

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

Complaint no. : 5769 of 2022

Date of order : 29.10.2024

Mr. Rajshekhar Vemparala
Ms. Sushmita Pathy
ADDRESS : 52, Arjun Marg, DLF Phase I,
Chakarpur, Gurugram

Complainants

Versus

1. Ansal Properties & Infrastructure Ltd.
ADDRESS : 115, Ansal Bhawan, 16 Kasturba
Gandhi Marg, New Delhi - 110001.
2. Samyak Project Private Limited
ADDRESS : 111, First Floor, Antriksh Bhawan,
22, Kasturba Gandhi Marg, New Delhi-110001

Respondents

APPEARANCE:

For Complainants:

Mr. Harshit Batra Advocate

For Respondents:

None

ORDER

1. This is a complaint filed by Mr. Rajshekhar Vemparala and Ms. Sushmita Pathy (allottees) under section 31 and section 71 of The Real Estate (Regulation and Development) Act of 2016 (in brief the Act, 2016) and rule 29 of The Real Estate



(Regulation and Development) Rules, 2017 against Ansal Properties & Infrastructure Ltd. and Samyak Project Private Limited (respondents / promoters)

2. As per complainants, they booked an apartment no. B-1504 on 15th Floor in Tower P admeasuring 1348 sq. ft. (Super Area) in the project of respondents. Respondent no.1 is responsible for the construction and development of the real estate project viz. "The Fernhill" (project) located at Sector-91, Gurgaon and respondent no. 2 had acquired the rights, title, and interest to construct and develop the real estate project in question. Both of respondent no.1 & respondent no.2 are the promoters within the meaning of 2(zk) of the Act of 2016 and are jointly liable for all the acts mentioned in the succeeding paragraphs. Complainants also filed CR/4910/2022 in the Authority, Gurugram which was adjourned sine die on 10.01.2023 against respondent no.1 and no reply was filed by respondent no.2.
3. That initially, respondents allotted said unit vide allotment letter dated 15.06.2011 wherein the net sale price was mentioned as Rs.36,32,860/- and no charges in the name of C.P. and PLC were incorporated in that allotment letter. Thereafter, respondents revised the allotment letter dated 26.07.2011 and unilaterally and arbitrarily levied C.P. and PLC charges upon them (complainants) without taking consent from them, thereby increasing the net sale price from Rs.36,32,860/- to Rs.39,00,260/- which has imposed unnecessary financial burden on them (complainants).



4. That initially respondent no.1 allotted unit no. B-1504 on 15th floor, having a tentative super area of 1348 sq. ft., thereafter, said respondent vide letter dated 17.12.2013 informed them(complainants) that they have been allotted unit no. 0704-B-P/0701 on 7th floor, having a tentative super area of 1675 sq. ft., unilaterally increasing in the super area without the consent of complainants, by 24.26% which is highly arbitrary and unjustifiable and also against the law. Respondents not only misrepresented the necessary approvals but also changed (increased) the super area of the unit.
5. That agreement sent by the respondents to them(complainants) for their signature on 21.07.2014 was a pre-printed agreement of a Pre-date i.e., ~~of~~ 10.07.2013 (more than one year before the date of delivery of agreement). As per Clause 5.1 of the said agreement, respondent was under an obligation to deliver possession of the unit within 48 (forty-eight) months from the date of execution of ~~this~~ agreement or from the date of commencement of construction of the particular Tower/Block in which the said unit is situated, subject to the sanction of the building plan, whichever is later.
6. A sum of Rs.14,02,064/- has already been paid by them(complainants) against the demands raised by respondent no. 1. After investing their hard-earned money and in the apprehension of losing their already paid amount against total consideration, they(complainants) were coerced to sign the agreement on the dotted lines, and thus



they signed the Builder Buyer Agreement on 03.08.2014. According to this agreement, due date of delivery comes out to be 03.08.2018. Respondent has delayed by 5 years in offering the possession of the said unit as is evident from the fact that till date, the valid and legal offer of possession has not been offered to them (complainants).

7. That from the date of allotment i.e. 15.06.2011 till the agreement dated 10.07.2013, the price of the unit has increased thrice. Detail of which is given as under :

Allotment dated 15.06.2011	Allotment dated 26.07.2011	Letter for an increase in the super area dated 17.12.2013	Agreement dated 10.07.2013. Delivered for signing on 21.07.2014 and signed on 03.08.2014
Area = 1348 sq. ft. Unit no. B-1504	Area = 1348 sq. ft. Unit no. B-1504	Area = 1665 sq. ft. Unit no. 0704-B-P701	Area = 1675 sq. ft. The area was unilaterally increased by 24.26%.
Net sale price = Rs. 36,32,860 No CP charges	Net sale price = Rs. 39,00,260 CP charges and PLC charges	The area was increased from 1348 to 1675 sq.	Basic price = Rs. 47,62,641 (added Rs. 3,25,423.46 due to increase in area)



and PLC charges were mentioned.	were unilaterally incorporated here.	ft., i.e., an increase of 327 sq. ft. = 24.26% increase	PLC price = Rs. 83,750 (added Rs. 5,722.50 due to increase in area)
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Change in the basic price from the allotment date i.e. 15.06.2011 to Agreement dated 10.07.2013 was Rs.12,13,531. The charge for additional PLC due to area increase is Rs.5,722.50 and consequent increase in EDC/IDC (which has not been included in initial agreement) is $400 * 327 = \text{Rs.}1,30,800$. Amount collected by respondent no.1 from them (complainants) is more than 35% of the BSP.

