BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUHORITY, GURUGRAM

Complaint No. :6082-2022
Date of Decision: 11.11.2026

1. Dr. Renu Srivastav
2. Col. (Dr.) Ashwini Goel (Retd.) both residents of B-26, Estend Colony, near Anand Niketan, New Delhi-110021.

.... Complainants

Versus

M/s Anand Divine Developers Pvt. Ltd. having its office at ATS Infrastructure Ltd. Plot No.16, Sector-135, Noida-201301, through its authorized person.

.....Respondent.

APPEARANCE

For Complainants: Mr. Garvit Gupta, Advocate.
For Respondent: Mr. Vinayak Gupta, Advocate.

ORDER

This is a complaint filed by Dr. Renu Srivastav & Col. Ashwini Goel (allottees) under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief "Act of 2016") read with Rule 29 of the Haryana Real Estate (Regulations & Development) Rules 2017 (in brief "Rule of 2017"), against M/s Anand Divine Developers Pvt. Ltd (promoter).

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2. Briefly stated, according to complainants, they are retired armed forces and medical professionals as well as physically disabled. In the month of January 2018, they (complainants) received a call from the office of the respondent for booking of a unit in the project named "ATS Triumph". The representatives of the respondent shared a preliminary cost-sheet with them (complainants) stating that the unit sought to be purchased by them would be 100% ready by 31st July, 2018.

3. That they (complainants) induced by the assurances and representations made by the respondent, booked a residential unit in their (respondent's) project. They (complainants) signed several blank and printed papers at the instance of the respondent and paid total booking amount of Rs.22,31,618/-. That a copy of the Apartment Buyer's Agreement (ABA) was sent to them (complainants) containing unilateral, arbitrary, one sided and legally untenable terms. It (respondent) unilaterally increased the time period of handing over of possession of the unit in question and it was amended as 30.09.2018. However, till date, the respondent did not even extend a valid offer of possession of the unit.

4. That they (complainants) expressed their objections to the arbitrary and unilateral clauses of ABA and requested the

AO

respondent for execution of an ABA with balanced terms. It (respondent) instead of amending the ABA threatened them to forfeit the amount paid by them (complainants) if further payments not made. By way of ABA dated 27.03.2018, unit No.6031 on the 3rd floor in Tower No.6 stood previously allotted to them (complainants) for a consideration of Rs.1,99,30,519/-.

5. That they (complainants) availed a loan of Rs.1,56,48,167/-from Punjab National Bank, which was directly deposited by the said bank into the respondent's account on 31.03.2018. That vide email dated 16.04.2021, the respondent intimated them (complainants) that the unit in question would be delivered to them on or before mid-June 2021 and when they contacted it (respondent) in June-July 2021, it was further stated that the unit would be handed over at the earliest.

6. That on 05.01.2022, the respondent sent an email to them (complainants) intimating them that the unit in question was ready for possession. They (complainants) requested the respondent to arrange for their visit to the unit in question prior to taking over its possession and asked it (respondent) to make payment of the interest as well as refund of the excess amount taken in lieu of parking charges. Upon the respondent's failure to respond,

A2

they (complainants) filed a complaint before the Authority, Gurugram seeking relief of possession, delayed possession charges and deletion of illegal demands and execution of conveyance deed. They (complainants) have already made payment of Rs.2,23,16,182/- and no default in making payment has been committed by them.

7. That immediately after filing of the complaint, the respondent contacted them (complainants) and arranged for a site visit on April 9th ,2022. Upon visiting the flat, they (complainants) highlighted several deficiencies in the flat and sent an email in this regard to the respondent. It (respondent) failed to rectify the said deficiencies. They (complainants) also discovered that some of the apartments in the project have been mortgaged by the respondent to L&T Infrastructure Finance Company Ltd. without intimation to the buyers of such apartments. They (complainants) apprehend that the unit allotted to them has also been mortgaged by the respondent despite receipt of Rs.2,23,16,182/- towards the total sale consideration. The respondent has breached their (complainants') trust and caused huge financial losses to them.

