

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

Complaint no. : 2418 of 2019
Date of first hearing: 17.12.2019
Date of decision : 17.12.2019

1. Mrs. Bittu Bhatnagar
2. Mr. Dhawaldeep Bhatnagar
176, Civil Lines, Station Road, Bareilly ,U.P.

Complainants

Versus

1. M/S Ansal Properties & Infrastructure Ltd.
115, Ansal Bhawan,16 Kasturba Gandhi
Marg, New Delhi 110001
2. M/S Samyak Projects Private Limited
111, 1st Floor, Antriksh Bhawan, 22,
Kasturba Gandhi Marg, New Delhi

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Gaurav Rawat Advocate for the complainants
Ms. Charu Sharma AR with
Siddharth Yadav advocate Advocate for the respondents

ORDER

1. A complaint dated 11.06.2019 was filed under section 31 of the Real Estate (Regulation and Development Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) by the complainants Mrs. Bittu Bhatnagar and Mr.



Dhawaldeep Bhatnagar against the promoters M/s Ansal Properties Infrastructure Pvt. Ltd. and M/s Samyak Projects Pvt. Ltd. on account of violation of clause 5.1 of flat buyer agreement (ABA, in short) executed on 20.07.2013, in respect of flat bearing no. 0704-C-0201, with area measuring 1618 sq. ft. in the project "The Fernhill" at Sector 91, Gurugram for not handing over the possession by the due date which is an obligation on the promoter under section 11(4)(a) of the Act.

2. The particulars of the complaint are as under: -

1.	Name and location of the project सत्यमेव जयते	The Fernhill, Sector 91, Gurugram
2.	Nature of project	Residential colony
3.	Total area of the Project	14.412 acres
4.	RERA Registered/Unregistered	Registered 389 of 2017 dated 22.12.2017
5.	RERA registration valid up to	31.12.2020
6.	DTCP license no.	48 of 2010 dated 21.06.2010
7.	Date of agreement	20.07.2013
8.	Unit no.	0704-C-0201, Tower C
9.	Area of unit	1618 sq. ft.
10.	Total consideration as per customer ledger placed on page no. 61 of the complaint	Rs.59,35,810 /-
11.	Total amount paid by the complainant as per customer	Rs56,34,626.62 /-



	ledger placed on page no. 61 of the complaint	
12.	Due date of possession as per clause 5.1 of the agreement: Within 48 months + grace period of 6 months from date of execution of agreement or from the date of commencement of construction of particular tower /block subject to sanction of the building plans whichever is later.	14.02.2019 (Note: Due date to be calculated from date of commencement of construction ie. 14.08.2014 on page no. 68 of the complaint)
13.	Reliefs Sought (in specific terms)	To direct the respondent to pay delay possession charges to the complainant .

3. The details provided above have been checked on the basis of the records available in the case file which have been provided by the complainants and the respondent. A flat buyer agreement dated 20.07.2013 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 14.02.2019. The respondents have failed to fulfil their contractual obligation by neither delivering the possession within the stipulated period nor paying the compensation as per the terms of the agreement dated 20.07.2013.
4. The respondents have utterly failed in fulfilling their obligation of delivery of the unit as per the buyer agreement



and failed to offer the possession in terms of section 18 of the Act read with the Rules. Hence, this complaint for the aforementioned relief.

5. On the date of hearing the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
6. The respondents contest the complaint inter alia on the grounds that the construction and development activities of the project came to a standstill due to a Government notification wherein the Government notified some part of the project to be covered under the newly declared green belt and other reasons mentioned in the reply which according to them were beyond their control.
 - Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
 - The Authority on the basis of information and explanation and other submissions made and the documents filed by both the

parties is of considered view that there is no need of further hearing in the complaint.

Arguments heard.

- As per clause 5.1 of the flat buyer agreement dated 20.07.2013 executed between the parties, the respondent was duty bound to deliver the possession of the allotted unit to the complainants within a period of 48 months plus 6 months as grace period from the date of execution of agreement or date of commencement of construction whichever is later. The date of commencement of construction is 14.08.2014 as such the due date of handing over of possession comes out to be 14.02.2019.
- The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.

- On consideration of the circumstances, the evidence and other record and submissions made by both the complainant and respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondents are in contravention of the provisions of the Act. By virtue of clause 5.1 of the flat buyer agreement executed between the parties on 20.07.2013, possession of the booked unit was to be delivered within a period of 48 months with 6 months' grace period from the date of commencement of construction i.e. 14.08.2014. Therefore, the due date of handing over possession comes out to be 14.02.2019. Accordingly, it is the failure of the promoters to fulfil their obligations, responsibilities as per the flat buyer agreement dated 20.07.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondents is established.
- As such the complainants are entitled for delayed possession charges w.e.f. 14.02.2019 till the date of offer of possession

at the prescribed rate of interest i.e. 10.20% p.a. as per provisions of section 18(1) of the Act read with rule 15 of the Rules.


7. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- i. The respondents are directed to pay delayed possession charges at the prescribed rate of interest i.e. 10.20% per annum w.e.f. 14.02.2019 till offer of possession as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 read with rule 15 of the rules.
- 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 each subsequent month.
- iii. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.20% p.a. by the promoters which is the same as is

being granted to the complainants in case of delayed possession.

- iv. Complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondents shall not charge anything from the complainants which is not part of the flat buyer agreement.

8. Complaint stands disposed off.
9. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:17.12.2019

JUDGEMENT UPLOADED ON 28.01.2020

HARERA
GURUGRAM