

Rahul Singh and Anr. Vs. Anand Divine Developers Pvt. Ltd.

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

**Complaint No. : 340-2021
Date of Decision: 09.03.2026**

1. Rahul Singh son of Brig. Devendra Kumar Singh,
2. Rachna Singh wife of Brig. Devendra Kumar Singh, both residents of Flat No. 1251, Tower No. 01, "ATS Triumph", Sector-104, Gurugram, Haryana.

... Complainants.

Versus

M/s Anand Divine Developers Pvt. Ltd. having its registered office at 711/92, Deepali, Nehru Place, New Delhi- 110019.

... Respondent.

APPEARANCE

**For Complainants: Mr. Siddharth Shankar, Advocate.
For Respondent: Mr. Harshit Batra, Advocate.**

ORDER

This is a complaint filed by Mr. Rahul Singh and Mrs. Rachna Singh (allottees), under Section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s Anand Divine Developers Pvt. Ltd. (promoter), as per section 2 (zk) of the Act, 2016.

Ad
Ad
A01

2. According to complainants, they were induced by various advertisements issued by the respondent for its residential group housing project namely "Triumph" situated at Sector 104, Gurgaon, Haryana (hereinafter referred as "the Project"). They jointly applied for allotment of a residential apartment/Flat bearing no. 1251 situated at 25th floor of Tower/Building No. 1, admeasuring super area of 2290 Sq. Ft. (212.75 Sq. Mtr. Approx.) along with two reserved car parking (hereinafter referred as "the Flat").

3. That since the respondent had represented that said project is comprising ultra-modern and luxurious flats, the cost of the said flat was higher than the market rate. The basic sale consideration of the said Flat was Rs.2,01,97,800/- calculated @ Rs.8,820/- per Sq. Ft., whereas total sale consideration of the said flat was Rs.2,17,56,550/- which includes Rs.6,00,000/- for two reserved car parking spaces @ Rs.3,00,000/- per car parking space, Interest Free Maintenance Security (IFMS), Power Back-up charges and other charges.

4. That based on advertisements and representations of the respondent and having got induced by their earlier projects at ATS Village and ATS One Hamlet at Noida, they (complainants) jointly applied for the said Flat on 24.04.2013. An amount of

AO

Rs.10,00,000/- was paid by them to the respondent on account of booking of the said flat, while making the Application Form. They (complainants) had chosen "Construction Linked Plan", under which payment was to be made in installments. Subsequently they (complainants) were induced into signing a pre-printed Buyer's Agreement on 12.07.2013, providing details terms and conditions for purchase of the said flat.

5. That the said Buyer's Agreement is totally one sided, imposing completely biased terms and conditions upon the complainants, thereby tilting the complete balance of power in favour of the respondent. The complainants had no option but to sign on the dotted line after having already paid about Rs.41,89,347/- to the respondent.

6. That the respondent was required to complete the construction and to handover the possession of the said Flat by July, 2016, since the construction has commenced in July, 2013, as per the demand raised by the respondent. Even if, a period of six months is taken as varied/increased, the respondent was required to hand over possession of the said Flat by end of 'January, 2017'. They (complainants) have jointly paid a total sum of Rs.2,26,28,760/- to the respondent against the total sale consideration of the said flat.

Lab
AO

7. That they (complainants) availed a home loan of an amount of Rs.1,60,00,000/- from State Bank of India in order to get financial assistance to purchase the said flat. In this regard, a Tripartite Agreement dated 12.05.2014 was executed between the complainant, respondent and State Bank of India. The complainant no.1 visited the office of the respondent several times, met its various officials and made requests to handover the possession of the said flat, but to of no avail.

8. That vide email dated 31.05.2019 they (complainants) received a demand letter dated 30.05.2019 issued by the respondent offering possession of their flat on receipt of "Occupancy Certificate". They (complainants) were asked to make the payment of outstanding amount and complete possession formalities of the said flat. A demand letter for a total amount of Rs.19,41,576/- including dues of BSP (on possession) of an amount of Rs.16,09,889/- and other charges against interest free maintenance deposit (Rs.50,000/-) power back up (Rs.59,000/-) and electricity meter charges (Rs.29,5000/-), was also annexed with the said letter dated 30.05.2019. Another demand letter for an amount of Rs.2,01,473/- towards 'HVAT' was also annexed with the said email dated 31.05.2019.

