



HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह. सिविल लाईंस. गुरुग्राम, हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

**Complaint No. : 4595/42/2018
Date of Decision : 18.12.2019**

**Sanjay Khanna
R/o Flat No.11-B, Pocket A/11, Kalkaji
Extension, Kalkaji, New Delhi-110019**

Complainant

V/s

**M/s Ansal Housing & Construction Ltd.
2nd Floor, Ansal Plaza, Sector -1, Vaishali
Metro Station, Vaishali, Ghaziabad-UP**

Respondent

Argued by:

For Complainant

Shri Naveen Single, Adv

For Respondent

Mrs. Meena Hooda, Adv

ORDER

This is a complaint under section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017(hereinafter referred as the Rules of 2017) filed by Shri Sanjay Khanna seeking refund of Rs.1,05,03,209/- deposited with the respondent for booking of a flat/unit no 0402, 4th floor, Tower A in its

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project known as "ANSAL HEIGHTS-86" in Sector 86, Gurugram on account of violation of obligations of the promoter under section 11(4)(a) of Real Estate (Regulation and Development) Act, 2016. Before taking up the case of the complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"ANSAL HEIGHTS,86"
II.	Location of the project	Sector-86,Gurgaon, Haryana
III.	Nature of the project	Residential (construction link plan)

Unit related details		
IV.	Unit No. / Plot No.	0402
V.	Tower No. / Block No.	Tower A
VI	Size of the unit (super area)	2780 sq.ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking	06.02.2012
XI	Date of execution of BBA (copy of BBA be enclosed as annexure 1)	21.09.2012
XII	Due date of possession as per BBA	03.09.2017
XIII	Delay in handing over possession till date	More than two years

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XIV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 37 of BBA
Payment details		
XV	Total sale consideration	Rs. 1,05,03,209/-
XVI	Total amount paid by the complainant till date	Rs. 1,04,46,700/-.

2. It is the case of the complainant that he booked a residential flat measuring 2780 sq ft in Ansal Heights located in Sector -86 on 06.02.2012 for total sale consideration of Rs.1,04,46,700/- and initially paid a sum of Rs.6,00,000/- vide cheque dated 08.02.2012. A BBA was executed between the parties on 21.09.2012 and as per the same possession of the allotted unit was to be delivered to the complainant within a period of 48 months inclusive of grace period. It is further the case of the complainant that he also paid different amounts to the respondent on 21.02.2012, 26.03.2012, 03.10.2013, 03.04.2014, 27.07.2014 and 16.02.2017, totalling to Rs.1,05,03,209/- upto 16.02.2017. The residential unit allotted to the complainant was under construction linked plan. Though the complainant continued to pay the instalments of the allotted unit but the respondent failed to honour its commitment and did not complete the project. It was to hand over the physical possession of the allotted unit within 42 months from the date of execution of Builder Buyer Agreement dated 21.09.2012 with a grace period of six months i.e. upto 21.09.2016. However, the respondent failed to meet that deadline. A letter dated 20.02.2017 was received from the respondent asking the complainant for payment of VAT and outstanding amount against the allotted unit and the same was directed to be paid upto 15.03.2017. It is further the case of the complainant that since the

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respondent failed to complete the project and deliver possession of the allotted unit despite a number of reminders, so, he was left with no other alternative but to seek refund of the deposited amount besides interest, compensation and other charges.

3. But the case of the respondent as set up in the written reply is that though the complainant was allotted a residential unit in its project known as ANSAL HEIGHTS, Sector -86, Gurugram and he deposited different amounts but the project is being completed and the allotted unit would be delivered soon to him It is pleaded that due to some circumstances beyond the control of the respondent, the work of the project could not be completed. It is further pleaded that due to Jat agitation, ban put by NGT, demonetisation etc, the pace of the construction had to be slowed down. However, the respondent has put great efforts in completing the project. It was denied that there was any intentional delay in completing the project and the same would be delivered to the complainant by 2021 i.e. within the stipulated time by the RERA.

4. After hearing both the parties and perusal of the case file, learned Authority vide its order dated 13.11.2018 directed the respondent to submit an affidavit with regard to availability of another apartment in its project and to pay the accumulated interest accrued from the due date of possession i.e. 03.09.2017 upto date besides initiating proceedings under section 59 of RERA Act, 2016. Feeling aggrieved from the same, the complainant filed an appeal before the Hon'ble Appellate Tribunal and who vide orders dated 02.07.2019 set-aside that order and a direction given to this forum to adjudicate the complaint filed by the complainant in form CAO in accordance with law.

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5. In pursuance to the directions, passed by the Hon'ble Appellate Tribunal, the complainant filed an amended complaint reiterating the pleas already taken and detailed above and prayed for refund of the amount deposited with the respondent besides interest and other charges.

