

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

Complaint no. : 1773 of 2019
First date of hearing: 04.09.2019
Date of decision : 11.09.2019

1. Mr. Kuldeep Yadav
2. Mrs. Manisha Yadav
Both R/o: H.No. 1795 , Sector-4,
Gurugram 122001

Complainants

Versus

1. M/s Ansal Housing & Construction Ltd.
Office address: 15 UGF, Indra Prakash, 21
Barakhamba Road, New Delhi-110001.
2. Mr. Deepak Ansal
R/o:- 15 UGF, Indra Prakash 21, Barakhamba
Road, New Delhi-110001

Respondents

CORAM:
Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:
Shri V.V. Manoharan Advocate for the complainant
Ms. Meena Hooda Advocate for the respondents

ORDER

1. A complaint dated 17.05.2019 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 complainants Mr. Kuldeep Yadav and Mrs. Manisha Yadav, against the promoter M/s



Ansal Housing and Construction Ltd. and ors., on account of violation of clause 29 of the apartment buyer's agreement executed on 13.03.2012 in respect of apartment described below in the project 'Ansal Heights', Sector 92, Gurugram, for not handing over 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 13.03.2012 i.e. prior to the commencement of the Act *ibid*, therefore, the 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/respondents 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	"Ansal Heights", Sector 92, Gurugram
2.	Project area	10.563 acres
3.	RERA Registered/ not registered.	Not registered
4.	Nature of the project	Residential
5.	DTCP License no.	76 of 2010 dated 01.10.2010
6.	Date of approval of building plan of the project	03.05.2012 as alleged by respondents in his reply pg. 14
7.	Unit no.	02, Floor-12, Tower- F



8.	Apartment measuring	1565 sq. ft.
9.	Date of execution of apartment buyer's agreement-	13.03.2012
10.	Payment plan	Construction linked payment plan
11.	Total consideration	Rs.54,970,93/- as per annexure P5 page 60 Dated 17.03.2019
12.	Total amount paid by the complainant till date	Rs.54,71,468/- as per annexure P5 page 63 dated 17.03.2019
13.	Due date of delivery of possession as per clause 29 of apartment buyer's agreement (36 months + 6 months grace period from the date of execution of agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later)	03.11.2015 Note: due date of possession is calculated from the date of approval of building plan i.e. 03.05.2012
14.	Delay in handing over possession till date 11.09.2019	3 years 11 months and 29 days
15.	Penalty clause as per the said apartment buyer's agreement	Clause 34 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area for any delay in offering possession.

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent no.1. An apartment buyer's agreement dated 13.03.2012 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 13.09.2015. Neither the respondents have delivered the possession of the said unit till



date to the complainants nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said apartment for the period of delay as per clause 34 of apartment buyer's agreement dated 13.03.2012. Therefore, the promoters have not fulfilled their committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent no.1 through its counsel appeared on 04.09.2019. The case came up for hearing on 04.09.2019 and 11.09.2019. The reply filed by the respondent no.1 on 04.06.2019 has been perused, by the authority. The respondent no.2 has failed to file reply despite due service of notice, therefore the case is being proceeded ex-parte against respondent no.2.

Facts of the complaint:

6. The complainants submitted that they booked an apartment on 06.06.2011 and an apartment buyer's agreement was executed on 13.3.2012. As per clause 29 of the apartment buyer's agreement, the possession of the said apartment was to be handed over within 36 months from the date of commencement of the construction, i.e.,14.06.2015 with an extended period of 6 months in case of force majeure situation.

The respondent commenced the construction on 14.06.2012 on which further instalments were demanded and paid by the complainants. Accordingly, the possession of the apartment should have been given to the complainants by 14.06.2015 and/or latest by 14.12.2015.

