

PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 15.01.2019
Complaint No.	332/2018 Case titled as Mr. Navneet & anr. Vs. M/s Ansal Housing & Construction Ltd. and others
Complainant	Mr. Navneet & another
Represented through	Complainant in person
Respondent	M/s Ansal Housing & Construction Ltd. & Others
Respondent Represented through	Shri Deepankar Dutt Sharma Advocate for the respondent.
Last date of hearing	6.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

As per clause 29 of the Apartment Buyer Agreement dated 2.4.2012 for unit No.D-205, "Anal Heights" Sector 92, Gurugram possession was to be handed over to the complainant within a period of 36 months + 6 months grace period from the date of execution of agreement or from the date of obtaining all required sanctions and approvals necessary for commencement

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह सिविल लाईंस गुरुग्राम हरियाणा

of construction i.e. 3.11.2012 which comes out to be 3.11.2015. It was a construction linked plan. However, respondent has not delivered the unit in time. Complainant has already paid Rs.41,86,528/- to the respondent against a total sale consideration of Rs.43,72,413/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 3.11.2015 till handing over the possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- i) The respondent is directed to hand over the possession of the said unit by 30.06.2019 as committed by the respondent in the affidavit submitted by him.
- ii) The respondent is directed to pay cumulative interest accrued from the date of possession i.e. 3.11.2015 to 15.1.2019 on account of delay in handing over of possession to the complainant within 90 days from the date of decision and subsequent interest to be paid by 10th of every succeeding month.

iii) The apartment is not park facing, accordingly, PLC charges not applicable, adjustment is to be made if charged already.

As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceedings will be initiated against the respondent under section 59 of the Act.

Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)

15.01.2019

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

Complaint no. : 332 of 2018
First date of hearing : 24.07.2018
Date of decision : 15.01.2019

1. Mr. Navneet
2. Mrs. Himani Chauhan,
Both R/o. H.No. 1566/3, Gali no.11,
Rajiv Nagar, Gurugram, Haryana-122001.

Complainants

Versus

1. JSG Builders Pvt. Ltd.
Regd. office: 297-A/4, Mehrauli,
New Delhi.
2. NCC Urban Infrastructure Limited
Regd. office: 41, Nagarjuna Hills,
Hyderabad-500082.
3. SAMYAK Projects Pvt. Ltd.
Regd. office: 111, 1st floor, Antriksh Bhawan,
22, K.G. Marg, New Delhi

4. M/s Ansal Housing & Construction Ltd.
Office address: Ansal Plaza Mall, 2nd floor,
Sector-1, Vaishali, Ghaziabad, U.P.-201010.

Respondents



CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Navneet Complainant in person
Shri Deepankar Dutt Sharma Advocate for respondent no.4

ORDER

1. A complaint dated 25.05.2018 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 complainants Mr. Navneet and Mrs. Himani Chauhan, against the promoters M/s Ansal Housing & Construction Ltd. and others, on account of violation of the clause 29 of the apartment buyer's agreement executed on 02.04.2012 in respect of apartment described below in the project 'Ansal Heights', Sector 92 for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.
2. Since, the apartment buyer's agreement has been executed on 02.04.2012 i.e. prior to the commencement of the Act *ibid*, 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 case are as under: -



1.	Name and location of the project	"Ansal Heights", Sector-92, Gurugram
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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.	License valid/renewed upto	30.09.2016
7.	Applied for occupation certificate on (as stated in reply)	25.04.2017 and removed deficiencies vide letter dated 12.09.2017
8.	Apartment/unit no.	D-205.
9.	Apartment measuring	1320 sq. ft.
10.	Date of execution of apartment buyer's agreement-	02.04.2012
11.	Payment plan	Construction linked payment plan
12.	Total cost of the said flat as per customer ledger dated 25.10.2018 filed by respondent along with affidavit	Rs.43,72,413/- (page 3 of affidavit)
13.	Total amount paid by the complainant till date as per customer ledger dated 25.10.2018 filed by respondent along with affidavit	Rs.41,86,528/-
14.	Building plans approved on [as admitted by the respondent]	3.05.2012
15.	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 of agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later)	3.11.2015
16.	Delay in handing over possession till date	3 years 2 months 3 days
17.	Penalty clause as per the said flat buyer's agreement	Clause 34 of the agreement i.e. Rs.5/- per



		sq. ft. per month of the super area for any delay in offering possession.
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4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondents. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 03.11.2015. Neither the respondents have delivered the possession of the said unit till date to the complainant nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said flat for the period of delay as per clause 34 of apartment buyer's agreement dated 02.04.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents appeared on 24.07.2018. The case came up for hearing on 24.07.2018 and 06.12.2018. The reply filed on behalf of the respondent no.4 on 29.10.2018 has been perused.



