

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

Complaint No. : 442 of 2018
First date of hearing: 09.08.2018
Date of Decision : 13.09.2018

Mr. Narender kumar,
R/o. Flat no.5, Government Employee
Housing Society, Sector-3, Part-2,
Rewari, Haryana-123401

Complainant

Versus

M/s Ansal Housing & Construction Ltd.
Office address: 15 UGF, Indra Prakash,
21 Barakhamba Road, New Delhi-110001.

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Ms. Priyanka Agarwal Representative on behalf of
thecomplainant
Shri Deepankar Dutt Sharma Advocate for the respondent

BRIEF

1. A complaint dated 14.06.2018 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 complainant Mr. Narender Kumar, against the promoter M/s Ansal Housing & Construction Ltd., on account of violation of the clause 31 of



the flat buyer's agreement executed on 04.03.2013 in respect of flat number 0203, 2nd floor, tower A in the project 'Ansal Heights, 86' for not handing over possession on the due date which is an obligation under section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	"Ansal Heights, 86", Sector-86, Gurugram
2.	RERA Registered/ not registered.	Not registered
3.	Flat/unit no.	0203 on 2 nd floor, tower-A.
4.	Flat measuring	2780 sq. ft.
5.	Date of execution of flat buyer's agreement	04 th March 2013
6.	Payment plan	Construction linked payment plan
7.	Total cost of the said flat	Rs.1,18,29,753/-
8.	Total amount paid by the complainant till date	Rs.1,13,17,295/-
9.	Percentage of consideration amount	Approx. 95.9 percent
10.	Date of delivery of possession as per clause 31 of flat buyer's agreement (42 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)	03 rd September 2017
11.	Building plans approved on	03.09.2013
12.	Delay in handing over possession till date	1 year 0 months 10 days
13.	Penalty clause as per flat buyer's agreement dated 04.03.2013	Clause 37 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area for any delay



		in offering possession.
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3. The 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 respondent. A flat buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 03rd September 2017. Neither the respondent has delivered the possession of the said unit till 13.09.2018 to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said flat for the period of such delay as per clause 37 of flat buyer's agreement dated 04.03.2013. 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 appearance. The respondent appeared on 09.08.2018. The case came up for hearing on 09.08.2018 & 13.09.2018. The reply filed on behalf of the respondent on 23.08.2018 has been perused.

Facts of the complaint

5. Briefly stated, the facts of complaint are that the complainant is a law-abiding citizen and consumer who have been cheated



by the malpractices adopted by the respondent and is allegedly carrying out real estate development.

6. The complainant submitted that he approached the respondent for booking of a flat in the said project and respondent provided a flat which was previously booked in the name of Mr. Ajay Kaul and Mr. Ajay Kaul was not interested to continue in the said project. Hence the respondent sold his flat to the complainant with same flat buyer's agreement on same rate.
7. The complainant submitted that the flat no. 0203, 2nd floor, tower no. 'A' measuring 2780 sq. ft. was initially allocated to Mr. Ajay Kaul by flat agreement dated 04.03.2013. Thereafter, the respondent endorsed the said agreement in favor of complainant vide endorsement letter and application for change in right to purchase a property letter dated 05.05.2014 and by this endorsement complainant became legal allottee and purchaser of the said property. However, the complainant before endorsement of the above said flat buyer's agreement executed an agreement to sale dated 14.03.2014 with Mr. Ajay Kaul for the purchase of above said flat.



8. The complainant submitted that he is paying house rent and EMI of home loan of Rs.93,00,000/- from HDFC which was taken for buying the said flat.
9. The complainant submitted that the total cost of the said flat is Rs.1,18,29,753/- out of this a sum of Rs.40,59,514/- was paid by the first purchaser, Mr. Ajay Kaul, till January 2014 and after that the complainant paid further instalments to the respondent till 30.02.2017 which is sum of Rs.72,57,781/-.
10. The complainant further submitted that the respondent sent a letter dated 01.02.2017 to the complainant for the payment of outstanding in respect of his flat which was a sum of Rs.5,12,458/-. It is pertinent to mention here that according to the statement of account the complainant has paid a sum of Rs.1,13,17,295/- to the respondent till February 2017. However, only 5% amount is remaining as per the statement and this amount is demanded by the respondent without completing the said project, whereas, 5% amount is required to be paid at the time of offer of possession. But the respondent without offering any possession of said flat demanded complete payment which is illegal and arbitrary.
11. The complainant submitted that he visited the project site to know the status of the project and it was very shocking to see



that the construction was not going on for past two and a half years. The complainant finally sent an email dated 11.10.2017 to the respondent to know about the status of the project in RERA and also for the date of completion and possession of the said project. As per clause 32 of flat buyer's agreement the builder is liable to offer possession on or before 04th September 2017.