KWB
AO

9. That since the issue of payment of compensation on delayed possession was not resolved by the respondent, on 29.07.2019 they (complainants) made payment of a total sum of Rs.3,39,973/- against said demands. The demand against the last and final installment of basic sales price of Rs.18,03,076/- was held back till the resolution of issue of compensation on account of delayed possession by the respondent. This said fact was duly communicated to the respondent by them vide email dated 01.08.2019.

10. That thereafter, upon several visits and meetings with the respondent's representative in their head office situated at Noida, the respondent had agreed to pay an amount of Rs.3,31,956/- on account of delayed compensation, calculated at Rs.5/- per Sq. Ft. for a total period of twenty-nine months i.e. from January 2017 to May 2019. Accordingly, a revised demand letter dated 09.10.2019 was issued by the respondent for a total amount of Rs.14,71,120/- inclusive of taxes.

11. That they (complainants) were living in a rented accommodation at Noida and were paying monthly rent of Rs.19,000/-. They (complainants) had no other option but to make the payment of demanded amount. Therefore, on 10.10.2019 they made payment of their portion of TDS. Since the rest of the payment

AO

was to be made by the Bank, same was made on 24.10.2019 after physical verification of the said flat by the bank's officials. Accordingly, the complainant had made the entire payment against the total sale consideration of the said flat, car parking charges and other charges as demanded by the respondent from time to time.

12. That vide email dated 21.11.2019 they (complainants) requested the respondent to finalize/finish the work of the said flat as per promised specifications and to handover the physical possession, which was duly acknowledged by the respondent vide email dated 21.11.2019 itself, stating that same will take 90 days approximately to complete/finish the said flat. However, despite making the final payment, respondent failed to handover the possession within said 90 days.

13. That thereafter vide email dated 17.07.2020 respondent again made a demand of an amount of Rs.50,000/- on account of maintenance charges, without stating the period covered under the said maintenance charges. The complainant had no option but to pay the said amount. Finally, the respondent handed over the physical possession of the said flat only on 06.08.2020 i.e. after a considerable delay of four (4) years from the agreed date of handing over the possession, without assigning any reason, whatsoever.

AO

14. Citing the facts mentioned above, the complainants prayed for following compensations/reliefs: -

i) to direct the respondent to pay compensation of an amount of Rs.89,47,851/- being the interest @ 10.75% on paid amount of Rs.2,08,02,956/- for delay in handing over the possession of the said flat for a period of 48 months from 01.08.2016 to 30.07.2020, under Section 18 proviso of the Act;

ii) to direct the respondent to pay an amount of Rs.25,00,000/- on account of compensation under section 18 (3) of the Act, for breach of various terms of conditions of Buyer's Agreement dated 12.07.2013, advertisement, prospectus and representation given to the complainants, for using sub-standard and poor quality of material and workmanship;

iii) to direct the respondent to pay an amount of Rs.10,00,000/- on account of losses suffered by the complainants on account of non-availability of deduction under Section 24 of the Income Tax Act and,

iv) to direct the respondent to rectify and make good all the defects, mentioned in Para 4 (27) of the present complaint hereinabove and to reserve and allot car parking space,

v) to direct the respondent to pay a sum of Rs.5,00,000/- to the complainants towards the harassment and mental agony caused to the complainants and cost of litigation;

vi) Any other order as the Hon'ble Authority may deem fit and proper,

15. The respondent contested the complaint by filing a written reply. It is averred that this complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.

AO

That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the Buyer's Agreement. The possession of the unit was subject to the occurrence of the force majeure events. That the completion of said project was hampered due to non-payment of instalments by the allottees in time and also due to the events and conditions which were beyond the control of the respondent and which have materially affected the construction and progress of the project. The respondent had sent a payment demand dated 18.12.2017 to the complainant for the net payable amount of Rs.2,01,474/-, however, the amount was paid by the complainants only after reminder dated 30.05.2019.

