

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

Complaint no. : 5435 of 2019
First date of hearing: 17.01.2020
Date of decision : 05.03.2020

Ritica Kapoor
R/o: Villa no.1, Compoond 107/A, Street 23 C,
Mirdif, Dubai, UAE PO BOX 299745

Complainant

Versus

M/s Ansal Housing & Construction Ltd.
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 complainant
Advocate for the respondent

ORDER

1. The present complaint dated 27.11.2019 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 flat buyer's agreement executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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, 86", Sector-86, Gurugram
2.	Project area	12.843 acres
3.	RERA Registered/ not registered.	Not registered
4.	Nature of the project	Residential project
5.	DTCP License no.	48 of 2011 dated 29.05.2011
6.	Unit no.	D-0801
7.	Apartment measuring	1895 sq. ft.
8.	Date of execution of apartment buyer's agreement	02.01.2013
9.	Payment plan	Construction linked payment plan
10.	Total consideration	Rs.78,93,009/- as per customer ledger dated 08.11.2019 at page 35 of complaint
11.	Total amount paid by the complainant till date	Rs.78,16,445.05/- as per customer ledger dated 08.11.2019 at page 38 of complaint
12.	Due date of delivery of possession as per clause 31 of flat buyer's agreement i.e. 42 months from the date of execution of agreement (02.01.2013) or within 42 months from date of obtaining all the required sanctions and approvals necessary for commencement of	02.01.2017 Note: due date of possession has been calculated from the date execution of agreement i.e. 02.01.2013



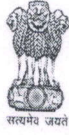
	construction, whichever is later + 6 months grace period.	
13.	Delay in handing over possession	Possession has not been handed over so far

3. As per clause 31 of the flat buyer's agreement, the possession was to be handed over within 42 months from the date of execution of agreement i.e. 02.01.2013 or within 42 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 31 of the flat buyer's agreement 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 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 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".

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 02.01.2017.

4. The complainant submitted that despite receipts of more than 100% of the payments, the complainant were not delivered the possession of the apartment and the respondents has been delaying delivery of the possession of the apartment. Hence, this complaint for the below-mentioned relief:
 - 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.
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 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 orders dated 16.07.2012, 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 at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air quality Index being worse, may be 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 31 of the flat buyer's agreement executed between the parties on 02.01.2013, possession of the booked unit was to be delivered within a period of 42 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. 02.01.2013 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. Therefore, the due date of handing over possession comes out to be 02.01.2017. 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 flat buyer's agreement dated 02.01.2013 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.

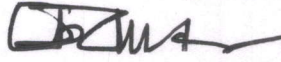
13. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at rate of the prescribed interest @ 10.15% p.a. w.e.f. 02.01.2017 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

14. 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 the interest at the prescribed rate i.e. 10.15% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 02.01.2017 till the offer of physical



- possession of the allotted unit after the receipt of occupation certificate.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainant which is not part of the flat buyer's agreement.
 - 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


(Samir Kumar)
Member

Dated: 05.03.2020