

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

Complaint no. : 923 of 2019
First date of hearing : 18.07.2019
Date of decision : 18.07.2019

Mr. Ranbir Singh Kanwar
R/o 43, Madhya Marg, 1st floor, DLF Phase-II,
Gurugram-122022, Haryana

Complainant

Versus

M/s Ansal Housing and Construction Limited
Registered Office: 606, 6th floor, Indra Prakash,
21 Barakhamba Road, New Delhi, Central
Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Ms. Vridhi Sharma
Ms. Meena Hooda

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 07.03.2019 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. Ranbir Singh Kanwar against the promoter M/s Ansal Housing and Construction Limited on account of violation of clause 31 of the apartment buyer's agreement executed on 06.05.2013 for

unit described below for not giving 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 06.05.2013, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on 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	"Ansals Highland Park", Sector 103, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Project area	11.7 acres
4.	RERA registered/ not registered	16 of 2019 dated 01.04.2019
5.	Revised date	30.11.2021
6.	DTCP license	32 of 2012
7.	Unit no.	STRLG 0802
8.	Unit area	1762 sq. ft.
9.	Date of booking	24.07.2012 (Date of signing of application form, as per agreement, page 28 of the complaint)

10.	Date of apartment buyer's agreement	06.05.2013
11.	Total consideration	Rs.91,19,461.08/- (as per annexure C-3, page 45 of the complaint)
12.	Payment plan(page 43)	Construction linked plan
13.	Total amount paid by the complainant	Rs. 91,15,115/- (as per annexure C-3, page 45 of the complaint)
14.	Due date of possession as per clause 31- 48 months from date of execution of agreement (06.05.2013) or date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later+ 6 months grace period.	06.11.2017 Note: No building plan approval or environment clearance or other approvals have been attached in the file. Therefore, the due date is calculated from the date of execution of agreement.
15.	Delay in handing over possession till 18.07.2019 (date of decision)	1 year 8 months 12 days
16.	Penalty clause as per clause 37 apartment buyer's agreement dated 06.05.2013	Rs.5/- per sq. ft. per month of the super area for the period of delay

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 06.05.2013 is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 06.11.2017 as per the said apartment buyer's agreement. The promoter has failed to deliver the possession

of the said unit to the complainant by the due date. 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 for appearance. The case came up for hearing on 18.07.2019. The reply has been filed on behalf of the respondent on 25.03.2019 and the same has been perused.

Brief facts of the complaint

6. The complainant submitted that he had booked a unit in the project of the respondent namely 'Ansal Highland Park' located at Sector-103, Gurugram. It is submitted that the respondent undertook to provide the possession of the flat by May 2017 but the respondent has failed to provide the possession of the allotted flat. It is further submitted that the project has been on halt for several years for the reason best known to the respondent and the respondent has not even provided any delay compensation as contemplated in the buyer's agreement to the complainant till date even after delay of more than 1.5 years and on the other hand the respondent had charged exorbitant rate of compoundable interest for any delay payment in instalment.
7. The complainant submitted that in lieu of the application for booking the complainant was forced to make payment of Rs.

12,83,280/- to the respondent company in the form of booking amount.

8. The complainant submitted that the respondent company accepted the said application for allotment of flat and flat buyer's agreement (hereinafter called as "buyer's agreement") dated 06.05.2013 was executed between the party inter-se for allotment of the above mentioned flat for total consideration of Rs. 88,63,550/-. It is submitted that the complainant had already paid a considerable amount towards the allotment of the flat along with application and therefore was in no position to decline any of the terms and conditions stipulated in the agreement.
9. The complainant submitted that as per the buyer's agreement dated 06.05.2013, the respondent company undertook to deliver the possession of the flat within 48 months from the date of signing of buyer's agreement that is, from 06.05.2013 and deliver by 06.05.2017.
10. The complainant submitted that the respondent being the promoter of the project, undertook to provide the possession of the flat within 48 months. But till date the respondent far from providing the possession, has not even completed the construction of the project. It is submitted that the due date of providing possession was in the year 2017, but even after

lapse of more than 1.5 years the respondent is unable to provide possession of the Flat.

11. The complainant submitted that the respondent company is in receipt of complete sale consideration to the tune of Rs. 91,15,115/- but still till date the respondent company has failed to complete the project and provide the due possession of the flat.
12. The complainant submitted that the terms and conditions of the apartment buyer's agreement are the result of the upper hand of the respondent over the complainant in the whole transaction, as the respondent was already in receipt of substantial amount of sale consideration before even execution of buyer's agreement. It is further submitted that under the terms and conditions of the buyer's agreement, the respondent had the arbitrary power to charge exorbitant rate of compoundable interest to the tune of 24% per annum in case of default in making payment of the instalments. Apart from charging the interest respondent company on its sole discretion also had the power to cancel the allotment/agreement and forfeit the earnest money i.e. 20% of total sale consideration and on the other hand, there was meagre compensation provided to the complainant under the buyer's agreement for the delay in providing possession of the

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apartment to the tune of Rs. 5/- per sq. ft. of the super area per month.

13. The complainant submitted that the said clauses are unilateral as the respondent has only tried to save itself from compensating the complainant in case of a delay in completion of the project and in giving the possession of the flat to the complainant. The respondent has only tried to considerably limit its own liability and impose unfair and arbitrary interest on the complainant in order to grab his hard-earned money. The complainant submitted that the respondent company had arbitrarily charged the complainant an exorbitant rate of interest and had procured the hard-earned money to the tune of Rs. 50,789.05.
14. The complainant submitted that the respondent remained silent on the non-delivery of the possession and failed to intimate any date of granting possession to the complainant nor of the stage of construction. Thus, left with no other option the complainant has approached this authority seeking intervention of this authority.
15. The complainant has relied on the judgment by Hon'ble Apex Court in the case of the **Fortune Infrastructure and Ors versus Trevor D'Lima and Ors.** and in the present case it is essential that the hon'ble authority may direct the respondent

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to immediately provide possession of the allotted flat along with delay compensation.

