

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

GURUGRAM

Complaint no. : 4729 of 2020

Date of decision : 01.06.2023

Veena Bhatia & Manoneet Bhatia

ADDRESS: L-49D First Floor Block-L Saket,
Sector-67, Gurugram, Haryana

Complainants

Versus

M/S Ansal Phalak Infrastructure Pvt. Ltd.

ADDRESS: 1202, Antriksh Bhawan 16,
Kasturba Gandhi Marg, New Delhi-110001

Respondent

APPEARANCE:

For Complainants:

Mr. Nilotpal Shyam Advocate

For Respondent:

Mr Deeptanshu Jain Advocate

ORDER

1. This is a complaint filed by Veena Bhatia and Manoneet Bhatia (buyers) under section 31 read with section 35,36,37 and 38 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) against respondent/developer (M/s Ansal Phalak Infrastructure Pvt. Limited).
2. According to complainants, they were approached by respondent's representative, about a project namely "The Sovereign Floors Esencia"


A.O.

located at sector-67, Gurugram, Haryana-122001, and were told that it will serve their purpose. They (complainants) filled up an application form on 07.10.20211 and were allotted a unit by the respondent bearing no. E-2150 having super area of 2542 sq. ft. in block-E.

3. That after payment of Rs. 13,00,000/- by them, the respondent executed Floor Buyer's Agreement (FBA) dated 07.11.2011. As per clause 5.1 of said agreement, the possession of the unit was to be handed over within 30 months, from the date of execution of said agreement. Total sale consideration was agreed to be Rs. 1,21,60,000/- excluding charges such as EDC, IDC, PLC, car parking, etc. They (complainants) paid a sum of Rs. 1,52,83,097/- towards total sale consideration, as per the payment plan.
4. On 02.12.2015, they (complainants) were offered possession of their unit, along with final demand letter. The occupation certificate for the project was obtained by respondent on 30.08.2016. Therefore, the possession offered on 02.12.2015 was not a legal offer of possession. The respondent vide email dated 10.06.2019 offered to pay Rs. 10,00,000/- towards delay possession charges, but the same was not paid till date. They sent a legal notice to respondent, asking the latter to hand over possession of their unit and to pay compensation, but respondent never replied.
5. It is further pleaded by the complainants that the respondent has illegally increased area of the unit by 595 sq. ft. i.e. 24.5% of the area allotted to them. It amounts major alteration, not permissible under Section 14 of Act of 2016. Moreover, respondent did not get sanction from competent authority regarding revised building plan .


A.O.

6. That Rs. 5,30,049/- has also been charged as cost of escalation. Clause 2.3 and 3.5 of the FBA are not binding upon them (complainants) as these are one-sided, discriminatory and unfair. Even otherwise, as per clause 3.5 of FBA, the respondent shall have to absorb cost escalation up to 5%.
7. That, the respondent has charged for preferential location of Rs. 3,84,000/-. The unit allotted to them (complainants) is located at the back end of the locality, which is adjacent to a village and hence not a preferential location.
8. That the respondent has illegally used the electricity connection for the purpose of common maintenance services, while they (complainants) were made to pay electricity bill of Rs. 40,727/-.
9. That they (complainants) have been made to pay IDC/EDC charges and also for covered car parking at the time of allotment, illegally. As they (complainants) were not legally bound to pay all these charges, the respondent is under legal obligation to return the excess amount.
- 10 Contending all this, the complaint sought compensation including delay possession charges (DPC) @ 18% p.a. During the course of proceedings, the complainants filed an application with prayer to relinquish certain reliefs. Learned counsel for applicants/complainants submitted that his clients relinquish all reliefs sought by them, except mentioned in Clause IX and X in prayer Clause (f) of complaint. The Application was allowed by the authority vide order dated 07.04.2022.
- 11 Neither anyone appeared on behalf of respondent nor any reply was filed despite service of notice, the respondent was proceeded ex-parte, vide order dated 10.02.2021. Though respondent filed an application dated 27.08.2021 with prayer to recall order dated 10.02.2021, the

h/b
A.O.

respondent neither stressed on it, nor filed any reply against the complaint alongwith said application. Learned counsel for respondent insisted on rejection of complaint on certain grounds. An application was also filed in this regard, on 25.01.2022.

12 I have heard learned counsels appearing for both of the parties and gone through written submissions filed on behalf of complainants.

13 It is contended by learned counsel for the respondent that in view of mandate given by the Apex Court in *M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors. Etc. case and Civil appeal No(s). 6745-6749 of 2021* this forum (A.O) has no jurisdiction to grant relief of delayed possession compensation. Even otherwise, as the complainants have already taken possession of their unit, same have no right to claim compensation now.

