

Complaint No. 1819 of 2019

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

Complaint no. : 1819 of 2019
First date of hearing: 04.09.2019
Date of decision : 04.09.2019

Sh. Birender Singh Yadav
R/o:- H. No. 364-A, Block-C, Sushant Lok-I,
Gurugram, Haryana-122002

Complainant

Versus

1. M/s. Ansal Housing & Construction Ltd.
Office address: 15, UGF, Indraprakash, 21
Barakhamba Road, New Delhi-110001.
2. M/s JSG Builders Pvt. Ltd.
Office Address: 297-A/4 Mehrauli, New Delhi
3. M/s NCC Urban Infrastructure Ltd.
Office Address: 41, Nagarjuna Hills,
Hyderabad-500082
4. M/s Samyak Projects Pvt. Ltd.
Office Address: 111, 1st Floor, Antriksh
Bhavan, K.G Marg, New Delhi-110001

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

**Chairman
Member
Member**

APPEARANCE:

Sh. Rahul Yadav
Ms. Meena Hooda

Advocate for the complainant
Advocate for the respondent no.
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Legal Assistant



ORDER

1. A complaint dated 15.05.2019 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 complainant Mr. Birender Singh Yadav, against the promoter M/s Ansal Housing & Construction Ltd. and others, on account of violation of clause 29 of the apartment buyer's agreement dated 13.04.2012 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 13.04.2012 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 the 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
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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.	Unit no.	E-101
7.	Apartment measuring	1320 sq. ft.
8.	Date of execution of apartment buyer's agreement	13.04.2012
9.	Payment plan	Construction linked payment plan
10.	Total sale consideration As per SOA dated 07.12.2018 on pg. 72 of the complaint	Rs. 44,71,206/- (excluding other charges)
11.	Total amount paid by the Complainant As per the SOA dated 07.12.2018 on pg. 72 of the complaint	Rs.41,34,938/-
12.	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)	13.10.2015 Note:- the due date is calculated from the date of execution of apartment buyer agreement i.e. 13.04.2012 as no documents regarding approval for commencement of construction has been annexed by the respondents
13.	Offer of possession	Not offered
14.	Delay in handing over possession till date of decision	3 years 10 months 22 days
15.	Penalty As per clause 34 of the apartment buyer agreement	Rs.5/- per sq. ft. per month of the super area for any delay in offering possession.

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4. 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 respondents. An apartment buyer's agreement dated 13.04.2012 is available on record for the aforesaid apartment. As per clause 29 of the said agreement, the possession of the subject unit was to be delivered by 13.10.2015. The respondents has failed to deliver the possession of the subject unit by the due date, thus the promoter has not fulfilled its committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The case came up for hearing on 04.09.2019. The reply filed by the respondent no. 1 on 04.06.2019 has been perused by the authority. The respondent no. 1 through its counsel appeared on 04.09.2019.

FACTS OF THE COMPLAINT

6. The complainant submitted that he has booked a residential flat in the project of the respondents namely "Ansal Heights" at Sector-92, Gurugram in Wazirpur Village, Gurugram.
7. The complainant submitted that the respondents no. 1, issued an allotment letter dated 16.09.2011, vide which the



complainant was allotted unit bearing no. E-101 in "Ansal Heights" Sector-92, Gurugram.

8. The complainant submitted that he was further induced to sign a pre-printed apartment buyer's agreement dated 13.04.2012 by virtue of which the respondents allotted a unit bearing no. E-101, 2BHK (1320 sq. ft). The said apartment buyer's agreement is totally one sided which imposed completely biased terms and conditions upon the complainant, thereby tilting the balance of powers in favour of the respondents.
9. The complainant submitted that he has paid a total sum of Rs. 44,42,115/- towards the aforesaid residential apartment in the project. The balance payment was to be made at the time of offering of possession.
10. The complainant submitted that the respondents have promised to complete the project within a period of 36 months from the date of approval of building plans with a further grace period of six months. The apartment buyer's agreement was executed on 13.04.2012 and till date the construction is not complete, which is resulting in extreme kind of mental



distress, pain and agony to him. That, as per the information provided by the respondents, the building plans of the project were approved by the concerned authorities on 03.05.2012.

11. The complainant submitted that the respondents has issued a letter dated 07.12.2018 for fit outs which the respondents has illegally termed as "offer of possession" as there can be no offer of possession without obtaining occupation certificate. As per the knowledge of him the respondents has not obtained the OC of the subject project till date. He has made a payment of Rs.3,00,000/- in the month of February, 2019 under protest to the respondents against the booked unit.
12. The complainant submitted that the respondents has charged a sum of Rs. 3,00,000/- as car parking charges which is against the settled principle of law as the builder cannot charge for the common areas and the demand of Rs. 3,00,000/- raised by the respondents was illegal, null and void and the sum of Rs. 3,00,000/- is liable to be adjusted/removed in addition to the PLC charges as the apartment is not park facing and the respondents has charged a sum of Rs. 66,000/- on account of

park facing (PLC) from him against the settled proposition of law.

13. The complainant submitted that the apartment buyer's agreement was executed on 13.04.2012 and building plans were approved on 03.05.2012, the project was to be completed in 36 months with grace period of six months. The respondents has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. He is entitled for refund of its entire amount paid to the respondents along with interest @ 18% p.a. as well as compensation.

ISSUES TO BE DECIDED

14. The complainant has raised the following issues:
- Whether the respondents/promoter has made false representations about the project in question in order to induce the complainant to make a booking?