8. That in furtherance, it is pertinent to highlight that due to the delay caused in delivery of possession, the Complainants additionally incurred the expense of rent/lease from August 2017 till March 2019, in the following manner:

Months	Rent per month	Total rent paid
August 2017 to October 2018	52,500/- per month (As per the lease agreement dated 09.12.2015)	(52,500*14) Rs. 7,35,000/-
October 2018 till March 2019	60,800/- per month	(60,800*5) Rs. 3,04,000/-



	(As per the rent deed dated 12.10.2018)	
Total Rent Paid After the Due Date of Possession		Rs.7,35,000+3,04,000 = Rs.10,39,000/-

9. That they (complainants) took housing loan for Rs.30,00,000/- from the State Bank of India, which was sanctioned vide sanction letter dated 10.03.2016. Further, a Quadripartite agreement has been executed between respondents and complainants. The sanction letter dated 10.03.2016 and the Quadripartite agreement executed between respondents and complainants and Statement of Account dated 05.07.2022, showing amounts of EMI paid are annexed with the complaint. They (complainants) have paid interest against the sanctioned loan amount of Rs. 30,00,000/- till date. Besides paying such a huge amount of interest for their dream house, they have not received possession of same from the respondents.
10. Citing all this, complainants have sought following reliefs:
- To direct respondents to pay for wrongfully taking a substantial sum of Rs.14,02,062/- before getting the pre-requisite approval including the building plan approval.
 - To direct respondents to pay Rs.2,67,400/- compensation in tune of unilateral increase in area of unit by 24.26%, amounting to Rs.3,25,423.46/-.

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- iii. To direct respondents to pay compensation of Rs.10,00,000/- for unfair trade practices on part of respondents and for giving a pre-printed agreement with a pre-decided date.
- iv. To direct respondents to pay compensation of Rs.5,00,000/- for incorporating arbitrary and one-sided clauses in the agreement and coercing complainants to sign on the dotted lines after taking a hefty sum from them (complainants), leaving no option for them.
- v. To direct respondents to pay compensation to the tune of monthly rent paid by complainants from August 2017 to March 2019 amounting to Rs.10,39,000/-.
- vi. To direct respondents to pay compensation in the tune of monthly interest paid by the complainants against the sanctioned loan.
- vii. To direct respondents to pay compensation for the delay caused in the possession from August 2017 till the date of order @ 15% p.a.
- viii. To direct respondents to pay compensation of Rs.10,00,000 for mental agony, harassment, and financial imbalance caused to the complainants due to the utter malaise, illegal and arbitrary practice of respondents.
- ix. To direct respondents to pay compensation for loss of profit and loss of escalation of cost of the property.
- x. To direct respondents to pay compensation to the tune of Rs.2,00,000 in lieu of litigation cost for pursuing the present case and the case before the Authority.

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- xi. To direct respondents to pay interest @12% p.a., on the compensation that may be awarded, if not paid within the time period, as may be stipulated by the Hon. Adjudicating officer.
- xii. Pass any other order, as may deem fit.
11. Notice of complaint is shown to have been served upon respondents through email as well as by speed post. Tracking report from postal department shows, notices having been served on 26.08.2022. On 18.01.2023, one Advocate (Mr. Tushar Bahmani) appeared for respondent no.1 and stated that insolvency proceedings are going on against said respondent no.1. This fact was not refuted on behalf of complainants. Moreover, a copy of order dated 16.11.2022, passed by NCLT was put on file. None appeared for respondent no.2, despite service through e-mail as well as through post. As per tracking report, notice was delivered upon respondent no. 2 at its given address on 26.08.2022. The latter i.e. respondent no.2 was thus proceeded ex parte on 18.01.2023.

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

12. On 18.01.2023, it was contended on behalf of respondent no.1 that insolvency proceedings were going on against his client i.e. respondent no.1. without disputing said fact, learned counsel for complainant requested on 05.12.2023 that matter be proceeded against respondent no.2, who has



already been proceeded ex parte. In agreement (BBA), copy of which is on file, M/s Samyak Projects Pvt. Ltd., (respondent no.2) is mentioned as "confirming party " who has acquired title and interest from the landowners (of project in question) and again same had right to construct, develop and built up area and to implement entire scheme of development of a multi storied housing scheme/ colony on the parcel of land (project land). In this way, respondent no. 2 can also be termed as promoter in view of Section 2(zk) of the Act of 2016. In this way, present complaint is maintainable against respondent no.2 also.