7. The complainants submitted that clause 22 of the apartment buyer's agreement states that delay in payment by the complainants shall attract compoundable interest at the rate of 24% per annum, compounded quarterly and the complainant, have since paid the interest for delayed payment. The clause 23 of the apartment buyers' agreement further provide that only 5% interest on refund of the amount for the period of starting 30 days after receipt of the original documents from the buyer till actual date of refund. The agreement further states in clause 34 that the developer would pay to the buyer @Rs.5/- per sq.ft. per month on super area for any delay in offering possession of the unit. As of date, the respondents have failed to pay the penalty of even the meagre sum at the rate of Rs.,5/- per sq.ft. to the complainants. Hence, the respondents are equally liable to pay same interest @ 24% for delay in handing over possession of the apartment to the complainant on his part.

8. The complainants submitted that the respondents have taken money from the apartment buyers/investors for construction without having HARERA registration and/or is yet to get the project registered with HARERA. They were put to grave hardship due to this as the complainants are paying EMI to the SBI for the loan taken for the purpose.

Issues to be decided:

9. The complainants have raised the following issues:
1. Whether there is delay in handing over the possession of apartment by the respondents? If so, what is the penalty/interest need to be paid to the complainants by the respondents?
 2. What is the compensation/interest to be paid by the respondents to the complainants for the delay accrued in handing over of the possession?

Reliefs sought:

10. The complainants are seeking the following reliefs:
1. Direct the respondents to handover the possession of the apartment along with interest for delayed possession till date of actual possession @24%p.a.

Reply on behalf of respondent no.1: -

11. The respondent submitted that the said project is related to licence no.76 of 2010 dated 01.10.2010 received from DGTC, Chandigarh over the land measuring 10.563 acres details of the same are given in apartment buyer's agreement, situated within the revenue estate of Village Wazirpur, Gurugram, which falls within the area of Sector-92, Gurugram-Manesar Urban Development Plan. The building plans of the project has been approved by the DTCP Haryana vide memo no. ZP671/JD(BS)/2012/7441 dated 03.05.2012. Thereafter, the respondents herein were granted the approval of firefighting scheme from the fire safety point of view of the housing colony measuring 10.563 acres by the Director, Haryana Fire Service, Haryana, Chandigarh.
12. The respondent submitted that the relief sought in the complaint by the complainants is based on false and frivolous grounds and he is not entitled to any discretionary relief from this hon'ble authority as the person not coming with clean hands may be thrown out without going into the merits of the case. However, the true facts of the case are that the land of the project is owned by M/s JSG Builders Pvt. Ltd., which owns a part of land of 43 Kanal 14 Marla and NCC Urban Infrastructure Ltd. which owns the balance area of 40 Kanal

and 16 failing in Village Wazirpur of Gurugram. The landowners have under an agreement agreed to grant, convey and transfer all its rights, entitlements and interests in development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Samyak Projects Pvt. Ltd.

13. The respondent submitted that the complainants approached the respondent sometime in the year 2011 for the purchase of an independent unit in its upcoming residential project "Ansal Heights" situated in Sector-92, Village Wazirpur, Gurugram. It is submitted that the complainant prior to approaching the respondents, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

14. The respondent submitted that the complainants vide application form dated 03.06.2011 applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form,

was allotted an independent unit bearing no. F-1202, type of unit - 3 + 2, in tower-F, sales area admeasuring 1565 sq. ft. (145.39 sq. mtrs.). The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondents that the complainants shall remit every instalment on time as per the payment schedule. The respondents had no reason to suspect the bonafide of the complainants. The complainants further undertakes to be bound by the terms and conditions of the application form.

15. The respondent submitted that that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondents to the authority.
16. The respondent submitted that it would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondent. There had been several circumstances which were absolutely beyond and out of control of the respondent. They are as follow: "such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the



"Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these, the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondent unable to cop with the labour pressure. However, the respondent is carrying its business in letter and spirit of the Builder Buyer Agreement as well as in compliance of other local bodies of Haryana Government."

17. The respondent submitted that the present complaint is barred by limitation. The complainant have themselves alleged that the possession of the unit was to be given not later than March 2015 and therefore cause of action, if any, accrued in favour of the complainants in March 2015. Thus, the complaint seeking interest as a form of indemnification for the alleged delay is barred by limitation.

18. The respondents submitted that it is evident from the entire sequence of events, that no illegality can be attributed to the respondents. The respondents submitted that several allottees, including the complainants have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible.