16. That it (respondent) offered the possession of the unit no. 1251 to the complainants vide letter dated 30.05.2019 after obtaining the Occupation Certificate on 28.05.2019. The complainants were intimated to remit the outstanding amount on the failure of which the delay penalty amount would accrue.

17. That the complainants, after remitting the due amount have taken the physical possession of the unit after completing their due diligence with respect to the quality of services rendered by the respondent and the infrastructure provided by it. The complainants also signed Tripartite Maintenance Agreement,

del
AO

Indemnity cum Undertaking and accordingly a certificate of possession was issued by the respondent.

18. That total sale consideration of the unit as mentioned was exclusive of stamp duty registration charges, electricity, meter connection charges and service tax which were payable by the complainants at the appropriate stage and the same was known to them from the very inception. Despite being aware that the timely payment of the instalments amount was the essence of the allotment, yet the complainants failed to remit the payments on time and the respondent was constrained to issue several reminders to the complainants.

19. Stating all this, respondent prayed for dismissal of the complaint.

20. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and perused the record.

21. Factual matrix of the case i.e. allotment of subject unit by the respondent in favour of the complainants, receipt of entire sale consideration amount and handing over possession of the same did not remain in dispute. It is also not denied that the possession was not handed over in agreed time, but as mentioned by the complainants, they have already been compensated for a

sum of Rs.3,31,956/- on account of delayed possession, calculated at the rate of Rs.5/- square feet, in terms of the BBA.

22. Learned counsel for the complainants contended that after taking the possession, his clients found that their flat was facing various problems, in terms of poor quality of construction work and defect in workmanship. The design and architecture of the said flat was not proper, as was represented to his clients. The construction material, fitting and fixtures used in the said flat are of sub-standard and poor quality. The complainants have well described in their complaint about flooring of the said flat, bathrooms, UPVC doors, windows (kitchen + bathrooms), Modular wardrobes, doors, locks, Modular kitchen, home automation and water sprinklers for firefighting. It is also claimed that the lifts are not being maintained properly. There is no club/multipurpose hall/gym and operational swimming pool. It is also claimed that despite agreed to provide two car parking spaces on reserved basis, no such car parking has been provided to them.

23. It is disclosed that during proceedings of this case, a local commissioner (Mr. Sumeet Nain) Engineering Officer of the Authority, was appointed with the direction to visit the project and to report about deficiencies, if any. The local commissioner filed his report. Inspection is stated to have been done in the presence of the


AO

complainants, their counsel and also representative of the respondent, on 21.08.2024. Although certain objections were filed against this report, on behalf of the respondent, but this Forum did not find much substance in these objections.

24. Apart from the report of local commissioner, as mentioned above, the complainants filed affidavits in their evidence verifying on oath, the deficiencies. Certain photographs have been placed on record by the complainants as well as by the local commissioner, which verified deficiencies in services.

25. Section 18(3) of the Act of 2016 provides that if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or **in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.**

26. The Builder Buyer's Agreement, copy of which has already been placed on the file, mentions about provisions² of two car parking for the complainants. The latter (complainants) claim that no such car parking has been given to them. This fact is not disputed on behalf of the respondent, during deliberation. According to local commissioner, swimming pool has been made operational recently i.e. in the year 2024. Besides this, shower area

along with changing room were not completed and construction work was going on at the time of his visit, finishing and repair work of Club house was in progress and the Club house has not been made operational. Flooring of Basketball court, Badminton court and Skating court was damaged. There was water leakage in the basement/parking area of the project. The air voids were observed beneath the Italian marble flooring and tiles flooring. The fire doors in the fire stair case area were not finished properly. The ply board door frames were installed instead of solid wood/timer frames. The UPVC widows fixed/used in the apartment seemed to be of light weight. Though sanitary wares of make Kohler/Jaguar brand and CP fittings of Camry/Othello & Kohler brand were affixed, the CP fittings (mixer) fixed in the kitchen had no proper finishing.

