

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

Complaint no. : 1385 of 2019
First date of hearing: 16.09.2019
Date of decision : 05.03.2020

1. Santosh Devi Jain
 2. Ashok Kumar Jain
- Both R/o: - House No. C-104,
Opposite Mother Dairy
Mianwali Colony, Gurugram,
Haryana

Complainants

Versus

M/s Ansal Housing & Construction Ltd.
Corporate Office at: - Ansal Plaza, 2nd floor,
Sector-1, Near Vaishali Metro Station,
Ghaziabad (U.P), through its Chairman cum
Managing Director.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Abhaj Jain
Ms. Meena Hooda

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 25.04.2019 has been filed by the complainant/allottee 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) for violation of



section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the apartment buyer's agreement executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

1.	Name and location of the project	"Ansal Heights", Sector 92, Gurugram
2.	Project area	10.563 acres
3.	RERA Registered/ not registered.	Not registered
4.	Nature of the project	Residential
5.	DTCP License no.	76 of 2010 dated 01.10.2010
6.	Unit no.	D-501
7.	Apartment measuring	1565 sq. ft.
8.	Date of execution of apartment buyer's agreement	15.06.2012 [page no 40 of complaint]
9.	Payment plan	Construction linked payment plan [page no 57 of complaint]
10.	Total consideration	Rs.53,00,664.75/- as per statement of account dated 14.03.2018 [page no 66 of complaint]
11.	Total amount paid by the complainant	Rs.49,02,644.42/- as per statement of account dated 14.03.2018 [page no 66 of complaint]
12.	Due date of delivery of possession as per clause 29 of apartment buyer's agreement	15.12.2015 Note: due date of possession has been



	(36 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) [page no 49 of complaint]	calculated from the date execution of agreement i.e. 15.06.2012
13.	Delay in handing over possession till date of this order	Possession has not been handed over so far

3. As per clause 29 of the apartment buyer's agreement, the possession was to be handed over within 36 months from the date of execution of agreement i.e. 15.06.2012 or within 36 months from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later, plus grace period of 6 months. Clause 29 of the apartment buyer's agreement is reproduced below:

"29. The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of agreement or within 36 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 dues by buyer and 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".

However, no documents have been placed on record to substantiate the contentions raised by the complainant/promoter regarding receipts of statutory



approvals. Hence, the due date is being calculated from the date of execution of agreement, which comes out to be 15.12.2015.

4. The complainants are submitted that the respondent had not disclosed anything regarding the delay in the construction; rather, they had assured the complainants that the respondent will follow the original timeline of the construction and the construction is in full swing and the possession will be delivered by its scheduled date. Further, on receipt of the offer of possession the complainants herein went to inspect the property and on inspection the complainants were surprised to find that the apartment offered was not in a habitable state. The complainants herein strongly objected to the same and did not take the possession of the apartment and had asked the respondent company to complete the unit. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to complete the construction of the flat along with common area facilities like club, car parking slot, parks, etc. and immediate possession of the flat.



- ii. Direct the respondent to pay interest at the prescribed rate on the amounts paid by the complainant for the delayed period of handing over possession till handing over of possession.
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 respondent in its reply has submitted that the delay caused was due to reasons beyond its control and as stated in the reply.
7. The respondent contests the complaint on the following grounds:
 - i. The respondent submitted that complaints pertaining to refund, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Act read with rule 29 of the Rules and not by this hon'ble authority.
 - ii. That the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the

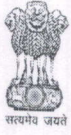


respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as order dated 16.7.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No. 20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders dated passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, maybe harmful to the public at large without admitting any liability. That, the demonetization was also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects.

8. 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 and submission made by the parties.



9. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.
10. Arguments heard.
11. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 29 of the apartment buyer agreement executed between the parties on 15.06.2012, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the date of execution of agreement or date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. The grace period of 6 month is allowed to the respondent due to exigencies beyond the control of the respondent. In present case, the due date is being calculated from the date of execution of agreement i.e. 15.06.2012 since, the language of



the apartment buyer's agreement is ticklish whereby the builder has very cleverly mentioned in the possession clause that the due date should be calculated either from the execution of agreement or date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. The language of the agreement is one-sided and shows the misuse of predominant position of the promoter. The same has also been 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."

12. Howsoever, the fact is not hidden that a number of opportunities had been given to the respondent/promoter to submit relevant documents for justifying the delay including the copy of environmental clearance which he has failed miserably to submit till date. The authority is of the considered view that there is delay on the part of the



respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the apartment buyer's agreement dated 15.06.2012 executed between the parties. As such this project is to be treated as an on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at rate of the prescribed interest @ 10.15% p.a. w.e.f. 15.12.2015 till the offer of possession of the booked unit as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

13. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay interest accrued so far at the prescribed rate of 10.15% p.a. for every month of delay from the due date of possession i.e. 15.12.2015 within 90 days from the date of this order and subsequent interest to be paid by the 10th of each succeeding month



- till actual offer of possession of the allotted unit after the receipt of occupation certificate.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent will intimate the complainant w.r.t. amount due towards him as per payment plan. The respondent is directed to charge the amount as per apartment buyer's agreement and not to charge or shall not charge extra amount from the complainant till obtaining the occupation certificate and offer of possession.
 - iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.15% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
 - v. Complaint stands disposed of.
 - vi. File be consigned to registry.

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.03.2020

(Samir Kumar)

Member

Judgement uploaded on 19.03.2020