12. The complainant submitted that in the meantime he also paid VAT charges of Rs.51,377/- on 14.03.2017 as demanded by the respondent. The complainant submitted that after paying a huge amount to the respondent towards a house for his family the complainant is running pillar to post for his flat but the respondent failed to handover the possession of the said flat to the complainant because the project is not going on as per the commitment of the respondent.

Relief sought:

The complainant is seeking the following reliefs:

- i. Direct the respondent to handover the possession in habitable condition with time bound manner or refund the amount paid i.e. Rs.1,13,17,295/- along with 18% interest of the flat no. A-0203 in Ansal Heights 86, Gurgaon.



- ii. To pay interest for the delay in handing over possession from the due date i.e. 04.03.2017 as per agreement.
- iii. The complainant is seeking compensation of Rs.10,00,000/- for mental agony, harassment and financial losses.
- iv. The complainant is seeking Rs.2,00,000/- as cost of litigation.

Respondent's reply

13. The respondent submitted that the project namely 'Ansal Heights, 86' is being developed by the M/s Ansal Housing & Construction Ltd. under License No. 48 of 2011 dated 29.05.2011 received from DGTCP, Haryana on a land area of about 12.843 acres in Village Nawada Fatehpur of Gurugram Haryana presently part of residential Sector-86 of the Gurugram Manesar Urban Plan 2021.
14. The respondent submitted that the land of the project is owned by M/s Resolve Estates Pvt. Ltd. having its registered office at 153, Okhla industrial Estate Phase-III, New Delhi-110020. That M/s Resolve Estates Pvt. Ltd. had under an arrangement granted, conveyed and transferred all its rights, entitlement and interests in the development, construction and ownership of the total permissible FSI of 9,79,079 sq. ft.



sanction or to be sanctioned on the land aforesaid to M/s Optus Corona Developers Pvt. Ltd. vide an agreement dated 22.03.2012 having its registered office at J-181, Saket, New Delhi. In this regards M/s Resolve Estates Pvt. Ltd. had also executed a registered general power of attorney dated 23.03.2012 authorizing M/s Optus Corona Developers Pvt. Ltd. to sell, mortgage or otherwise deal with the said FSI as it deemed fit. That subsequently, M/s Optus Corona Developers Pvt. Ltd. vide agreement dated 03.04.2013 had further granted, conveyed and transferred all its rights, entitlements and interest in the development construction and ownership of the said permissible FSI on the land aforesaid to M/s Samyak Projects Pvt. Ltd having its registered office at 111, 1st floor, Antriksh Bhawan, K. G. Marg, New Delhi-110001/ that further M/s Ansal Housing & Construction Ltd through joint venture agreement dated 24.05.2013 has entered in to an agreement with the M/s Samyak Projects Pvt. Ltd whereby the respondent got right to utilize the entire said FSI to promote, develop and market the said project.



15. The respondent submitted that the District Town & Country Planning Haryana has granted the approval/sanction to develop the project vide license bearing no. 48 of 2011 dated 29.05.2011. That the building plans of the project has been

approved by the DTCP Haryana vide memo no. ZP-781/D/(BS)/2013/50373 dated 03.09.2013.

16. The respondent submitted that it has already completed the development work and has applied for occupancy certificate for part occupancy of the project vide application dated 26.04.2017 and further removed the objections raised by the department vide letter dated 31.05.2017.
17. The learned counsel for the respondent submitted that the respondent is under process to file application for registration of the project under RERA. The respondent was under impression that the said project was not covered under RERA as the respondent had applied for the occupancy certificate on 26.04.2017 and further removed the objections raised by the department vide letter dated 31.05.2017 and as per rule 2(o)(i) of the Haryana RERA Rules, 2017 the said project does not fall under the ambit of RERA. But due to recent stand taken by this hon'ble authority where the authority has asked to apply for RERA registration for even those projects where the application for occupancy/completion has been filed, the respondent has decided to get the project registered to avoid any adverse consequence.