Facts of the complaint

6. Briefly stated, the facts of the complaint are that the respondent companies are developing its project namely

'Ansal Heights' at Sector-92, Gurugram, therefore the hon'ble authority has the jurisdiction to try the present complaint.

7. The complainants submitted that relying upon the advertisement of the respondents, one Sh. Om Dutt Yadav had booked a flat no. D-205 measuring super area 1320 sq. ft. together with the proportionate undivided, unidentified, impartible interest in the land underneath the said complex with the right to use the common areas and facilities in the said complex vide apartment buyers' agreement dated 02.04.2012.
8. The complainants submitted that the basic sale price of the apartment was of Rs.30,98,172/- payable by the apartment allottee as per payment plan and the previous owner made a total payment of Rs.25,27,440.32/-.
9. The complainants submitted that as per clause 29 of the agreement dated 02.04.2018, the developer shall offer possession of the unit within a period of 36 months from the date of execution of agreement or within 36 month 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 the 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. As per clause 34, the developer shall be liable to pay compensation calculated @ Rs.5/- per sq. ft. per month of the carpet area of the apartment for the period of delay in offering the possession of the said apartment beyond the period indicated in clause-29.

10. The complainants submitted that on 08.07.2016, they purchased the said flat vide application dated 08.07.2016, by paying the sum of Rs.75,900/- through cheque dated 08.07.2016 on account of transfer of flat. The complainant submitted that in consequent to the transfer application dated 08.07.2016, the respondents had issued an allotment letter dated 19.08.2016 to the complainants. In the said letter the respondents had mentioned the basic sale price @ Rs.32,30,170/-, on the contrary the basic sale price was Rs.30,98,172/- as per the booking letter issued by respondents.



11. The complainants submitted that the respondent had issued a letter dated 14.03.2018 regarding offer of possession for fitouts in Ansal Heights, Sector-92, Gurugram, Haryana. The said letter was replied by the complainants through letter dated 18.04.2018 whereby they have asked the respondents to take the occupation certificate from competent authority,

whereby the complainants agreed to pay the amount if company is willing to settle.

12. The complainants submitted that the major concern of the complainant was that the respondent has charged for park facing and it is not a park facing flat. So kindly adjust the complainant's amount which was charged for park facing flat. Master bedroom almirah niches have not been provided in the room as shown. The complainants have some doubt that is it actually 1320 sq. ft. flat as carpet area seems to be less than 800 sq. ft. The school be constructed inside the society but actually had shown behind the club at the entrance. The revenue road not disclosed in the advertisement as shown. The water body is behind tower-C not given as per construction.

13. The complainants submitted that the respondents have cheated and played fraud upon the complainants by booking the apartment in the so called project Ansal Height at Sector-92, Gurugram and thus the respondents have committed criminal offence of breach of trust and other offences.



Issues to be decided

14. The complainants have raised the following issues:

- i. Whether the respondent has failed to deliver the possession of the flat?
- ii. Whether respondent has reduced the size of master bed room from 10'6" to 11' feet and the flat size 1320 sq. ft. has been reduced as 800 sq. ft. without disclosing it to the complainant?
- iii. Whether the occupation certificate for the said project is still awaited?

15. Reliefs sought:

The complainants are seeking the following reliefs:

- i. The respondent be directed to handover the possession of the said unit.
- ii. Direct the respondent to pay interest to the complainant on the total paid amount of Rs.40,95,197/- as per payment plan.

Reply on behalf of respondent no.4



16. The respondent submitted that the project namely 'Ansal Heights' is being developed by the M/s Ansal Housing & Construction Ltd. under license no. 76 of 2010 dated 01.10.2010 received from DTCP, Haryana on a land area of about 10.563 acres in Village Wazirpur of Gurugram, Haryana

presently part of residential Sector-92 of the Gurugram Manesar Urban Plan 2021.

17. The respondent submitted that the land of the project is owned by M/s JSG Builders Pvt. Ltd. which owns a part land of 43 kanal and 14 marla and NCC Urban Infrastructure Ltd. which owns the balance area of 40 kanal and 16 marla. The landowners had under an arrangement granted, conveyed and transferred all its rights, entitlement and interests in the development, construction and ownership of the total permissible FSI to M/s Samyak Projects Pvt. Ltd. The respondent has entered into an arrangement with the confirming party to jointly promote, develop and market the proposed project being developed on the land as aforesaid. The respondent further represents that in view of the agreement entered into between the landowners and the confirming party and subsequent agreement between the respondents and the confirming party, the respondent has undertaken the development and marketing of the project and has offered for sale residential apartment of various types and sizes.



