



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

सिविल लाईंस, गुरुग्राम, हरियाणा

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

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint No. : 2441/2018
Date of Decision : 16.04.2021

Sanjeev Kumar Bhardwaj
H.No.A-704,Vatika G-21, Sector 83
Gurugram-122005

Complainant

V/s

M/s Ansal Housing & Construction Limited
15, UGF, Indra Prakash,
21, Barakhamba Road,
New Delhi -110001

Respondent

II

Complaint No. : 524/2019
Date of Decision : 16.04.2021

Aditya Tripathi & Kamla Tripathi both R/o
H.No.D-193.New Town Heights
Sector 91, Gurugram

Complainants

V/s

M/s Ansal Housing & Construction Limited
15, UGF, Indra Prakash,

Shlc c e 16/4/2021

21, Barakhamba Road,
New Delhi -110001

Respondent

III

Complaint No. : 1685/2019
Date of Decision : 16.04.2021

Rajeev Sharma
H.No.R-9/102, Raj Nagar
Ghaziabad-201002

Complainant

V/s

M/s Ansal Housing & Construction Limited
15, UGF, Indra Prakash,
21, Barakhamba Road,
New Delhi -110001

Respondent

IV

Complaint No. : 6134/2019
Date of Decision : 16.04.2021

Geeta Malik W/o Shri Anil Malik
H.No.IV/1-69, Gopi Nath Bazar
Delhi Cantt, New Delhi-110001

Complainant

V/s

M/s Ansal Housing & Construction Limited
15, UGF, Indra Prakash,
21, Barakhamba Road,
New Delhi -110001

Respondent

V

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Complaint No. : 6137/2019
Date of Decision : 16.04.2021

Vinod Kumar and Anil Kumari, both R/o
H.No.9, Ashoka Park Extention
East Punjabi Bagh, New Delhi-110026

Complainants

V/s

M/s Ansal Housing & Construction Limited
15, UGF, Indra Prakash,
21, Barakhamba Road,
New Delhi -110001

Respondent

Complaints under Section 31
of the Real Estate(Regulation
and Development) Act, 2016

Argued by:

For Complainant:

Sanjeev Kumar Bhardwaj

For Complainants

Aditya Tripathi, Kamal }
Tripathi & Rajeev Sharma }

For Complainant

Geeta Malik W/o Anil Malik }
Vinod Kumar & Anil Kumari }

For Respondent:

In person

Mr Sanjeev Bhardwaj, AR

Mr Sanjeev Sharma, Advocate

Ms Meena Hooda, Advocate

ORDER

This common order of mine seeks to dispose of the above mentioned complaints seeking refund of the amount deposited with the respondent-builder.

2. The above mentioned five complaints under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and

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XII	Date of execution of FBA (copy of FBA be enclosed)	19.03.2013(P/9)
XIII	Due date of possession as per ABA	48 months i.e. 18.03.2017
XIV	Delay in handing over possession till date	About four years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 37 @ Rs.5/- per sq ft per month for the delayed period

Payment details

XVI	Total sale consideration	Rs. 1,14,89,360/-
XVII	Total amount paid by the complainant upto Jan.2013	Rs.1,23,53,907/-

II

Project related details

I.	Name of the project	"Ansal Heights 86" Sector 86, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential

Unit related details

IV.	Unit No. / Plot No.	G-0903
V.	Tower No. / Block No.	G
VI	Size of the unit (super area)	Measuring 1360 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-

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IX	Category of the unit/ plot	Residential
X	Date of booking(original)	30.11.2011
XI	Date of Allotment(original)	17.01.2012(A-1)
XII	Date of execution of FBA (copy of FBA be enclosed)	12.12.2012(A-6)
XIII	Due date of possession as per FBA	12.12.2016(Inclusive of grace period of six months)
XIV	Delay in handing over possession till date	More than four years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 37 @ Rs.5/- per sq ft per month for the delayed period

Payment details

XVI	Total sale consideration	Rs. 52,72,496/-
XVII	Total amount paid by the complainant upto April, 2017	Rs.53,85,314/-

