAL HOUSING LIMITED
Complainant	MAHENDER KUMAR
Represented through	Shri Rajan Kumar Hans Advocate
Respondent	ANSAL HOUSING LIMITED
Respondent Represented	Shri Maheshwar Rathi proxy counsel
Last date of hearing	21.10.2022
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint was filed on 18.03.2021 and the reply on behalf of respondent has been received on 15.07.2022. The CRA for refund has been received on 21.04.2022.

The succinct facts of the case are as follows:

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Heights 86", Sector 86, Gurugram.
2.	Total area of the project	12.843 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
5.	Name of licensee	Resolve Estate Pvt. Ltd.
6.	Registered/not registered	Not registered
7.	Unit no.	C-1202

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण



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		[pg. 24 of complaint]
8.	Area of the unit	1895 sq. ft. [pg. 24 of complaint]
9.	Date of execution of buyer's agreement with original allottee	10.09.2012 [pg. 21 of complaint]
10.	Date of transfer of unit in name of the complainant	18.04.2013 [pg. 39 of complaint]
11.	Possession clause	31. <i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the 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."</i> (Emphasis supplied) [pg. 29 of complaint]
12.	Due date of possession	10.09.2016 (Note: 42 months from date of agreement i.e., 10.09.2012 as date of start of construction is not known + 6 months grace period allowed being unqualified)
13.	Basic sale consideration as per payment plan annexed with BBA at page 37 of complaint.	₹ 71,62,816.75/-
14.	Total amount paid by the complainant as alleged by the	₹ 55,42,452/-



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	complainant on pg. 7 of complaint	
15.	Email requesting for refund of the amount paid by the complainant	22.02.2021 [pg. 51 of complaint]
16.	Offer of possession	Not offered

The complainant is seeking the following reliefs:

1. Refund entire amount paid (₹55,42,452/-) by the complainant along with the interest.

The instant matter falls in the category where the promoter has failed to complete or unable to give possession of the unit in accordance with terms of the agreement for sale or duly completed by the date specified therein and still OC has not been obtained/possession has not been handed over.

Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

The due date of possession as per agreement for sale as mentioned in the table above is **10.09.2016..**

The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.**

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."



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Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed:

The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

The authority hereby directs the promoter to return the amount received by him i.e., Rs. 55,42,452/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date



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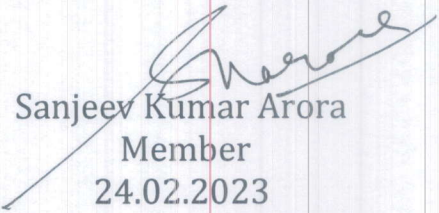
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CR/193/22

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+2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

Matter stands disposed off. Detailed order will follow. File be consigned to the registry.


Sanjeev Kumar Arora
Member
24.02.2023