

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

Complaint no. : 2505 of 2018
First date of hearing: 28.03.2019
Date of decision : 05.03.2020

1. Hitesh Yadav S/o Late Sh.
Satinder Singh Yadav
2. Mrs. Sangeeta Yadav W/o
Mr. Hitesh Yadav
Both R/o: - S-136, Uppal Southend
Behind Omaxe Mall, Sector-49,
Sohna Road, Gurugram

Complainants

Versus

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

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Manish Yadav
Ms. Meena Hooda

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 31.12.2018 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.	A-605
7.	Apartment measuring	1935 sq. ft.
8.	Date of execution of apartment buyer's agreement	04.07.2012 [page no 16 of complaint]
9.	Payment plan	Construction linked payment plan [page no 33 of complaint]
10.	Total consideration	Rs.61,80,717.50 /- as per Customer Statement dated 02.08.2018 [page no 40 of complaint]
11.	Total amount paid by the complainant	Rs.61,26,706.68 /- as per Customer Statement dated 02.08.2018 [page no 38 of complaint]
12.	Due date of delivery of possession as per clause 29 of apartment buyer's agreement (36 months + 6 months grace period from the date of execution	04.01.2016 Note: due date of possession has been calculated from the date



	of agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later) [page no 25 of complaint]	execution of agreement i.e. 04.07.2012
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. 04.07.2012 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 which comes out to be 04.01.2016. 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 04.01.2016.

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 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.
- ii. Direct the respondent to deliver the possession of the apartment complete in all respect.



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. That without prejudice to the aforesaid and the rights of the respondent, it is submitted 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. However, the respondent is carrying its business in letter and spirit of the Builder Buyer Agreement as well as in compliance of other local bodies of Haryana Government.

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 04.07.2012, 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. 04.07.2012 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 agreement dated 04.07.2012 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. 04.01.2016 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. 04.01.2016 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 complainants till



obtaining the occupation certificate and offer of possession.

- iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @10.15% by the promoter which is the same as is being granted to the complainants 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