III

Project related details

I.	Name of the project	"Ansal Heights 86" Sector 86, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential

Unit related details

IV.	Unit No. / Plot No.	A-0903
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V.	Tower No. / Block No.	A
VI	Size of the unit (super area)	Measuring 1701.25 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	14.12.2012 (P/1)
XI	Date of Allotment(original)	14.02.2013 (P/6)
XII	Date of execution of FBA	14.01.2013 (P/3)
XIII	Due date of possession as per FBA	14.01.2017
XIV	Delay in handing over possession till date	About three years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 37 @ Rs.5/- per sq ft per month for the delayed period

Payment details

XVI	Total sale consideration	Rs. 1,14,06,217/-
XVII	Total amount paid by the complainant upto March,2019	Rs.1,18,71,971/-

IV

Project related details

I.	Name of the project	"Ansal Heights 86" Sector 86, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential

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Unit related details

IV.	Unit No. / Plot No.	H-12A05
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 1360 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	01.03.2012
XI	Date of Allotment(original)	
XII	Date of execution of FBA	05.12.2012(A-1)
XIII	Due date of possession as per FBA	December, 2016(inclusive of grace period of 6 months)
XIV	Delay in handing over possession till date	More than three years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 37 @ Rs.5/- per sq ft per month for the delayed period

Payment details

XVI	Total sale consideration	Rs.56,38,306/-
XVII	Total amount paid by the complainant upto Dec.2016	Rs. 65,43,321.18p.

V

Project related details

I.	Name of the project	"Ansal Heights 86" Sector 86, Gurugram
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II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	I-0904
V.	Tower No. / Block No.	I
VI	Size of the unit (super area)	Measuring 1360 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	28.09.2011
XI	Date of Allotment(original)	
XII	Date of execution of FBA (A-1)	04.01.2013
XIII	Due date of possession as per FBA	Jan.2017
XIV	Delay in handing over possession till date	About three years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 37 @ Rs.5/- per sq ft per month for the delayed period
Payment details		
XVI	Total sale consideration	Rs.56,90,621/-
XVII	Total amount paid by the complainants upto 04.11.2016	Rs. 56,31,153.48p.

3. Brief facts of the case can be detailed as under.

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A project by the name of 'Ansal Heights- 86' situated in Sector 86, Gurugram was being developed by the respondent-builder. The complainants coming to know about the same booked residential units detailed in the tabulated form on 14.01.2013, 30.11.2011, 14.12.2012, 01.03.2012 and 29.08.2012 respectively against total sale consideration of Rs.1,14,89,360/-, Rs.52,72,496/-, Rs.1,14,06,217/-, Rs.56,38,306/- and Rs.56,90,621/- leading to execution of Flat Buyer Agreements on 19.03.2013, 12.12.2012, 14.01.2013, 05.12.2012 and 04.01.2013. It is the case of the complainants that after booking of respective units and on the basis of terms and conditions mentioned in the FBAs, they started depositing various amounts and deposited Rs.1,23,53,907/- (upto Jan 2013) Rs.53,85,314/- (upto April 2017) Rs.1,18,71,970/- (upto March 2019) Rs.65,43,321/- (upto Dec. 2016) and Rs.56,31,153/- (upto 04.11.2016) respectively. It is their case that as per clause 3.1 of the FBA, the project was to be completed within four years inclusive of grace period and possession of the allotted units was to be offered to the complainants. But despite passage of due date, the respondent failed to complete the project and offer possession of the allotted units to them. So, after the due date they withdrew from the project and filed complaints seeking refund of deposited amount besides interest and compensation ^{on} ~~with~~ 24.12.2018, 19.11.2019, 25.11.2018, 02.12.2019 and 30.12.2019 respectively.