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8. Contending all this, complainants have sought following reliefs: -

(i) to direct the respondent to make payment of Rs.45,40,000/- along with interest @18% p.a. paid by the complainants towards the rental amount from the date of payment till the date of realization which falls under the ambit of 'amount of loss caused as a result of default' as stated in Section 72(b) of the Real Estate (Regulation and Development) Act, 2016 and is payable by the Respondent to the complainants in the form of compensation.

ii) to direct the respondent to make payment towards the rental amount of Rs. 1,20,000/- per month till the time a habitable possession of the unit is given by the respondent to the complainants.

iii) to direct the respondent to make payment of Rs. 25 lacs as compensation towards mental harassment, trauma and distress at par with Clause 19 of the Agreement.

iv) to direct the respondent to make payment of Rs. 10 lacs towards the compensation amount for misappropriate gain as per Section 72(a) of the Re Estate (Regulation and Development) Act, 2016.

v) to direct the respondent to make payment of Rs. 10 lacs towards compensation amount as per Section 14 of the Real Estate (Regulation a Development) Act, 2016.

vi) to direct the respondent to make payment of Rs. 55,000/- towards the litigation cost.

9. The respondent contested claim of complainants by filing a written reply. It is averred that the implementation of the project was hampered due to non-payment of instalments by the allottees on time and also due to the events and conditions which

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were beyond its (respondent) control. After obtaining Occupation Certificate on 03.10.2016, it (respondent) offered the possession of the unit to the complainants vide letter dated 30.05.2019. They (complainants) were not coming forward to take possession of the unit after remitting the due amount.

10. That the demands made by it (respondent) were as per the Apartment Buyer's Agreement. That when the complainants have already taken physical possession of the unit on 19.03.2022 after inspecting the unit and ownership record, then how can they claim for refund. That the project is constructed as per the approved layout plan.

11. Denying all averments of the complaint, the respondent prayed for dismissal of present complaint.

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

13. Admittedly, the complainants had approached the Authority seeking delayed possession compensation (DPC) by filing a complaint no.775 of 2022. Said complaint was allowed by the Authority vide order dated 28.09.2023 and the respondent has been directed to pay interest to the complainants against the paid-up

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amount at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by them (complainants), apart from some other reliefs.

14. It is submitted by learned counsel for the complainants that despite said order of the Authority, it is for the Adjudicating Officer to allow compensation for delay in handing over possession, in view of section 72 of Act of 2016.

15. As per Section 18 (1) of Act of 2016, if promoter fails to complete or 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, (b)-------, 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 or 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.**

16. It is worth mentioning here that the complainants did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority.

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The said complaint has already been allowed. Proviso added to sub section (1) of section 18 provides 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 handing over of possession, at such rate as may be prescribed. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

17. Upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra" Appeal No. 70 of 2023 decided on 20.04.2023----------;**

> ***"13.9. If we closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."***

18. Similar was finding of Haryana Real Estate Appellate Tribunal in case "TATA Housing Development Company Limited vs. Nitin Singhal & Surendra Kumar Singhal, Appeal No.737 of 2023 decided on February 17,2026.

19. When the complainants have already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession.

20. Apart from delay in handing over possession, the complainants have requested for compensation alleging that there remained following deficiencies in service by the respondent: -

a. Terrace Area and Carpet Area less than the area mentioned in the Buyer Agreement- Terrace area as per the Buyer Agreement is 387 Sq. ft. whereas the actual area is 370 Sq. ft and Carpet area in the Buyer Agreement is 2093 Sq. ft., whereas the actual area is 1995 Sq. ft.;

b. Non-provision of wooden/premium imported flooring in all bedrooms (as provided in the Buyer Agreement) - wooden flooring has only been provided in the master bedroom;

c. Non-installation of electrical meter;

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d. Seepage in the servant room and bedroom;

e. Pending paint touch-up in several parts of the house

21. It is contended by learned counsel for the respondent that in their complaint filed before the Authority as referred above, the complainants did not take any plea about deficiencies in service. In this way, claim of complainants cannot be entertained in view of Sections 28&29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in brief "Rules of 2017").

22. It is not disputed on behalf of the complainants that the latters did not take plea of these deficiencies in their complaint filed before the Authority. Copy of order of the Authority is on the record. Apparently, the Authority did not mention about any such plea having taken by the complainants, in their complaint and no finding was given in this regard. As per Rule 29(1) of Rules of 2017, any aggrieved person may file an application/complaint with the adjudicating officer for adjudging quantum of compensation....., **where violation by the promoter has been established by the Authority, in an inquiry under section 35 in form CAO or in such form as specified in the regulations.**

23. When the Authority has not given finding on any such violation by the promotor/respondent, present complaint seeking

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compensation for violations allegedly done by the respondent (described above), cannot be entertained. On basis of facts discussed above, complaint in hands is thus dismissed.

File be consigned to the record room.

Announced in open Court.
today i.e. **on 11.11.2026.**

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

Present: Mr. Garvit Gupta, Advocate for the complainants.
Mr. Vinayak Gupta, Advocate for the respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.

(Rajender Kumar)
Adjudicating Officer,
11.11.2026