27. In this way, from the record, it is well established that the unit in question had deficiencies, which were in contravention to the representation given by the respondent and also BBA entered between the parties. The complainants are thus, entitled for compensation in view of Section 18(3) of the Act, 2016, described above.

28. The complainants have prayed for compensation of Rs.25 lakhs on account of compensation for breach of various terms and conditions of BBA. However, learned counsel for the

Sub
AO

complainants could not clarify how this amount of Rs.25 lakhs has been calculated. Even if there were deficiencies as pointed out by the local commissioner, from nature and extent of deficiencies, it appears cost of repair would not be more than 5 lakhs, if renovation/repair work is done. The complainants are allowed a sum of Rs.5 lakhs as compensation in this regard.

29. As stated by the local commissioner, swimming pool has been made operational in the year 2024. It is not denied that the complainants received possession of their units on 06.08.2020. In this way, the complainants were deprived of facility of swimming pool for four years. Similarly for non-completion of Basketball court, Badminton court and Skating court, the allottees/complainants had right to use (as per agreement) Basketball court, Badminton court, Skating court and Club House, but the same were not completed before giving possession to the complainants.

30. Admittedly, the respondent received the entire sale consideration from the complainants, but did not provide these facilities in time causing undue gain for itself and consequently loss to the complainants. They are allowed a sum of Rs.2 lakhs as compensation in this regard.

AO

31. About providing of two car parking spaces, it is submitted that according to BBA, the complainants were granted facility of two car parking and total sale consideration included Rs.6,00,000/- for two car parking. This fact is not controverted on behalf of respondent. The respondent ^{is} thus ^{is} directed either to refund the amount of car parking received by it along with interest at the rate of 10.85% per annum from the date of payment by the complainants till the amount is received or allot two car parking to them as per BBA.

32. Admittedly, the respondent levied Rs.50,000/- as maintenance charges before even handing over possession. All this was illegal. The respondent could not charge maintenance till possession is handed over. Same is directed to refund the amount of Rs.50,000/- with interest @ 10.85% from the date of receipt of amount till possession was handed over to the complainants.

33. The complainants have requested for a sum of Rs.89,47,851/- being interest on the amounts paid by them. Admittedly, the complainants have already received possession of the unit allotted to them. There is no question to allow interest in this regard.

34. The complainants have prayed for a sum of Rs.10 lakhs as compensation on account of loss suffered by them for non-

AO

availability of deductions under Section 24 of the Income Tax Act. This Forum has jurisdiction to allow compensation for violation in respect of Sections 12,14,18 & 19 of the Act, 2016. The provisions for compensation in violation of deduction under Section 24 of the Income Tax Act is not within jurisdiction of this Forum. Request in this regard is declined. Similarly, this Forum has no jurisdiction to give any direction for rectification or making good the deficiencies, if any. Prayer in this regard is also declined.

35. The complainants have prayed for compensation of Rs.5 lakhs towards harassment and mental agony. When despite receiving total sale consideration, the promoter/respondent failed to provide agreed facilities and there remained deficiencies in service, all these caused harassment and mental agony to the allottees/complainants. Rs.5 lakhs in this regard appear to be excessive. The complainants are allowed a sum of Rs.2 lakhs in the name of harassment and mental agony.

36. Although, learned counsel for the complainants requested for compensation of Rs. 2 lakhs as cost of litigation. No court fee is required to be paid to the Authority while filing complaint for compensation. It is evident from the record that the complainants were represented by an Advocate during proceedings

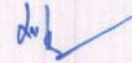
AD

Rahul Singh and Anr. Vs. Anand Divine Developers Pvt. Ltd.

of this case, they are allowed a sum of Rs.50,000/- towards cost of litigation.

37. The complaint is thus disposed of with direction to the respondent to pay aforesaid amounts along with interest at the rate of 10.85% per annum from the date of this order till realization of amount. File be consigned to record room.

Announced in open court today i.e. on **09.03.2026**.



(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.