

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

Complaint no. : 8048 of 2022
Date of decision : 08.09.2023

Sh. Gaurav Yadav
Address: H.no. 197, Sector 14, Gurugram

Complainant


Versus

1. Ansal Housing and Construction Ltd.
Address: 2nd Floor, Ansal Plaza, Sector 1, Vaishali,
Ghaziabad, U.P 201010
2. Samyak Project Pvt. Ltd.
Address: 111, 1st Floor, Antariksh Bhawan, K.G.Marg,
New Delhi 110001


Respondents

APPEARANCE:

For Complainant: Mr. S.S.Yadav Advocate

For Respondents: None

ORDER

1. This complaint is filed by Gaurav Yadav through Special Power of Attorney (SPA)  Sh. Satyavir Singh Yadav under section 31 read with section 72 of The Real Estate



(Regulation and Development) Act 2016, against

respondents viz. Ansal Housing & Construction Ltd. and
Samyak Project Pvt. Ltd.

2. According to complainant, a project namely "Ansal Heights
sector 86 Gurgaon" was promoted, developed and marketed
by the respondents as per their agreement and
understanding between land owner, promoters, developer
and the power of attorney holders. This fact was disclosed in
clause 3 of agreement entered between him (complainant)
and respondents under the heading "Developer's
Representation"

3. Mrs. Meenakshi Sharma (original allottee) W/o Sh. Pankaj
Sharma, R/o H.No. 2437 Ganeshpura Tri Nagar Delhi had
booked a flat no C-804 3 BHK-3T in said project of respondent
admeasuring 1895 sq.ft. with total net basic price of
Rs.55,97,166.75 on 15/11/2011. She (original allottee) had paid
an amount of Rs. 1,431,536 (installments including service tax)
to the developer till 26/4/2012.

4. Mrs. Meenakshi Sharma sold her unit in question to
complainant viz. Sh. Gaurav Yadav for a consideration of
Rs.21,00,000/-. He (complainant) paid Rs.15,00,000/- to Mrs.
Meenakshi Sharma and Rs.6,00,000/- to the developer on



- 10/9/2012. The respondents/developers transferred the said unit in favour of the complainant as per intimation and transfer letter dated 29/11/2012 and allotment letter dated 13/12/2012.
5. According to clause no. 31 of the FBA, executed between the parties on 14.09.2012, respondents were obliged to offer possession of the said unit any time, within a period of 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever, is later subject to timely payment of all the dues by him (complainant) and subject to grace period of 6 months to force - majeure circumstances. The due date of possession stands as 01.10.2017.
6. That the respondents issued demand letters on 01.09.2013, 27.05.2014, 04.07.2014, 26.08.2014, 13.11.2014, 24.12.2014, 17.02.2015, 26.05.2015, 28.08.2015, 23.11.2015, 24.03.2017, 05.05.2017 demanding amount of Rs. 288505.81, Rs.615393.26, Rs.615393.26, Rs.907045.68, Rs.421582, Rs.421582.34, Rs.288505.88, Rs.327165, Rs.288506.97, Rs.328465.88, Rs. 290003, Rs.24043, Rs.25555, which were fully paid by him (complainant) through cheques.
7. Respondents sent email to him (complainant) on 04.11.2017, explaining the reasons for delay in completion of project, i.e.



because of delay in obtaining necessary sanctions, approvals from the state authorities which were obtained in the month of October 2013.

8. On 29.09.2018, a report was published in Times of India Newspaper that the project named ANSAL HEIGHTS 86 promoted, developed and marketed by respondents cannot be completed by the end of the year 2018 in the light of progress going on at site. On 30.09.2018, he (complainant) through email again asked about the delay in possession, on which, a reply on e-mail was received from the respondent on 3.12.2018, that a meeting of respondents officials was held and issues related to said project were deliberated upon, as when and how to complete this project.
9. After no assurance from respondents, he (complainant) filed a complaint no 965/2019 before the authority, seeking refund of deposits made by him (complainant) to the respondents with interest, which was decided by authority dated 12/7/2022 and respondents were held liable to refund the amount deposited by him along with the interest thereon @ MDLR +2 % from the date of deposit till date of payment. Till filing of this complaint, respondents are liable to pay the total amount of Rs. 1,35,57,116/- including interest in compliance with order dated 12.07.2022.

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A.O.