DETERMINATION OF ISSUES:

After considering the facts submitted by the complainants, reply by the respondent no.1 and perusal of record on file, the issue wise findings of the authority are as under:

19. With respect to the **issues** raised by the complainant, as per clause 29 of the apartment buyer's agreement dated 13.03.2012, the possession of the unit was to be handed over within 36 months plus grace period of 6 months from the date of execution of agreement or the date of obtaining all the required sanctions and approvals necessary for



commencement of construction, whichever is later. In the present case, the apartment buyer's agreement was executed on 13.03.2012 and the building plan was approved on 03.05.2012. Therefore, the due date of handing over the possession shall be computed from 03.05.2012. The clause regarding the possession of the said unit is reproduced below:

"The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of apartment buyer's agreement or within 36 months from the date of 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 30. Further there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."

Accordingly, the due date of possession was 03.11.2015 and hence, the period of delay in delivery of possession is computed as 3 years 11 months and 29 days till the date of decision. The delay compensation payable by the respondents @ Rs.5/- per sq. ft. per month of super area for any delay in offering possession of the unit as per clause 34 of apartment buyer's agreement is held to be very nominal and unjust. The possession of the apartment/apartment was to be delivered by 03.11.2015, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. The

complainant made a submission before the authority under section 34(f) to ensure compliance/ obligations cast upon the promoter as mentioned above. 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 its obligation.

20. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso read with rule 15 of the rules to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. Therefore, as per section 18(1) proviso read with rule 15 of the Rules ibid, the complainant is entitled to prescribed rate of interest i.e. State Bank of India highest marginal cost of lending rate plus two percent, per annum.

Findings of the authority:

21. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, 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.

22. Since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondents to show cause as to why a penalty of 10% of the total project cost may not be imposed. Registration branch is directed to do the needful.
23. It has been brought on record by the counsel for the respondents by filing an affidavit and documents in this context that they have applied for occupation certificate and relevant para No.3 of the affidavit is re-produced as under: -

"That in compliance of the order dated 4.9.2019, it is submitted that the project in question has already been completed in terms of the licence No.76 of 2010 dated 01.01.2010 issued to us to develop a group housing colony measuring 10.563 acres falling the revenue estate of village Wazirpur, Sector-92, Gurugram. As per the Haryana Building Code, 2917, para No.4, 10 (5), we have not received any query from the office of Director General, Town & Country Planning, Haryana, SCO-71-75, Sector 17-C, Madhya Marg, Chandigarh and more than 120 days have been passed from the date we applied for grant of occupation certificate, and we are taking the same as deemed occupation certificate".

In view of the averments made by the counsel for the respondents, it is directed that they may pursue the matter

before the DTCP Haryana Chandigarh by apprising the facts w.r.t deemed approval so that the matter may be clarified in a patent manner. However, the complainant is entitled for delayed possession charges till the actual delivery of possession.

24. Brief facts leading to this complaint are that by virtue of clause 29 of the apartment buyer agreement dated 13.03.2012 for unit no.02, 12th floor-12, tower-F, in project "Ansal Heights" Sector-92 Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of approval of building plan i.e. 03.05.2012 + 6 months grace period which comes out to be 03.11.2015. The respondents have failed to deliver the possession of the unit in time. Complainant has already paid Rs.54,71,468/- to the respondents against a total sale consideration of Rs.54,970,93/-.

Directions of the authority:

After taking into consideration all the material facts adduced 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:

- i. The respondents are directed to pay delayed possession charges at the prescribed rate of interest i.e. 10.35% per annum w.e.f. due date of possession i.e. 03.11.2015 as per the provisions of proviso section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the actual offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession.
- iv. The promoter shall not charge anything from the complainant which is not part of the flat buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.35% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- vi. The respondents are directed to provide statement of account to the complainant within a week time. The

earlier order dated 04.09.2019 be complied with by the respondents urgently.

25. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondents under the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.

26. The order is pronounced.

27. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.09.2019

Judgement uploaded on 10.10.2019

HARERA
GURUGRAM

SANDEEP BHUCKAL
LEGAL ASSISTANT