14 I agree with learned counsel claiming that this forum (AO) has no jurisdiction to try and entertain prayer seeking delayed possession compensation, as sought by complainants in this case. As stated above, by filing an application, the complainants have relinquished all their claims except for compensation, as described in clause IX and X of the complaint.

15 So far as plea that the complainants have taken possession and hence they have no *locustandi* to file complaint, seeking compensation is concerned, I find no substance in this plea. Simply to say that possession has been taken over by the complainants, all this does not deprive them (complainants) from seeking compensation for wrong which has already been done to them. Present complaint is thus not liable to be rejected on this ground. Application filed by respondent in this regard is thus dismissed.


A.O.

16 After withdrawal of some of reliefs, complainants are seeking compensation on following grounds:-

IX To award Rs. 10,00,000/- (Rupees Ten Lacs only) as compensation for loss of opportunity cost with regard to impugned unit, disproportionate gain and unfair advantage made by respondent comply with regard to complainants money and mental harassment caused to the complainants in view of the inordinate delay in delivery of possession of the impugned unit.

X To direct company to pay a cost of Rs. 1,00,000/- (Rupees One Lakh only) towards the cost of the litigation.

15. During deliberations it is pointed out that possession of unit in question has been handed over to the allottees/complainants on 07.08.2019. All this is mentioned by the respondent in its application seeking rejection of complaint. The complainants have sought compensation of Rs. 10 lakhs alleging loss of opportunity, cost with regard to impugned unit, disproportionate gain and unfair advantage by respondent and again compensation for mental harassment caused to them due to inordinate delay in delivery of possession.

As per Clause 5.1 of FBA the respondent undertook to deliver possession of subject unit within 30 months, with an extended period of six months from the date of execution of said agreement (FBA) or date of sanction of building plan, whichever is latter.

16. As stated earlier, FBA was executed between the parties on 07.11.2011 and as per Annexure 3, building plans were approved on 23.01.2013. Taking the latter dated i.e. 23.01.2013, as starting point, 30 months were completed on 23.07.2015. Adding 6 more months as extended

krb
A.O.



period, There remained delay of about more than three and half years. Apparently, the allottees/complainants were deprived of their right, during this period causing anxiety and mental harassment to them. On the other hand, respondent used money paid by the complainants and did not discharge its obligation to complete unit, and hence gained at the cost of buyers/complainants.

17 Learned counsel for complainants also contended that his clients suffered mental harassment as the respondent sent draft FBA and asked them (complainants) to send the same back within 30 days, otherwise their booking of unit will be cancelled. Moreover, same could have been penalized by forfeiting 20% of sale consideration i.e. earnest money. Moreover, complainants would have been made liable to pay brokerage or penalty at rate Rs. 1 per sq. ft. failing to send ^{back} agreement to sell, after their signatures. His clients i.e. complainants remained under pressure to sign FBA, without properly having gone through the same. It is further the plea of learned counsel that his clients were forced to take possession by the respondent, without receiving an occupation certificate. The respondent could not have compelled them to take possession, unless the construction was completed and the same i.e. builder had received occupation certificate.

18 I find force in said plea of learned counsel. To impose such a condition i.e. to sign FBA within 30 days, or to force an allottee to take possession without getting occupation certificate is apparently unfair trade practice, on the part of a builder.

19 There is an old proverb "*ubi Jus ibi remedium*" meaning that where there is right, there is remedy. The allottees had right to get possession of their unit within agreed time, particularly when same had paid

Handwritten signature
A.D.

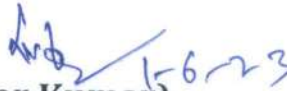


entire sale consideration. Similarly, the respondent was not justified to force the allottees to impose condition of 30 days to sign, draft of FBA or to take possession without getting OC. The complainants are thus well within their rights to claim compensation.

20 There is nothing on record ^{to} establish as what exact loss has been suffered by the complainants or what unjustified gain was received by the respondent. Keeping in view the facts of the case, in my opinion, a sum of Rs. 2 lakh is appropriate amount of compensation, in this regard. The same is thus allowed to the complainants, to be paid by the respondent.

21 As described above, the complainants have also sought compensation of Rs. 1 lakh towards cost of litigation. The complainants did not put on file any receipt of fee paid to their counsel. Apparently, same were represented by an advocate. The complainants are thus allowed a sum of Rs. 50,000/- as cost of litigation. The complaint is thus allowed. Respondent is directed to pay Rs. 2,50,000/- to the complainants as compensation within 30 days from today, otherwise same will be liable to pay interest @10% per annum till the date of realization. Announced in open Court today i.e. 01.06.2023.

File be consigned to the Records.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram