

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 17.10.2018
Complaint No.	317/2018 Case titled as Mr. Sameer Agarwal V/s M/s Ansal Properties & Infrastructure Limited & Anr.
Complainant	Mr. Sameer Agarwal
Represented through	Mr Sumit Kumar Gaur, Advocate for the complainant
Respondent	M/s Ansal Properties & Infrastructure Limited & Anr.
Respondent Represented through	Mr Sidharth Yadav, Advocate for the respondent.
Last date of hearing	26.09.2018
Proceeding Recorded by	Mr. S.L.Chanan

Proceedings

It has been alleged by the complainant that the builder/promoter will not be able to deliver the possession on due date as per terms and conditions of Builder Buyers Agreement dated 10.07.2013. As per clause 5.1. of the agreement dated 10.07.2013, possession of the unit was to be handed over to the complainant within a period of 48+6 months grace period from the date of execution of agreement. As per above provision of agreement and in view of the customer ledger indicating the payments made to the respondent/promoter, the commencement of construction was started on 14.08.2014. Therefore, this unit in terms of clause 5.1 of agreement is to be handed over by 14.02.2019. As on date the above mentioned date of handing

over possession of unit is premature. However, since the respondent has submitted on oath the due date of possession is 31.12.2020. As such, certainly the promoter will be handing over the possession of the unit after due date i.e. 14.02.2019. Therefore, the complainant is entitled to receive interest for the delayed period of possession at prescribed rate of interest i.e. 10.45% w.e.f. 14.02.2019 till the actual handing over the possession. Counsel for the respondent has mentioned various reasons which were beyond their control on account of non-acquisition of about 1.25 acres of land and they have to change the layout plan after getting due permission from the competent authority. He has stated that construction work is in full swing and project is registered with the authority and the due date of possession is 31.12.2020. The complaint stands disposed accordingly. Detailed order shall follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

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

Complaint No. : 317 of 2018
Date of First
Hearing : 19.07.2018
Date of Decision : 17.10.2018

Mr. Sameer Agarwal
R/o House no.117, Kakadev, L Block, P.S.
Kakadev, Tehsil: Kanpur Nagar, Kanpur

...Complainant

Versus

1. M/s Ansal Properties and Infrastructure
Limited
Office at: 115, Ansal Bhawan, 16, K G
Marg, New Delhi-110001

...Respondents

2. M/s Samyak Projects Pvt. Ltd.
Office at: 111, First floor, Antriksh
Bhawan, 22, Kasturba Gandhi Marg,
New Delhi-110001

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Complainant in person with
Shri Sumit Kumar Gaur,
Advocate

Advocate for the complainant

Shri Siddharth Yadav

Advocate for the respondents



ORDER

1. A complaint dated 23.05.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Sameer Agarwal, against the promoters M/s Ansal Properties and Infrastructure Limited and M/s Samyak Projects Pvt. Ltd., on account of violation of clause 5.1 of the builder-buyer agreement executed on 10.07.2013 for unit no. 0704-G-0501 with a super area of 1877 sq. ft. in the project "The Fernhill" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	"The Fernhill" in Village Mewka, Sector 91, Gurugram
2.	Unit no.	0704-G-0501
3.	Nature of real estate project	Group housing colony
4.	Project area	14.412 acres
5.	RERA Registered/ not registered	Registered (389 of 2017)
6.	DTCP license	48 of 2010
7.	Date of booking	26.07.2011
8.	Date of builder buyer agreement	10.07.2013
9.	Total consideration	Rs. 59,62,615/- (as per customer ledger dated



		27.07.2018 under Annexure-R3)
10.	Total amount paid by the complainant	Rs. 19,19,071/- (as per complaint) Rs. 19,21,067/- (as per customer ledger in annexure R3)
11.	Payment plan	Construction Linked Plan
12.	Date of delivery of possession.	Clause 5.1 – 48 months + 6 months grace period from date of execution of agreement (10.07.2013) or commencement of construction (14.08.2014-as per customer ledger in annexure R3), whichever is later, i.e. 14.02.2019 Note: The complaint is pre-mature.
13.	Delay of number of months/ years up to 17.10.2018	8 months
14.	Penalty clause as per builder buyer agreement dated 10.07.2013	Clause 5.5- Rs. 10/- per sq. ft. per month
15.	Revised date of delivery of possession as per RERA registration certificate	31.12.2020



3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondents. A builder buyer

agreement dated 10.07.2013 is available on record for unit no. 0704-G-0501 according to which the possession of the aforesaid unit is to be delivered by 14.02.2019.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 19.07.2018. The case came up for hearing on 19.07.2018, 04.09.2018 and 26.09.2018 and 17.10.2018. The reply has been filed by the respondent no.1 on 04.09.2018.