10. Citing facts as described above, complainant sought following reliefs:

- a. To order the respondents to pay compensation of Rs. 50,00,000/- on account of loss/injury as well as mental agony suffered by the complainants.
- b. To order the respondents to pay litigation cost of Rs. 5,00,000/-.
- c. to pass such other order as Adjudicating Officer may deem fit and proper, in the facts and circumstances of the present case.

11. Notice of complaint was given to respondents. Same is shown to have been served through e-mail and speed post but neither any one appeared on behalf of any of the respondents, nor any reply was filed. Respondents were proceeded exparte on 28.02.2023.

I heard learned counsel of complainant and went through record on file.

12. As described above, according to complainant, he had filed a complaint before Haryana Real Estate Regulatory Authority, Gurugram, seeking refund of the amount, which has already been allowed by the authority, vide order dated 12.07.2022. A



copy of such order is on the record. As per complainant, respondents were obliged to offer possession of the subject unit within 42 months from the date of agreement (FBA) or within 42 months from the date of obtaining all required sanctions and approvals for the commencement of construction, whichever is later. Due date of possession according to him (complainant) was 01.10.2017. Allowing said contention of present complainant, the Authority directed respondents to refund the amount as received from the complainant.

13. The complainant claims to have paid sale consideration whenever demands were raised by the respondents. Detail of the payments is well mentioned in the complaint. The respondents when used the money paid by the complainant and did not fulfil their obligation to hand over possession. Same are thus liable to compensate the complainant. Out of total sale consideration of Rs. 21 Lakhs, he paid Rs.15 Lakhs to erstwhile owner i.e. Mrs. Meenakshi Sharma and remaining amount of Rs. 6 Lakhs to respondents/developers through cheque dated 10.09.2012.

(Signature)
A. D.

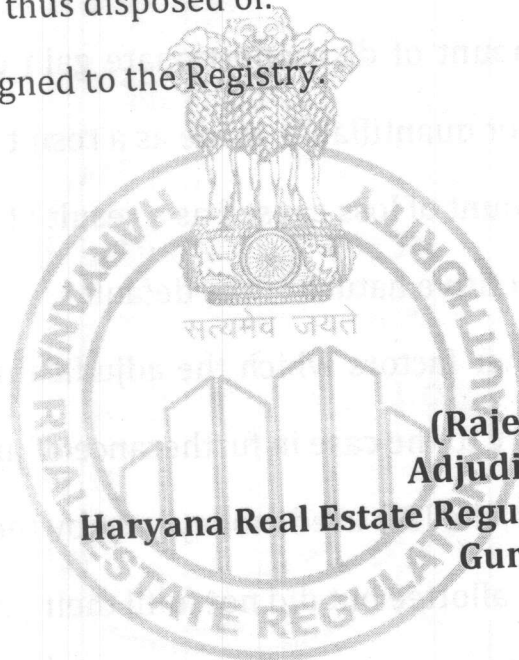
14. Keeping in view, the fact that respondents used money paid by the complainant as well as by the original allottee, request of complainant for compensation in this regard is allowed. Section 72 of the act of 2016, prescribes factors which have to be taken into account by the Adjudicating Officer, to adjudge quantum of the compensation, same are :
- a. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
 - b. The amount of loss caused as a result of the default.
 - c. The repetitive nature of the default.
 - d. Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.
15. Apparently, the JD's used money paid by the complainant or by the original allottee but did not fulfil their promise to hand over possession in prescribed time, and hence gained undue benefit. All this, consequently caused financial loss to the complainant. Rs. 50 lakhs as claimed by complainant appear excessive. Keeping in mind facts of the case, respondents are directed to pay compensation of Rs.10 lakhs ^{to complainant} in this regard.
16. The complainant has claimed Rs. 5Lakhs as litigation charges. No receipt/ certificate about payment of fee to his counsel has been filled by the complainant but apparently, complainant was represented by an advocate during proceedings of this case. A

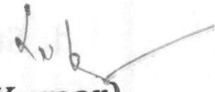
sum of Rs. 1 Lakh is allowed to complainant as cost of litigation to be paid by respondents.

17. Respondents are directed to pay amounts of compensation well mentioned above, within 30 days of this order, otherwise same will be liable to pay interest @10.5% p.a. till realisation of amount.

18. Complaint is thus disposed of.

19. File be consigned to the Registry.




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

HARERA
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