18. The respondent submitted that the DTCP, Haryana has granted the approval/ sanction to develop the project vide license no. 76 of 2010 dated 01.10.2010. that the building plans of the

project has been approved by the DTCP, Haryana dated 03.05.2012.

19. The respondent submitted that it has already completed the development work and has applied for occupancy certificate for part occupancy of the project vide application dated 25.04.2017 and further removed the objections raised by the department vide letter dated 12.09.2017.
20. The respondent submitted that he would hand over the possession to the complainant within the time scheduled had there been no force majeure circumstances beyond the control of the respondent. The respondent submitted that due to several unforeseen events such as ban by NGT, jaat agitation and demonetization, etc. the pace of construction has slowed down but the respondent has put great efforts in completing the project. The respondent stated that it has diligently performed its part.
21. The respondent submitted that the present complaint is not maintainable for non-joinder of parties as M/s Resolve estate Pvt. Ltd., M/s Optus Corona Pvt Ltd. and M/s Samyak Properties Pvt. Ltd. are the necessary parties and the complainant has not made them necessary parties.



22. The complainant submitted that no cause of action has arose against the respondents as in terms of RERA Act. The respondent has changed the completion date and has undertaken to complete the project on or before 30.06.2019.

Determination of issues

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 under:

23. With respect to the **first issue** raised by the complainant, as per clause 29 of the apartment buyer's agreement dated 02.04.2012, the possession of the unit was to be handed over within 36 months plus grace period of 6 months from the date of execution of agreement or the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. In the present case, the apartment buyer's agreement was executed on 02.04.2012 and the building plan was approved on 3.05.2012. Therefore, the due date of handing over the possession shall be computed from 3.05.2012. The clause regarding the possession of the said unit is reproduced below:



"31. 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 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.

Accordingly, the due date of possession was 3.11.2015 and hence, the period of delay in delivery of possession is computed as 3 years ~~2~~ months ~~3~~ days till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of super area for any delay in offering possession of the unit as per clause 34 of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided. It has also been observed 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."



24. The possession of the apartment was to be delivered by 3.11.2015, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real

Estate (Regulation and Development) Act, 2016. 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 by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil its obligation.

25. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it will lead to flooding of complaints before this authority by each and every allottee, which shall hamper the very purpose of the completion of project as the project is almost complete and the respondent has applied for part occupation of the project on 25.04.2017. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. Therefore, as per section 18(1) proviso read with rule 15 of the Rules ibid, the complainant is entitled to prescribed rate of interest i.e. State Bank of India highest marginal cost of lending rate plus two percent, per annum.



26. With respect to the **second issue** raised by the complainant, the complainant has made baseless allegations without any supportive documents to prove that the respondent has decreased the area. Hence, this issue is answered in negative.
27. With respect to the **third issue** raised by the complainant, the respondent has himself admitted the fact that they had applied for OC on 25.04.2017 and further removed the objections raised by the department vide letter dated 12.09.2017, however the same is not supported by the documents.

Findings of the authority

28. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has



complete territorial jurisdiction to deal with the present complaint.

29. As per clause 29 of apartment buyer agreement dated 02.04.2012 for unit no.D-205 in "Ansal Heights", Sector 92, Gurugram possession was to be handed over to the complainants within a period of 36 months + 6 months grace period from the date of execution of agreement or from the date obtaining all required sanctions and approvals necessary for commencement of construction i.e. 03.05.2012 which comes out to be 03.11.2015. It was construction linked plan. However, respondent has not delivered the unit in time. Complainants have already paid Rs.41,86,528/- to the respondent against a total sale consideration of Rs.43,72,413/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e.10.75% per annum w.e.f 03.11.2015 till handing over the possession as per the provisions of section 18(1) of the Act ibid. 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 handing over the possession shall be paid before 10th of every subsequent month.



Directions of the authority

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

- (i) The respondent is directed to hand over the possession of the said unit by 30.06.2019 as committed by the respondent in the affidavit submitted by him.
- (ii) The respondent is directed to pay cumulative prescribed rate of interest i.e.10.75% accrued from due date of possession i.e. 3.11.2015 to 15.01.2019 on account of delay in handing over of possession to the complainant within 90 days from the date of decision and subsequent interest to be paid by 10th of every succeeding month.
- (iii) The apartment is not park facing, accordingly, PLC charges not applicable, adjustment is to be made if charged already paid.



31. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto

cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.

32. The order is pronounced.
33. 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

Dated: 15.01.2019

Judgement Uploaded on 16.01.2019