16. Issues to be decided

The relevant issues as culled out from the complaint are:

- i. Whether there has been failure on the part of the respondent in delivering the allotted flat/apartment to the complainant within the stipulated time period?
- ii. Whether the complainant is entitled to immediate possession of the apartment along with interest for the delay period and at what rate?

17. Relief sought

The complainant is seeking the following reliefs:

- i. Direct the respondent to grant immediate possession of the residential apartment bearing no. STRLG - 0802 to the complainant along with compensation for delay at prescribed rate of interest; and
- ii. May pass any other orders as the hon'ble authority deems fit.

Interim Relief

- iii. Direct the respondent to maintain the status qua of the allotted apartment and to not create any third-party interest; and
- iv. Direct the respondent to not cancel the allotment of the complainant.

Respondent's reply

18. The respondent submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.
19. The respondent submitted that in view of clause -31 the respondent was required to handover the possession within a period of 48 months from the date of execution of agreement or within 48 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 the dues by buyer and subject to force majeure circumstances as described in clause-32. **[Note- The respondent has wrongly mentioned "42 months". As per clause 31, it is 48 months]**. Further, it is also clearly mentioned in clause 31 of the agreement that there shall be a grace period of 6 months allowed to the developers over and



above the period of 48 months as above in offering the possession of unit. It is further submitted that the respondent had applied for registration with the authority of the said project by giving afresh date for offering of possession.

20. The respondent submitted that complainant is not entitled to have the refund as well as get 24% interest as alleged, because the project is delayed due to many force majeure factors, which were beyond the control of respondent company. It is also submitted that the construction work of the project is in full swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority. It is submitted that respondent is not liable to pay a nominal compensation of Rs. 5/- per sq. feet per month for is delayed period because the project delayed due to many force majeure factors, which were beyond the control of respondent company.

21. The respondent submitted that the construction work of the project is in full swing and the work will be completed within prescribed time period as given by the respondent to the authority. The respondent started the construction after getting due approvals /sanctions from the Government authorities and whatever delay happened that was due to the

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situations and circumstances which were beyond the control of the respondent.

22. The respondent submitted that it is not violating the provision of the apartment buyer's agreement which was duly signed by the complainant in token of its correctness and genuine and giving his consent to abide by the terms and conditions. The parties to the apartment buyer's agreement entered into the same without any pressure or coercion.
23. The respondent relied on the law as laid down by the Hon'ble Bombay High Court in case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018 (1) RCR (C) 298, the liberty to the promoters /developers has been given under section 4 to intimate fresh date of offer of possession while complying the provision of section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Particularly the respondent has relied upon para No.86 and 119 of the above said citation.
24. The respondent submitted that it had applied for registration with the authority of the said project by giving afresh date for offering of possession. The facts of judgement mentioned therein are different from the present complaint; possession

of the apartment will be handed over to the complainant as on date given to the authority by the respondent.

25. All other averments have been denied by the respondent.

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:

26. With respect to the **all issues**, raised by the complainant, the authority came across clause 31 of the apartment buyer's agreement, which is reproduced below:

*"31. The Developer shall offer possession of the Unit any time, within a period of **48 months** from the date of execution of Agreement or within 48 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 the dues by Buyer and subject to force majeure circumstances as described in clause 32."*

27. Accordingly, the possession was to be offered within 48 months from date of execution of apartment buyer's agreement (06.05.2013) or date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later + 6 months grace period. However, no building plan approval or environment clearance or other approvals have been annexed with paper book. Therefore, the due date is calculated from the date of execution of apartment buyer's agreement. The grace period has been

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allowed by the authority because of contingencies beyond the control of the respondent. Thus, the due date of possession comes out to be 06.11.2017. The respondent has failed in delivery of possession in violation of the apartment buyer's agreement and the possession has been delayed by 1 year 8 months and 12 days till the date of order. As the promoter has failed to fulfil its obligation under section 11(4)(a) of the said Act, the complainant is entitled for interest at prescribed rate i.e. 10.60% per annum for every month of delay w.e.f 06.11.2017 till date of actual offer of physical possession as per the provisions of proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 read with rule 15 proviso of Rules *ibid*.

Findings of the authority

28. **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.
29. 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. 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.

30. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned under section 11(4)(a) 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. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
31. As per clause 31 of the apartment buyer's agreement dated 06.05.2013 for unit no. STRLG-0802 in project "Ansal Highland Park" Sector-103, Gurugram, possession was to be handed over to the complainant within a period of 48 months from the date of execution of agreement + 6 months grace period which comes out to be 06.11.2017. However, the respondent has failed to deliver the possession of the unit to the complainant in time. Complainant has already paid Rs.91,15,115/- to the respondent against a total sale consideration of Rs.91,19,761.08/-. As such, complainant is

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entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f 06.11.2017 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:

32. After taking into consideration all the material facts as adduced and produced 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 to the respondent in the interest of justice and fair play:

- (i) The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.60% p.a. from due date of possession i.e. 06.11.2017 till the offer of the possession to the allottee. The interest so accrued till date of decision shall be paid within 90 days from date of this order.
- (ii) Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid on or before 10th of subsequent month.

(iii) Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period


(iv) Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.60% by the promoter which is the same as is being granted to the complainant in case of delayed possession

24. The complaint is disposed of accordingly.

25. The order is pronounced.

26. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:18.07.2019

Judgement uploaded on 24.07.2019