Facts of the complaint

5. On 26.07.2011, the erstwhile owner Mrs. Alka Jassal booked a unit in the project named "The Fernhill" in Village Mewka, Sector 91, Gurugram. On 26.05.2012, the erstwhile owner transferred all the rights and liabilities in respect of such allotment to the complainant with due permission of the respondent company. Accordingly, the complainant was allotted a unit bearing 0704-G-0501 in tower G.
6. On 10.07.2013, builder buyer agreement was entered into between the parties wherein as per clause 5.1, the construction should have been completed within 48 months + 6 months grace period from the date of execution of agreement or from the date of commencement of construction, whichever



is later. The complainant made payments of all instalments demanded by the respondents amounting to a total of Rs 19,19,071/-.

7. The complainant submitted that to the best knowledge and as per the current status as updated by the respondent no. 1 on its website, only first floor slab has been casted in the tower as such the time period as agreed for the completion and handing over the possession of the flat has not been adhered by the respondent no. 1 and the possession of the flat has been substantially delayed. Further, demand letters dated 21.12.2016 and 21.09.2017 were issued to the complainant demanding amount from the complainant.
8. The complainant submitted that despite repeated calls, meetings and emails sent to the respondents, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant. Complainant further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainant decided to terminate the agreement.
9. As per clause 5.1 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by



14.02.2019. The clause regarding possession of the said unit is reproduced below:

“ 5.1 “Subject to Clause 5.2 and further subject to all the buyers/allottees of the Flats in the said Residential Project, making timely payment, the Company shall endeavour to complete the development and residential project and the said flat as far as possible within 48 months, with an extended period of 6 months, from the date of execution of this Agreement or from the date of commencement of construction of the particular Tower/Block in which the said Unit is situated subject to the sanction of the building plan whichever is later.”

10. Issues raised by the complainant

The complainant did not frame any issues. However, the relevant issue as per the complaint is:

- I. Whether the complainant is entitled to refund of the principal amount along with interest?

11. Relief sought

- I. To direct the respondents to fully refund the amount paid by the complainant amounting to Rs 19,99,071/- with interest in terms of section 18 r/w rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017.



Respondent's reply

12. The respondents submitted that the present complaint is liable to be dismissed as the same has been filed without any

cause of action. The present complaint has been filed prematurely well before the agreed date for handover of possession of the flat/unit in dispute. Further, the conduct of the respondent no.1 has been totally in consonance with the terms and conditions agreed between the parties and the complainant is trying to wriggle out of its responsibility to make further payments by making false and baseless allegations.

13. The respondent no.1 further submitted that the unit was first allotted to one Mrs. Alka Jassal (original applicant/ allottee). However, later in the month of May 2012, a joint request was made by the original allottee and the complainant for the transfer of the said unit in the name of the complaint. Accordingly, after completing the requisite transfer formalities, the unit was transferred in the name of the complaint vide transfer certificate dated 26.05.2012 and a BBA was executed on 10.07.2013.

14. The respondents submitted that on the present date, the phase 1 of the project stands completed with construction work of phase 2 having tower G comprising of the said unit is going on in full swing. The construction of tower G has been completed till 3rd floor. The sanctioning of the building plan, license etc.



got delayed due to some environmental clearance issues, increased FAR and force majeure circumstances etc. which were beyond the reasonable control of the respondent no.1 company.

15. It is submitted that the handover of possession of the unit to the complainant was also subject to complete payment of the basic sale price and other charges due and payable up to the date of possession according to the payment plan applicable to him/her (clause 4.3). The timely payment of the instalment amount was of the essence of the contract however, the complainant failed to honour the same. Out of total consideration of the unit, only a sum of Rs 19,21,067/- has been received by the respondent no.1 company despite repeated requests and reminders to the complainant regarding the same.