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- ii. Whether the respondents/promoter is liable for unjustifiable delay in construction and development of the project in question?
- iii. Whether the respondents/promoter has illegally charged a sum of Rs. 3,00,000/- towards car parking from the complainant?
- iv. Whether the respondents/promoter has illegally charged a sum of Rs. 66,000/- towards PLC on account of park facing apartment from the complainant?

RELIEFS SOUGHT

15. The complainant is seeking the following reliefs:
- i. Direct the respondents to handover the possession of the apartment bearing no. E-101.
 - ii. Direct the respondents to pay interest to the complainant on the amount of Rs. 44,42,115/- along with interest @18% per annum from the date when payments were made till hand over of the possession.

REPLY ON BEHALF OF RESPONDENT NO. 1

16. The respondent submitted that the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this hon'ble authority.



The complainant has filed the present complaint seeking refund and interest for alleged delay in delivering the possession of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this hon'ble authority.

17. The respondent submitted that the above 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. ZP-671/JD(BS)/2012/7441 dated 03.05.2012.
18. The respondent submitted that the complainant vide application form dated 05.01.2011 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no. E-101, measuring

1320 sq. ft.. The complainant 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 respondent that the complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainant further undertakes to be bound by the terms and conditions of the application form.

19. The respondent submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted 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 respondent to the authority.
20. The respondent submitted that the complainant has admitted that he was offered the possession of the said unit on 07.12.2018 and therefore no cause of action is arisen in favour of the complainant as he has already been offered the possession of the unit.
21. The respondent submitted that several allottees, including the complainant, 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 in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the authority of the said project by giving afresh date for offering the possession, however, in this case the complainant has been already offered the possession by the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

22. The respondent submitted that as far as labour cess, fire fighting works and Haryana VAT and GST are concerned, the



Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the apartment buyer's agreement, vide which complainant was agreed to pay in addition to basic sale price of the said unit they are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.

DETERMINATION OF ISSUES

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

23. With respect to the **first and second issue** raised by the complainant, the authority came across that as per clause 29 of the apartment buyer's agreement dated 13.04.2012, 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 due date of handing over the possession shall be computed from the date of execution of apartment buyer's agreement i.e. 13.04.2012 as no documents regarding approval for commencement of construction has been annexed by the respondent. The clause regarding the possession of the said unit is reproduced below:

"29. The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of 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 calculated was 13.10.2015 and it has not been offered by the respondents till now, hence, the period of delay in delivery of possession is computed as 3 years 10 months 22 days till the date of decision. Hence, the authority is of the view that the promoter has failed to fulfil its obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016 and is liable for unjustifiable delay in construction and development of the project.

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24. With respect to the **third issue** raised by the complainant, the authority is of the view that as per the clause 20 of the apartment buyer's agreement the complainant is liable to pay an amount of Rs. 3,00,000/- towards the car parking charges and the same has been signed by the complainant. Thus, the demand made by the respondents towards the car parking charges is not illegal.
25. With respect to the **fourth issue** raised by the complainant, the authority is of the view that as per the clause 1 of the apartment buyer's agreement the complainant is liable to pay an amount of Rs. 66,000/- towards the PLC on account of park facing apartment and the same has been accepted by the complainant. The complainant has only written that the apartment is not park facing but no picture or other document has been annexed in the paper book regarding the issue, so the issue is decided in negative.

FINDINGS OF THE AUTHORITY

26. **Jurisdiction of the authority-** The authority has complete 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

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be decided by the adjudicating officer if pursued by the complainant at a later stage.

As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

27. The complainant has made a statement that the project is 60/65% complete and as per averments of counsel for the promoter that they have applied for occupation certificate. It is not understood as to how they have applied for occupation certificate without completing the project. It seems that the promoter is trying to cheat the allottees by making a statement which is far from truth.
28. Keeping in view the interest of large number of allottees, the authority decided to order audit of the project with particular reference to provisions of the Act. Meanwhile, the accounts of the project are ordered to be freezed.

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29. As per clause 29 of the apartment buyer's agreement dated 13.04.2012 for unit no. E-101, 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 execution of agreement i.e. 13.04.2012 + 6 months grace period which comes out to be 13.10.2015 and this date has been conceded by the respondents in his written reply. At the moment, the respondents has miserably failed to deliver the possession of the unit in time, the offer of possession vide letter dated 07.12.2018 is only of a fit out possession. However, it is a matter of fact that the fit out offer of possession has no meaning in the eyes of law even without receiving occupation certificate. Complainant has already paid Rs. 41,34,938/- to the respondents against a total sale consideration of Rs. 44,71,206/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 13.10.2015 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 to be read with rule 15 of the Real Estate (Regulations and Development) Rules, 2017 till the actual delivery of possession.

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DECISION AND DIRECTIONS OF THE AUTHORITY

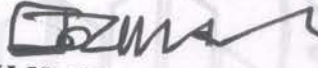
30. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- i. The complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 13.10.2015 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 to be read with rule 15 of the Real Estate (Regulations and Development) Rules, 2017 till the actual delivery of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant 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 each subsequent month.
- iii. Interest on due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

- iv. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession.
- v. The promoter shall not charge anything from the complainant which is not a part of the apartment buyer's agreement.
31. Complaint stands disposed off.
32. The order is pronounced.
33. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.09.2019

DEEPANSHU SINGLA

Judgement Uploped on 19.11.2019

Legal Assistant