4. But the case of the respondent as set up in separate written replies is that though the complainants booked residential unit in its project known as Ansal Heights 86, situated in Sector 86, Gurugram and deposited various amounts but they did adhere to the schedule of payment and committed default in the same. There is some delay in completion of the project i.e. due to various reasons such as shortage of labour, raw-material, various restraint orders passed by different statutory authorities and other

circumstances beyond its control. It was denied that the respondent cheated the complainants and lured them to invest in its project and misappropriated funds received from them. In fact, the complainants failed to honour the contractual obligations and which led to delay in completion of the project and offer of possession of the allotted units to them. However, every effort is being made to complete the project and offer possession of the allotted units to various allottees including the complainants. It was denied that the complainants are entitled to seek refund of the deposited amount from the respondent. Moreover, if the complainants are allowed refund alongwith interest, then it may be harmful for the growth of real estate sector as well as the project in which the complainants were allotted units and the other allottees who are waiting for possession of their dream homes.

5. All other averments made in the complaints were denied in toto.

6. I have heard the learned counsel for both the parties and have also perused the case filed.

7. It is not disputed that the complainants on different dates booked residential units in the project of respondent-builder known as 'Ansal Heights 86' Gurugram against total sales consideration mentioned earlier. It led to execution of FBAs detailed earlier and on the basis of which they starts depositing different amounts. It is a fact that the due date for completion of the project and offer of possession of the allotted units has already expired. So, after that the complainants filed the above mentioned complaints seeking refund besides interest and compensation from the respondent-builder. It is contended on behalf of the complainants that though they deposited a major part of the sale consideration with the respondent but neither it completed the project by the due date nor offered

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possession of the allotted units to them. So, they cannot be asked to wait for completion of the project and offer of possession of the allotted units. In this regard besides referring to the letter of allotment, a reference is also being made to Flat Buyer Agreement. A perusal of both these documents coupled with schedule of payment and other documents relied upon by the complainants show that the respondent-builder failed to honour its contractual obligations. So, in such a situation, the allottees were right in withdrawing from the project and seeking refund of the amount besides interest and compensation. The contention of the learned counsel for the respondent is that though there is delay in completion of the project and offer of possession of the allotted units to the complainants but they would be compensated as per terms and conditions embodied in the flat buyer agreement and with particular reference to clause 37 which provides as follow:

That the Developer would pay to the Buyer @Rs.5/- per sq ft per month on Super Area for any delay in offering possession of the Unit in clause No.31 above after adjusting all dues including unpaid interest on account of late payments and any amounts of interest waived earlier on the said unit. Similarly, in the event of his/her failure to pay all dues before the due date as mentioned in offer of possession and/or failure to visit the site for Final Verification/Inspection or for taking possession/Keys of the unit for any reason (even if Sale deed has been registered) whatsoever, the Buyer shall be liable to pay, in addition to interest on delayed payments, Holding charges @Rs.5/- per sq ft per month of Super Area from due date mentioned in offer of possession letter till the Keys of the unit is taken by the Buyer. In case of delay in Final verification/inspection, the Buyer shall pay Holding charges from the date of expiry of time given in offer of possession till the actual date of Final verification/Inspection. Thereafter there will be a grace period of 60 days within which time the Buyer shall get the Sale deed of the unit registered and take the keys of his unit from Site in Charge/Estate Manager. In case keys of the unit are not taken within this grace period of 60 days, the buyer shall pay further holding charges upto the day of actual handing over of Keys.

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So, in view of the provision of compensation clause mentioned above, an allottee is not entitled to withdraw from the project. Secondly, if the plea of an allottee for withdrawal from the project and refund is allowed, then it may be detrimental for the health of the project as well as interest of other allottees who are waiting for their dream homes. Lastly, it is pleaded that the respondent-builder has offered possession to some of the allottees in other towers. Moreover, due to circumstances beyond its control such as shortage of labour, raw material, demonetisation and various restraint orders passed by statutory authorities, the construction of the project could not pick up to its full swing. Now, every effort is being made to complete the project by raising funds from other sources. So, the plea of the complainants seeking refund of the deposited amount is not maintainable and rather, they be asked to continue with the project and deposit the remaining amount so that the construction of the project could be completed and possession of the allotted units be offered to them.