13. Briefly stated, the complainants have sought compensation against the respondents alleging that:

- i. At the time of booking unit in question, respondents mis-represented before them (complainants) and assured/ represented/warranted that they have all necessary permissions to develop the project.
- ii. When they booked the unit and paid sale consideration in part, respondent no.1 informed them 17.12.2013 that due to reduction in permissible FSI, they were changing unit unilaterally to 0704-B-P/0701 having super area of 1675 sq.ft. Although they had already been allotted a unit i.e. B 1504, 15th floor in tower P admeasuring 1348 sq.ft. In this way, their unit was changed including super area by 24.26 %.
- iii. Respondents sent to them (complainants) a draft of agreement (BBA) on 21.07.2014 which was a pre printed agreement of a pre date i.e. 10.07.2013 (more



than 1 year before) the delivery of agreement. This counts to unfair trade practice by making one side agreement.

Contending all this, complainants have sought compensation as described above.

14. It is well settled that Adjudicating Officer has jurisdiction to determine the compensation in view of Sections 12, 14, 18 and 19 of the Act of 2016. Section 12 casts obligation upon the promoter regarding veracity of advertisement/prospectus. As mentioned earlier, respondent no. 2 did not opt to contest this complaint despite due service of notice. A presumption can be raised that said respondent is not disputing facts of the case as claimed by the complainants. At the cost of repetition, according to the complainants, at the time of the booking, the respondents mis represented and assured to them that they had all necessary permissions in regard to the development of the project. However, they were informed by respondent no.1 on 17.12.2013 that permissible FSI was reduced and hence they(respondents) unilaterally changed their unit as described above. The size of unit was also changed without their knowledge and consent. All this was in contradiction to provision of section 12 of the Act of 2016.
15. Similarly, section 14 of the Act, obliges the promoter to adhere to the sanctioned plans and the project specifications which the promoter failed to adhere.
16. Section 18(3) of the Act, mentions that if the promoter fails to discharge any other obligation imposed on him under this



- Act or he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.
17. According to complainants, they were made to pay a substantial amount of Rs.14,02,062/- before getting pre-requisite approval from the concerned Government agencies. I find weight in the submissions of the learned counsel for complainants, stating that the promoters agreed to complete the project and to hand over possession within certain period, but same failed to adhere to the agreement/ commitments/ representation. Same (respondents) are liable to pay compensation to complainants. Although the complainants have sought ~~be~~ compensation of Rs. 1402062/- which they are stated to have paid. As respondents have no approval to develop the project, the complainants are entitled to get said amount back as compensation, with interest, prayer in this regard is allowed.
18. Complainants requested to pay a compensation of Rs. 2,67,400/- for unilaterally increasing in the area. Letters allegedly written by respondents are on the record. From all this and also from the fact that respondent no. 2 did not opt to contest the claim, I have no reason to disbelieve in this regard. It is not plea of complainants even that they paid this amount, No reasons to allow Rs. 267,400/- However, the complainants ~~are~~ are granted compensation of Rs. 50,000/- in this aspect. Respondent no.2 is directed to pay said amount of Rs. 50,000/-.
19. Complainants have also prayed a sum of Rs.10,00,000/- as compensation for unfair trade practice on the part of



respondents and again Rs.5,00,000/- for incorporating arbitrarily and one sided clause in the agreement and to force them (complainants) to sign on dotted lines.. As mentioned above, Adjudicating Officer has jurisdiction to grant compensation in view of Sections 12,14,18,19 of the Act of 2016. None of these provisions provide compensation for unfair trade practice. Request in this regard is thus declined.

20. Complainants ^{have} asked to pay compensation for the delay caused in the possession from August 2017 till the date of order @ 15% p.a. This forum can only provide compensation as per provisions mentioned under sections 12, 14, 18 and 19 of the Act of 2016 only. For delay possession charges, complainants may approach ^{the} Authority.
21. Respondents/ builder used money paid by the complainants and failed to fulfil its obligation. Apparently, all this caused unfair advantage/ undue enrichment to the respondents and loss to the allottee/ complainants. The latter also suffered mental harassment and agony. Considering facts of this case and circumstances of the complainants, same are awarded a compensation of Rs.2,00,000/- for mental agony and harassment ^{to} be paid by the respondents.
22. Although complainants have not filed any receipt/ certificate about fees paid by ^{them to their} ~~it to its~~ counsel, apparently, ^{they were} ~~it~~ was represented by an advocate during proceedings of this case. Same ^{are} is awarded a sum of Rs.50,000/- as cost of litigation ^{to} be paid by respondents.



23. The complainants have prayed for compensations of Rs. 10,39,000/- stated to be amount of rent paid by them. When the respondents are blamed to have no authority to develop the project, the claim of ^{Complainants} respondent is remotely related. Request is thus rejected.
24. Complaint in hands is thus disposed of. Respondent No. 2 is directed to pay amounts of compensation as described above, within 90 days of this order, otherwise same will be liable to pay said amounts along with interest @10.5% p.a. till realisation of amounts.
25. Announce in open court today.
26. File be consigned to records.

drk
(Rajender Kumar) 29-10-24
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram