

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 26.7.2018
Complaint No.	221/2018 case titled as Mr. Narain Dass Sardana versus Ansal Housing & Construction Ltd.
Complainant	Mr. Narain Dass Sardana
Represented through	Shri Himanshu Raj advocate for the complainant.
Respondent	Ansal Housing & Construction Ltd
Respondent Represented through	Shri Deepankar Dutt Sharma Advocate for the respondent.

Proceedings

Arguments advanced by the learned counsels for the parties have been heard. The learned counsel for the complainant has submitted that the allotment letter was signed by both the parties on 24.5.2012 and as per clause **26** of the allotment letter, the complete and actual possession of the flat was to be delivered to the complainant within 36 months after the approval of building plans which comes to 11.9.2016. The building plan was approved on **11.9.2013**. The respondent has registered the project with HARERA on 31.7.2017 and admitted to complete the project by 31.12.2019 which is a far fetched reality as they do not have valid licence as the licence of the project has already been expired on 29.12.2013. Thus, the complainant is not interested to continue with the project and wants to withdraw the deposited amount alongwith interest. On the other hand, counsel of the respondent argued that the construction work is in progress and they will be in a position to give the possession to the complainant on the committed date i.e. 31.12.2019 mentioned in the RERA registration. Upon this the counsel of the complainant insisted that he is firm to withdraw the amount and do not continue with the project.

Upon hearing the arguments of the parties, the authority is of the view that it will meet the ends of justice in case the complainant is provided with the refund of the deposited amount alongwith interest. Therefore, the allottee shall be refunded the deposited amount received by the promoter alongwith the **prescribed interest i.e. 10.15%** from committed date of possession i.e. 11.9.2013, within **45** days from the

date of this order. The complaint is disposed of accordingly. Detail order will follow.
File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
26.7.2018

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

Complaint no. : 221 of 2018
Date of first hearing : 26.06.2018
institution :
Date of decision : 26.07.2018

Narain Dass Sardana

R/o House no 102, Sector 10A, Chandigarh:
160011

...Complainant

Versus

Ansal Housing and Construction Ltd
R/o 15 UGF, Indra Prakash, 21 Barakhamba
Road, New Delhi: 110001

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Anil Kadyan
Shri Mandeep Sehra

Advocate for the complainant
Advocate for the respondent

HARERA
GURUGRAM

ORDER

1. A complaint dated 02.05.2018 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. Narain Dass against the respondent promoter Ansal



Housing and Construction Ltd. in respect of apartment/unit described below in the project 'Ansals Hub 83', on account of violation of the section 3 of the Act *ibid*.

2. Since the allotment letter has been executed on 24.05.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016
3. The particulars of the complaint are as under: -

1.	Name and location of the project	Ansals Hub 83, sector 83, Gurugram, Haryana
2.	Registered/not registered	Registered 09 of 2018
3.	RERA registration valid up to	31.12.2020
4.	Real estate type	Commercial
5.	Payment plan	Construction Linked
6.	DTCP license number	87 of 2009



		Dated 30.12.2009
7.	Allotment letter	24.05.2012
8.	Unit area	625.92 sq. ft.
9.	Unit no.	612
10.	Total basic sale price	Rs 27,02,566/-
11.	Total amount paid by the complainant	Rs. 19,04,524/-
12.	Building plan approved on	11.09.2013
13.	Date of delivery of possession As per clause 26: within 36 months from date of sanction plans or date of execution of allotment letter whichever is later	11.09.2016
14.	Delay of number of months/ years till date	1 year 10 months 15 days
15.	Penalty as per clause 30	Rs 5 per sq. ft. per month on super area

4. As per the details provided above, they have been checked as per record available in the case file provided by the complainant and respondent. No builder buyer agreement is available on record. However from the facts, it can be noted that the promoter has not fulfilled his committed liability as on date and that the complainant has filed this present complainant seeking a refund of the invested amount along with interest.



5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly the counsels appeared on 26.06.2018, 17.07.2018 and 26.07.2018. The reply has been filed by the respondent which has been pursued.

FACTS OF THE CASE:

6. The complainant is a resident of India and is an aggrieved person as per the RERA Act, 2016. The opposite party approached the complainant inviting him to purchase a unit in its project "Ansals Hub 83" situated at sector 83, Gurugram.
7. On pursuance, assurance and promises of the opposite party the complainant booked a shop/office space admeasuring 625 sq. ft. on 21.03.2011 and was allotted unit no 612 (6th floor) to the complainant on 24.05.2012.
8. It is expressly stated in the allotment letter that the actual and complete possession of the unit will be handed over to the complainant within 36 months from the date of



allotment i.e. 24.05.2015 but till date the possession of the unit has not been offered to the complainant.

9. The complainant has time and again tried to correspond with the opposite party in regard to the delivery of the possession but the opposite party gave no answers.

10. That it is also pertinent to mention here that the opposite party had arbitrarily changed the unit no. and the area of the shop which the complainant had booked in their project without giving any prior information to the complainant.

11. The opposite party changed the complainants unit no. from 612 to 604 and had increased the area from 625.94 sq. ft. to 803 sq. ft.

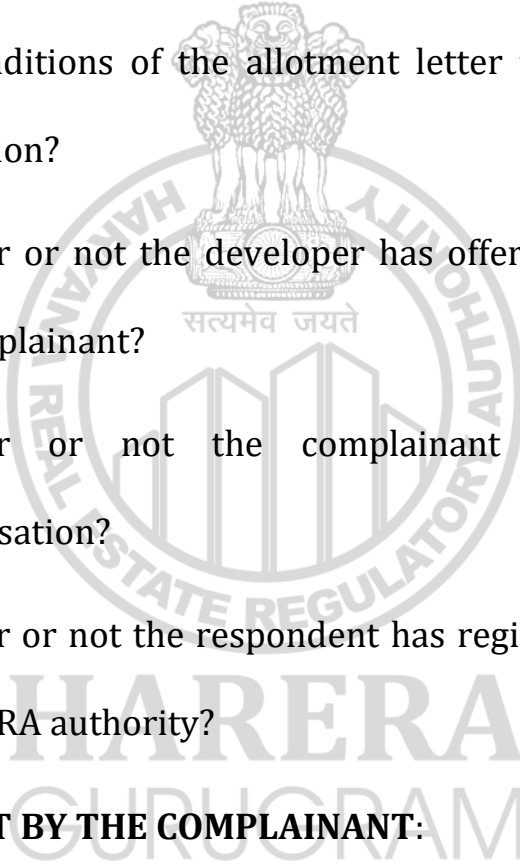
12. On requesting and pleading to change the unit as the area of the re allotted unit was bigger due to which cost of the unit had also increased. The re allotted unit is 909 measuring 433 sq. ft. on 9th floor.

13. That the complainant is an aggrieved person and requests the refund of the entire amount which has been paid to the respondent by the complainant.



ISSUES RAISED BY THE COMPLAINANT:

14. The following issue have been raised by the complainants:
- i. Whether or not the respondent is under an obligation to refund the complainants invested amount?
 - ii. Whether or not the respondent has violated the terms and conditions of the allotment letter thereby delaying possession?
 - iii. Whether or not the developer has offered possession to the complainant?
 - iv. Whether or not the complainant is entitled to compensation?
 - v. Whether or not the respondent has registered its project with RERA authority?



RELIEF SOUGHT BY THE COMPLAINANT:

15. Following reliefs have been prayed for:
- i. Refund the complete amount which has been deposited by the complainant.

- ii. Direct payment of Rs 20,00,000 along with 12% interest for causing mental agony.
- iii. Direct payment OF Rs 14,00,000 along with 12% interest to the complainant as deficiency in services for keeping the complainant in dark with regard to the progress of the property.
- iv. Direct payment of Rs 8,00,000 along with 12% interest under section 12 of the Act.
- v. Direct payment of Rs 14,00,000 along with 12% interest for causing physical harassment caused to the complainant.
- vi. Direct the opposite part to hand over 10% of the estimated cost of the real estate project to the complainant.
- vii. Direct the opposite party to hand over 5% of the estimated cost of the real estate project to the complainant.
- viii. Direct the opposite party to reimburse litigation cost of Rs 1,00,000 along with 12% interest to the complainant.