8. It is not disputed that the complainants have deposited a major part of the sale consideration with the respondent-builder after allotment of residential units in their favour and execution of FBA. It is a fact that due date for completion of the project and offer of possession of the allotted units has already expired. So, in such a situation, can an allottee be asked to wait and not to seek refund. The answer is in the negative. In cases of **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan(2019) 5, SCC, 725** and followed in **Wg Cdr. Ariful Rahman Khan & Others Vs DLF Southern Homes Pvt Ltd. 2020, SCC online SC 667**, it was held by the Hon'ble Apex Court of the land that when the respondent/builder fails to complete the project in time and deliver the possession of the allotted unit to the complainant as per allotment letter or the apartment buyer agreement, then he has a right to ask for refund if the possession is

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inordinately delayed. Moreover, when the due date for completion of the project and offer of possession has already expired, then the allottee cannot be made to wait indefinitely to seek refund of the deposited amount with the respondent and offer of possession. So, the plea advanced in this regard on behalf of the respondent is devoid of merit.

9. It is also pleaded on behalf of the respondent that the project is being completed soon and possession of the allotted units would be offered to the complainants including the other allottees. It is pleaded that due to circumstances beyond the control of the respondent, the project could not be completed. But again the plea taken in this regard is devoid of merit. The respondent-builder has not placed on file any document to show the status and extent of construction. It is taking a lame excuse for delay for completion of the project such a shortage of labour, raw-material and various restraint orders passed by different statutory authorities and some social schemes launched by the Government of India. In case of **DLF Universal Ltd & Anr Vs Capital Greens Flat Buyers Association** etc. Civil Appeal No. 3864-3889 of 2020 decided on 14.12.2020, it was observed by the Hon'ble Apex Court of the land that delay in approval of building plans and issuance of stop work orders as a result of fatal accidents during the course of construction being force majeure conditions cannot be taken into consideration in achieving timely completion of contractual obligations. Even, there was also an exit offer given to the flat buyers on two occasions by the builder and which also resulted in delay in completing the project. So all these circumstances were not considered sufficient for invoking *force majeure* conditions and resulted in payment of delayed possession charges to the allottees by the builder. Thus, the plea advanced in this regard on behalf of the respondent is devoid of merit.

10. Lastly, it is pleaded on behalf of the respondent that if the plea of the allottees for refund is allowed, then it may be detrimental for the interest of the project as well as other allottees who are waiting for possession of their dream homes. Moreover, the project is likely to be completed very soon and offer of possession would be made to various allottees including the complainants. But again the plea advanced in this regard is devoid of merit. In cases of **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors, 2018(5) SCC 442** and followed by **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, it was held by the Hon'ble Apex Court of the land that a person cannot be allowed to wait indefinitely for possession of the allotted unit and is entitled to seek refund of the amount paid by him alongwith interest and compensation. Lastly, Section 18 of Real Estate(Regulation and Development) Act, 2016 provides for refund and which runs as under:

(1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building -*

(a)

(b)

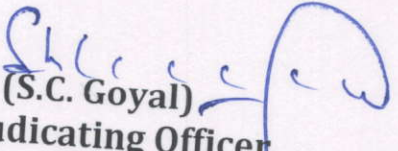
He shall be liable to demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

11. Thus, in view my discussion above and taking into consideration all the material facts brought on the record by both the parties, it is held that the claimants are entitled for refund of the amount deposited with the respondent-builder besides interest. Consequently, the following directions are hereby ordered to be issued to the respondent:

Shruti Chandra
16 Jul 2021

- i) To refund the entire amount of Rs.1,23,53,907/-, Rs.53,85,314/- Rs. 1,18,71,971/-, Rs.65,43,321/- and Rs.56,31,153/- besides interest @ 9.3.% p.a. from the date of receipt of each payment till the whole amount is paid to the respective complainants.
12. This order be complied with by the respondent within a period of 90 days and failing which legal consequences would follow.
14. Hence, in view of my discussion detailed above, the complaints filed by the complainants against the respondent-builder are ordered to be disposed off accordingly.
15. A copy of this order be placed in the connected case files bearing No.524/2019,1685/2019, 6134/2019 and 6137/2019.
16. File be consigned to the Registry.

16.04.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram 16/4/2021

Judgement uploaded on 23.04.2021