16. The respondents submitted that the project in question had commenced prior to enforcement/commencement to the RERA, 2016 and as such prior to the said act, the parties were bound by the agreed terms of the said agreement dated 10.07.2013. Further, after coming into force of the RERA, 2016, the respondent no.1 company got it registered wherein a registration certificate dated 22.12.2017 with validity up to



December 2020 for phase-2 of the project has been duly issued in favour of the respondent no.1 company. In terms of the said RERA certificate, the respondent no. 1 is fully committed and bound to complete the development work of the project by the said date and deliver the units to the buyers including complainant.

17. It is further submitted that without prejudice, even if it is assumed but not admitted that there has been some delay in completion of the project attributable to the respondent no. 1 and that the BBA had been executed between the parties then also there would have been an appropriate mutually agreed remedy provided in the said BBA under clause 9.12 which is reproduced herein below:

9.12- "That it is clearly agreed and understood that if for any reason, the company is not in a position to deliver the allotted unit as applied for and agreed hereto, the company, at its sole discretion, shall consider for delivering any alternate residential unit...."

In view of the above, without prejudice to its rights and contentions and as a goodwill gesture towards its valued customer, the respondent no. 1 had previously offered the complainant an alternate flat/plot and is still the same in the project in question or other project of the company in Gurugram or some other place as per the available inventory.



Determination of issues

After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

18. Regarding the issue raised by the complainant, the respondents have undertaken to deliver possession of the unit up till 31.12.2020 as per the RERA registration no. 389 of 2017 dated 22.12.2017. Further, it is submitted by the respondents in the reply that the construction of phase 2 of the project in which unit in question is situated has been completed up till 3rd floor. Thus, keeping in view the status of the project and the interest of other allottees, refund cannot be allowed at this stage. However, the complainant is entitled to interest at the prescribed rate of 10.45% for delayed possession.

19. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:



Findings of the authority

20. **Jurisdiction of the authority-** The project “The Fernhill” is located in Village Mewka, Sector 91, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

21. Keeping in view the status of the project and other intervening circumstances, the authority is of the view that as per clause



5.1 of the builder buyer agreement dated 10.07.2013, the construction should have been completed within 48 months + 6 months grace period from the date of execution of agreement or from the date of commencement of construction, whichever is later. In view of the customer ledger indicating the payments made to the respondents/promoters, the date of commencement of construction was 14.08.2014. Therefore, the due date of possession comes out to be 14.02.2019. As on date, the above-mentioned date of handing over possession of unit is of a later date and thus, the complaint is premature. Further, during the proceedings dated 17.10.2019, the counsel for the respondents has mentioned various reasons which were beyond their control on account of non-acquisition of about 1.25 acres of land and they had to change the layout plan after getting due permission from the competent authority. He has stated that construction work is in full swing and project is registered with the authority and the due date of possession is 31.12.2020.

Accordingly, keeping in view the status of the project and the interest of other allottees, the authority is of the view that it will not be appropriate to allow refund at this stage and the respondents must hand over the possession as per the date



undertaken by them in the RERA registration, i.e. 31.12.2020. However, since the date committed by the respondents is later than the due date of 14.02.2019, the complainant is entitled to receive interest for the delayed period of possession at prescribed rate of interest i.e. 10.45% p.a. w.e.f. 14.02.2019 till the actual handing over the possession. If the builder fails to deliver the possession on the committed date i.e. 31.12.2020, in that case, the complainant can file a fresh application seeking refund.

Decision and directions of the authority

23. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents:

(i) The respondents are directed to give the physical possession of the said flat to the complainant on the date committed by the respondents for handing over the possession, i.e. by 31.12.2020.

(ii) The respondents are directed to give interest to the complainant at the prescribed rate of 10.45% p.a. w.e.f. 14.02.2019 till the actual handing over the possession.



(iii) If the possession is not given on the date committed by the respondents, i.e. 31.12.2020, then the complainant shall be at liberty to further approach the authority for claiming refund of the amount paid by him.

24. The complaint is disposed of accordingly.

25. The order is pronounced.

26. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Date: 17.10.2018

HARERA
GURUGRAM