6. The respondent filed an amended reply by reiterating the pleas taken earlier. It was pleaded that the construction of the project in which the allotted a unit could not be completed beyond the reasons not in its control. It was not disputed that the complainant booked a flat in its project and paid different amount. But the project could not be completed due to various orders passed by the Hon'ble High Court by which extraction of water was banned, Hon'ble National Green Tribunal, New Delhi restraining the excavation work, demonetisation and Jat agitation etc. However, the respondent has now obtained necessary statutory clearances and the possession of the allotted unit would be handed over to the complainant in the year 2021.

7. All other averments made by the complainant were denied in toto.

8. To decide the rival pleas, following issues arise for consideration:

I) Whether the respondent/developer violated the terms and conditions of the BBA/flat buyer agreement?

II) Whether there was any reasonable justification for delay to offer the possession of the allotted unit?

III) Whether the claimant is entitled for refund of paid amount?

9. I have heard the learned counsel for both the parties and have also perused the written submissions filed on their behalf.

10. Some of the admitted facts of the case are that the complainant booked a residential flat bearing No.0402 on 4th floor, Tower, measuring 2780 sq ft.

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in the project 'Ansal Heights-86', Sector-86, Gurugram to be developed by the respondent on 06.02.2012 and paid a sum of Rs.6,00,000/- out of total sale consideration of Rs.1,04,46,700/-. A Builder Buyer Agreement dated 21.09.2012 Annexure P-2 was executed between the parties. As per that document, the possession of the allotted was to be delivered to the complainant within a period of 42 months plus six months grace period i.e. upto 03.09.2017. It is also not disputed that the complainant was allotted the residential unit under a construction linked payment plan. He admittedly deposited a total sum of Rs.1,05,03,209/- on different dates. However, despite the passage of due date, the construction of the project in which the complainant was allotted a unit under the construction linked plan was not completed and offered to the complainant. It is the case of the complainant that he was allotted a residential unit and he continued to deposit different amounts totalling to Rs.1, 05,03,209/-. But the respondent failed to adhere to its commitment and to hand over the possession of the allotted unit as per terms and conditions of BBA Annexure P-2. A reference in this regard may be made to clause 31 of that document which reads as under:

"The Developer shall offer possession of the 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 approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be grace period of six months allowed to the Developer over and above the period of 42 months as above in offering the possession of the unit."

11. A perusal of the above mentioned clause of BBA shows that possession of the allotted unit was to be offered to the complainant within a period of 42 months from the date of execution of BBA or within 42 months from the date of obtaining of all required sanctions and approvals necessary for commencement of construction. It is not disputed that complainant was

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allotted a residential unit under the construction linked payment plan. So, if there was any delay in obtaining statutory sanctions by the respondent either to carry out construction activities or proceed with the same, then it should not have been asked the complainant to make payment of the amount due. It is not proved that during the period of obtaining statutory sanctions including various orders passed by the Hon'ble High Court, NGT and demonetisation etc, the complainant was asked not to make payment towards the allotted unit. Moreover, the complainant was allotted a residential unit in February 2012 and the various factors mentioned by the respondent creating hindrances in completion of the project relates to the intervening period of 2014, 2016 respectively. So, it cannot be said that respondent was not in a position to complete the construction of the project. Moreover, the respondent was contractually under an obligation to deliver the possession of the allotted unit to the complainant within the stipulated period. It cannot be said that all the developments pointed out by the respondent qua non completion of the project took place before the due date and so, the same shall be of no help to it from absolving its responsibility to pay interest to the complainant.

12. It is a fact on record that the allotment of the unit of the complainant took place in Feb.2012 under the construction linked payment plan and the project was to be completed within a period of 42 months. During the pendency of the proceedings before the learned Authority, a local commission was appointed and who was directed to visit the spot and report about the progress of work of the project in which the complainant was allotted a unit. A perusal of that report dated 12.11.2018 shows the physical progress of the work at the site was upto 55%. It is not now the case of the respondent that after a lapse of more than a year, the work of the project is progressing towards completion and possession of the of the

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allotted unit would be delivered to the complainant shortly. Rather, while filing written submissions, a specific plea has been taken by the respondent that possession of the allotted unit would be delivered to the complainant by 2021 i.e. 9 years after allotment and particularly when the allottee has deposited almost 95% price required for allotment of the unit. Though, it is pleaded on behalf of the respondent that due to non-obtaining of statutory requirements such as Environment clearance, fire safety certificate, non-extraction of ground water and the various orders passed by the Hon'ble National Green Tribunal, New Delhi, a fresh date of offer of possession while complying with provision of Section 3 of RERA Act, 2016 by relying upon the ratio of law laid down in case of **Neelkamal Realtors Suburban Pvt Ltd. Vs Union of India & Ors. (CWP-2737/2017)** can be given. It was observed that there is liberty with the promoters/developers under Section 4 of the Act, 2016 to intimate fresh date of offer of possession while complying with the provision of Section 3 of the said Act. It was also observed that the Act of 2016 is having prospective effect instead of retrospective.