18. The respondent submitted that the respondent would have handed over the possession to the complainant perfectly within time had there been no force majeure circumstances beyond the control of the respondent. However, there were several reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab and Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon; order passed by the National Green Tribunal whereby mining of sand in Haryana and Rajasthan was banned, reservation agitation in Haryana, orders of the National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016; demonetization etc. adversely effected the progress of the project. That the respondent would pay the respondent appropriate compensation as per the terms and conditions of the said allotment letter duly executed by the complainant.



19. The respondent submitted that the this hon'ble authority has no jurisdiction to entertain present complaint as the project has yet not received the registration certificate under RERA.

Preliminary objections and reply on merits

20. The respondent submitted that the present complaint is not maintainable for non-joinder of necessary parties as M/s Resolve Estates Pvt. Ltd., M/s Optus Corona Developers Pvt. Ltd., M/s Samyak Projects Pvt. Ltd. are the necessary parties.
21. That the complaint is not maintainable and the same is liable to be dismissed on the ground that the project has not received registration certificate under RERA and hence this hon'ble authority has no jurisdiction to entertain present complaint.
22. That no cause of action has arisen against the respondents as in terms of the RERA Act as the developer has changed the completion date and has undertaken to complete the project on or before 30.11.2021. Hence, on this ground alone the complaint is liable to be dismissed.
23. That the complaint is not maintainable and the same is liable to be dismissed on the ground that the complainant seeks suitable interest and compensation, which falls under the ambit of adjudicating officer (under RERA) and not this hon'ble authority.
24. The respondent submitted that as per clause 31 of the said agreement the developer was to offer the possession of the



unit within a period of 48 months from the date of sanction of building plans or date of execution of the agreement whichever is later, subject to force majeure circumstances. The respondent further submitted that the respondent has collected only those taxes which are made applicable by the appropriate governments.

25. It is submitted that the respondent has already completed the construction work of the said project and now the paint and other finishing works are going on. That the respondent is committed to deliver the project on or before 30.11.2021.

Findings of the authority

26. The preliminary objections raised by the respondent regarding the jurisdiction of the authority stands dismissed. 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 complainants at a later stage.

27. As per clause 31 of the flat buyer's agreement, the possession of the unit was to be handed over within 42 months plus grace period of 180 days 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 building plan was approved on 03.09.2013. Therefore, the due date of handing over the possession shall be computed from 03.09.2013. The clause regarding the possession of the said unit is reproduced below:

“31. 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 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 32. Further there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.”

14. Accordingly, the due date of possession is 03rd September 2017 and the possession has been delayed by 1 year and 10 days till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of super area for any delay in offering possession of the unit as per clause 37 of flat buyer’s agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **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.”

15. The possession of the apartment was to be delivered by 3rd September 2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the 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.”



16. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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.

The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation 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.

17. In the present complaint, the complainant is seeking possession of the said unit in time bound manner or return of the entire money paid towards the said unit along with interest @ 18% p.a.

18. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project as



the project is almost complete and the respondent has applied for occupation certificate for part occupancy of the project on 26.04.2017. The refund of deposited amount will also have adverse effect on the other allottees in the said project. Therefore, keeping in view the principles of natural justice and in public interest, the relief sought by the complainant regarding refund of the deposited amount cannot be allowed.

19. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. 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 complainant during proceeding dated 09.08.2018 made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required. Therefore, the relief sought by the complainant regarding compensation becomes superfluous.

20. The authority is of the considered opinion that the respondent has failed to deliver the possession of the said to the complainant by the committed date i.e. 3rd September 2017 as per clause 31 of the agreement and the possession has been delayed by 1 year and 10 days till the date of decision. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over the possession. Further, the respondent has submitted during the oral arguments that the construction of the project is almost complete and they will be applying for registration of the project within 2 days wherein they shall specify the actual date of delivery of the flat.



Decision and directions of the authority

21. After taking into consideration all the material facts as adduced and produced 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 to the respondent in the interest of justice and fair play:

- (i) The respondent is directed to hand over the possession of the said unit within the time as committed by the respondent in registration certificate.
- (ii) The respondent is directed to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 03.09.2017 till the actual date of handing over of the possession.

The respondent is directed to pay cumulative interest accrued from 03.09.2017 to 13.09.2018 on account of delay in handing over of possession to the complainants within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month.



28. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.
29. The order is pronounced.
30. Case file be consigned to the registry. A copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2018

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