



HARERA
GURUGRAM

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

PROCEEDINGS OF THE DAY


Day and Date	Thursday and 12.7.2018
Complaint No.	222/2018 case titled as Mr. Kapil Chaudhari and anr. Versus M/s Ansal Housing Construction Ltd.
Complainant	Mr. Kapil Chaudhari and anr.
Represented through	Complainant and Sushila Devi mother of complainant in person with Shri Rajni Anand Adv.
Respondent	M/s Ansal Housing Construction Ltd
Respondent Represented through	S/shri Anuj Singh and Sunil Dutt, Advocates for the respondent.


Proceedings

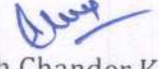
The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation & Development) Act, 2016.

Rejoinder filed by the complainant. Copy supplied to the learned counsel for the respondent. Arguments have been heard.

The complainant has made a statement that he intends to withdraw from the project. He has submitted that the amount deposited by him shall be refunded to him. Therefore, the allottee shall be refunded the amount received by the promoter along with the **prescribed interest** within 45 days from the date of payment made by him. The complaint is disposed of accordingly. Detail order will follow. The file be consigned to the Registry.


Samir Kumar
(Member)


Dr. K.K. Khandelwal
(Chairman)
12.7.2018


Subhash Chander Kush
(Member)

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

Complaint No. : 222 of 2018
Date of Institution : 02.05.2018
Date of Decision : 12.07.2018

1. Kapil Chaudhari, R/o Sc-171, Shastri Nagar, Ghaziabad, Uttar Pradesh
2. Sucheela Devi R/o D-22 Saket New Delhi-110017

...Complainants

Versus

1. Ansal Housing and Construction Ltd
Office: 15, UGF, Indera Prakash, 21,
Barakhamba Road, Connaught Place, New
Delhi- 110001

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Complainant and Sushila Devi Advocate for the complainants
mother of complainant in
person with Shri Rajni Anand
Shri Anuj Singh and Sunil Dutt Advocate for the respondent

ORDER

A complaint dated 02.05.2018 was filed under Section 31 of The Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of The Haryana Real Estate (Regulation and Development)





Rules, 2017 by the complainants (Mr. Kapil Chaudhari and Ms. Sucheela Devi) against the promoter (Ansal Housing & Construction Ltd.) on account of violation of Clause 29 of the builder-buyer agreement executed on 31.07.2012 for unit no. C-504 in the project "Ansal Heights" for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

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

1.	Name and location of the project	Ansal Heights, sector 92, Gurugram
2.	Flat/Apartment/Plot No./Unit No.	C-504
3.	Booking amount paid by the buyer to the builder/promoter/company	Rs. 6,82,268.63/-
4.	Total consideration amount as per agreement dated 31.07.2012	Rs. 56,22,607.50/-
5.	Total amount paid by the complainant upto date	Rs. 53,47,146
6.	Percentage of consideration amount	95 % Approx.
7.	Date of delivery of possession.	Clause 29, 36 months i.e. 31.07.2015
8.	Delay of number of months/ years upto 12.07.2018	3 years
9.	Penalty Clause as per builder buyer agreement dated 12.02.2008	Clause 34 i.e. Rs. 5/- per sq. ft. per month
10.	Cause of delay in delivery of possession	No valid reason





3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record for Unit No. C-504 according to which the possession of the aforesaid unit was to be delivered by 31.07.2015. The promoter has failed to deliver the possession of the said unit to the complainants by the due date nor has paid any compensation i.e. @ Rs. 5 per Sq. ft of the super area of the said unit per month for the period of the such delay as per builder buyer agreement dated 31.07.2012. Therefore, the promoter has not fulfilled his committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 05.06.2018. The case came up for hearing on 05.06.2018 & 12.07.2018. The reply has been filed on dated 20.06.2018 on behalf of the respondent which has found to be vague and evasive. The rejoinder was filed by the complainant on dated 12.07.2018.

It is contended by the respondent that the Authority does not have the jurisdiction to decide the present complaint and that the parties are bound by the terms and conditions of the agreement. The respondent further contended that they got delayed in handing over the possession due to the circumstances beyond their control.





5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The counsel for the complainant stated that he intends to withdraw from the project and seeks for refund with interest on the amount deposited by him.
6. As per clause 29 of the builder-buyer agreement, the Company proposed to hand over the possession of the said unit by 31.07.2015. The clause regarding possession of the said unit is reproduced below:

"29. POSSESSION

The developer shall offer possession of the unit any time, within a period of 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later 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 31.07.2015. As far as the penalty clause in case of delay in possession is concerned which is Rs. 5/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:



"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were 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."

7. As the possession of the flat was to be delivered by 31.07.2015 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."



8. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

“34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

9. As per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the complainant, interest at the prescribed rate for every month of delay till the handing over the possession as the promoter has not fulfilled his obligation.

Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy



available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

10. 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.** leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage.
11. Thus, the Authority, exercising powers vested in it under section 37 of The Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent to refund the paid amount i.e. Rs 53,47,146 along with interest @ 10.45% p.a. from the date of payment of amount within 90 days.
12. The authority takes Suo-moto cognizance that the project is registerable and has not been registered by the promoters. The authority has decided to take Suo-moto cognizance for not



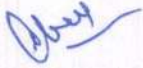
getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act.

13.The order is pronounced.

14.Case file be consigned to the registry.


(Sami Kumar)
Member




(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

12/7

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