REPLY BY THE RESPONDENT:

16. The respondent submitted that he has applied for registration of the project vide application 31.07.2017 under the provisions of the Act and Rules.

17. The respondent submitted that the DTCP has granted the approval/sanction to develop the project vide license bearing no 87 of 2009 dated 31.12.2009. the building plans of the project has been approved by the DTCP.

18. The respondent submitted that the complainant had applied for a unit in the said project and the respondent agreed and allotted a unit bearing unit no 612 having sale area 625.12 sq. ft. the complainant duly signed and executed allotment letter after carefully going through the same and agreed to the terms and conditions mentioned.

19. The respondent further submitted that the would have handed over the possession to the complainant perfectly within time had there been no force majeure circumstances beyond the control of the respondent. The respondent



submitted several reasons and circumstances absolutely beyond the control of the respondent.

20. The respondent submitted that the present complaint is not maintainable for non joinder of the parties as M/s Akansha Infrastructure Pvt. Ltd. and M/s Samyak Properties are the necessary parties and the complainant has not made them respondents.

21. The respondent submitted that the present complaint is not maintainable and the same is liable to be dismissed on the ground that the project has not received registration certificate under RERA.

22. The respondent submitted that no cause of action has arisen against the respondent as in terms of the RERA Act, the developer has changed the completion date and has undertaken to complete the project on or before 31.12.2020.

23. The respondent submitted that the complaint regarding compensation falls under the ambit of the adjudicating officer.



DETERMINATION OF ISSUES:

24. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as follows:

- i. With respect to the **first issue** raised by the complainant, the authority is of the view that since the complainant is not interested to continue with the project and wishes to withdraw the deposited amount, refund of the same may be allowed.
- ii. With respect to the **second issue** raised by the complainant, it is noted that there is a delay in handing over the possession. However since the complainant wishes to withdraw from the project this issue becomes superfluous.
- iii. With respect to the **third issue** raised by the complainant, it is observed that though the respondent was duty bound to hand over possession of the unit within the time stipulated, he has failed to do so since he has not yet received the occupation certificate either.



- iv. With respect to the **fourth issue** raised by the complainant the complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required. Also, the complainant had made a statement on 26.06.2018 during proceedings that he is not appearing before the authority for compensation but for the fulfilment of the obligations by the promoter as per the Act. Therefore, the issue raised by the complainant regarding compensation becomes superfluous
- v. With respect to the **fifth issue** raised by the complainant, it is noted that the said project is registered with Haryana RERA vide registration number 09 of 2018 which is valid up to 31.12.2020.



FINDINGS OF AUTHORITY:

25. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to 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.

26. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.

27. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.

28. The learned counsel for the complainant has submitted that the allotment letter was signed by both the parties on 24.5.2012 and as per clause 26 of the allotment letter, the complete and actual possession of the flat was to be delivered to the complainant within 36 months after the approval of building plans which comes to 11.09.2016. The building plan was approved on 11.9.2013. The respondent has registered the project with HARERA on 31.07.2017 and



admitted to complete the project by 31.12.2020 which is a far fetched reality as they do not have valid licence as the licence of the project has already been expired on 29.12.2013.

29. The complainant is not interested to continue with the project and wants to withdraw the deposited amount along with interest. On the other hand, counsel of the respondent argued that the construction work is in progress and they will be in a position to give the possession to the complainant on the committed date i.e. 31.12.2020 mentioned in the RERA registration. Upon this the counsel of the complainant insisted that he is firm to withdraw the amount and do not continue with the project

DECISION AND DIRECTIONS OF THE AUTHORITY:

30. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 here by



issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent is directed to refund the amount deposited by the complainant along with interest.
- ii. The allottee shall be refunded the deposited amount received by the promoter along with the prescribed interest i.e. 10.15% from committed date of possession i.e. 11.09.2013, within 45 days from the date of this order.

31. The order is pronounced.

32. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 26.07.2018

Judgement Uploaded on 05.01.2019