13. I have considered this aspect of submissions made on behalf of the respondent.

14. The due date to deliver the possession of the allotted unit by the respondent to the complainant was 03.09.2017. A period of more than two years since then has already expired. Even the due date proposed by the respondent for completion of the project and handing over possession of the allotted unit has been mentioned as the year 2021. It is very sad state of affairs that for Ansal Heights buyers, it is never ending wait. The allottees are having a clueless lot as the housing project in Sector 86 is not complete even 9 years after its launch. So, in such a situation when the respondent failed to honour its commitment to complete the project and deliver

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possession of the allotted unit within the stipulated period, then the complainant is legally entitled to seek refund of the amount already deposited besides interest and compensation. A reference in this regard may be made to the ratio of law in cases of Pioneer Urban Land & Infrastructure Ltd. Vs Govindan Raghvan Civil Appeal No.12238 of 2018 decided on 02.04.2019 by the Hon'ble apex court, Shalabh Nigam Vs Orris Infrastructure Pvt Ltd and Anr in Consumer Case No. 1702/2016 decided on 06.05.2019 by Hon'ble National Consumer Disputes Redressal Commission, New Delhi and Marvel Omega Builders Pvt Ltd and Anr. Vs Shrihari Gokhale and Anr in Civil Appeal No.3207-3208 of 2019 decided on 30.07.2019 rendered by the Hon'ble apex court of the land and wherein it was held that when the respondent/builder failed to complete the project in time and deliver the possession of the allotted unit to the complainant as per the allotment letter or the apartment buyer agreement, then the allottee has a right to ask for refund of the possession is inordinately delayed.

15. It is pleaded on behalf of the respondent that Builder Buyer Agreement was executed between the parties on 21.09.2012 and the same was signed by the complainant out of his free will and consent. So, the courts should be very slow to interference in its genuineness. But again the plea taken in this regard is devoid of merit. In case of *Central Inland Water Transport Corporation Limited and Ors Vs Brojo Nath Ganguly and Ors. and others (1986) 3SCC 156*, it was observed by the Hon'ble Apex Court of the land being reproduced as under:

"..... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will,

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when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties, who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can, visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form, or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction

.....These cases can neither be enumerated nor fully illustrated. This court must judge each case on its own facts and circumstances"

Similarly, in case Neelkamal Realors Suburban Pvt Ltd. Vs Union of India & Ors.(Supra), the Hon'ble Bombay High Court observed as under:

"...Agreements entered into with individual purchasers are invariably one sided standard-format agreements prepared by the builders/developers and which are overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

So, taking into consideration the factual as well as legal position detailed above, the respondent cannot take benefit of the provisions of Builder Buyer Agreement dated 21.09.2012 to avoid its liability ^{and not} to offer possession of the allotted unit to the complainant within the stipulated

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period, extend that period unilaterally and the right of the allottee to seek refund of the amount deposited with it from time to time upto March, 2017.

16. Thus, in view of my discussion above and taking into consideration all the material facts brought on record by both the parties, it is evident that the respondent/developer violated the terms and conditions and other commitments agreed upon on 21.06.2012 and there is ^{no} ~~any~~ reasonable justification for delay to offer possession of the allotted unit to the complainant. It is also not evident as to what is the pace and stage of construction of the project at site upto now in which the complainant has been allotted a residential unit. So, in such a situation, the respondent is guilty of violating terms and conditions of Builder Buyer Agreement annexure P-2. There also is no justification for delay in offering possession of the allotted unit to the complainant even upon now. So, findings on all these issues are returned accordingly.

17. Thus, in view of findings detailed above, the complainant is held entitled to seek refund of the deposited amount with the respondent to the tune of Rs.1,05,03,209/- besides interest at the prescribed rate i.e. 10.20% p.a. from the date of each payment till the actual receipt of total amount from the respondent.

18. The complainant is also entitled to a sum of Rs.20,000/- as compensation inclusive of litigation charges to be paid by the respondent.

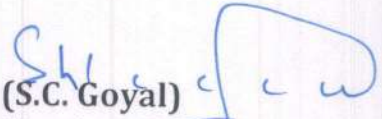
19. The payment in terms of this order shall be made to the complainant by the respondent within a period of 90 days from the date of this order and failing which legal consequences would follow.

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20. Hence, in view of above, the complaint stands disposed of.

21. File be consigned to the Registry.

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(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram 18/12/19
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