

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

Complaint no. : 271 of 2020  
Date of first hearing : 14.02.2020  
Date of decision : 23.02.2021

Nandita Singh  
R/o T-22/10, DLF Phase-III,  
Gurugram-122040

**Complainant**

Versus

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Karan Sehgal  
Shri Gagan Sharma

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 16.01.2020 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in

short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the apartment buyer's agreement executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

1.	Name and location of the project	"The Fernhill" in Village Mewka, Sector 91, Gurugram
2.	Project area	14.412 acres
3.	Nature of the project	Residential Project
4.	DTCP license no.	48 of 2010 dated 21.06.2010
	DTCP license validity status	20.06.2016
	Name of licensee	SRP Builders
5.	HRERA registered/ not registered	Registered vide no. 392 of 2017 [Phase-I] & 389 of 2017 [Phase- II]
	RERA registration valid up to	31.12.2019 [Phase-I] 31.12.2020[Phase- II]
6.	Date of allotment letter	20.06.2011 [Page 37 of complaint]
7.	Unit no.	0704-C-12A02,

		[Page 42 of complaint]
8.	Unit area	1618 sq. ft.
9.	Payment plan	Construction linked plan [page 65 of complaint]
10.	Date of execution of flat buyer agreement	10.07.2013 [page 40 of complaint]
11.	Total consideration	Rs. 46,09,050/- [as per schedule payment at page 65 of complaint]
12.	Total amount paid by the complainant	Rs. 25,03,783/- [as per averments at page 28 of complaint]
13.	Date of delivery of possession. (Clause 5.1 – 48 months + 6 months grace period from date of execution of agreement or commencement of construction of the particular tower in which the said unit is located, whichever is later)	<b>10.01.2018</b>  (Note: calculated from the date of flat buyer agreement as failed to provide the date of commencement of construction)
14.	Delay in handing over possession till date of decision i.e. 23.02.2021	3 years 1 month 13 days

#### A. Brief facts of the complaint

3. The complainant submitted that the complainant kept waiting for the agreement however; the respondent company on one pretext or other never sent the copy of the agreement. It is pertinent to mention here that during the time, when the complainant was eagerly waiting for the builder buyer

agreement, the respondent company raised several demands, strictly as per the plan opted by the complainant. However, the complainant, unaware of the malafide intention and considering the delay in getting the agreement signed a normal delay kept making the payments, as and when demanded by the respondent company.

4. The complainant submitted that various mails were made by the complainant wherein the complainant voiced her concerns regarding delay in delivery of the possession, unilateral terms and conditions of the builder buyer agreement and several other important issues however, the respondent company, aware of the said mails and duty bound to reply to the same, choose to avoid the same resultant in further harassment of the complainant.

5. The complainant submitted that the complainant was left with no option but to stop making any further payment till the issued raised by her gets resolved, since under no circumstances these unreasonable demands can be accepted by the complainant, it's her hard-earned money. Complainant vide reply dated 04.04.2018 to the legal notice dated 06.03.2018,

considering the above-mentioned acts and behavioral pattern of the respondent company and the on-going delay in handing the occupational certificate/completion certificate of the above-mentioned unit, apprised the respondent company that she shall not make any payment to the respondent company until the above mention unit along with the occupation certificate is handed over to the complainant. Further, it was also apprised that the complainant is also not liable to pay afore mentioned payment/demands made by the respondent company till the final disposal of the issues raised by the complainant in several mails and also in para 5 of the reply to the legal notice sent by the respondent company.

6. The complainant submitted that it is borne out that the respondent company had deliberately and willfully harassed the complainant with a view to cheat the complainant and thereby cause unlawful gain to themselves and unlawful loss to the complainant. As per clause 5.1 of the said agreement dated 10.07.2013, the possession of the unit in question was to be handed over within a period of 48 months plus 6 months grace period from the date of execution of agreement or from the

date of commencement of construction of the particular tower/block in which the said unit is situated whichever is later. Both the parties failed to provide the sufficient document pertains to the date of commencement of construction. Therefore, the due date of possession calculated from the date of flat buyer agreement and the due date comes out to be 10.01.2018.

7. The complainant submitted that at the time of booking the above-mentioned unit, a brochure containing the details qua the payment plans available with the respondent company was handed over to the complainant and accordingly, the complainant, after considering the financial constrain, was pleased to opt for the construction link plan. The same was communicated to the respondent company and accordingly, it was represented to the complainant that within a week a builder buyer agreement shall be sent to the respondent wherein the understanding and representations made by the respondent company shall be written down in details so as to give a clear picture qua the booked unit.

**B. Relief sought by the complainant.**

- i. Direct the respondent to hand over the unit alongwith the interest towards delay in handing over of the unit;

**C. Brief facts of the respondent.**

The respondent contests the complaint on the following grounds:

- i. That instant complaint filed by the complainant is false, frivolous, baseless and nothing but gross abuse of the process of law and this Ld. Authority. It has been filed with the sole purpose of harassing and extracting unlawful gains from the respondent company. It is submitted that the main intent of the legislature in enactment of the RERA Act, 2016 was to provide relief to aggrieved buyers/customers however, same cannot be misused by wishful buyers/customers to arm-twist the builders into extracting unlawful gains and wriggle out of their contractual liability. Also, before arriving at any decision this Hon'ble Authority is mandated to apply the principle of natural justice and take a just and valid decision on the case at hand.
- ii. The present complaint is liable to be dismissed as the same has been filed without any valid or tenable cause of action. The conduct of the respondent has been in

- consonance with the terms and conditions agreed between the parties and the complainant is trying to wriggle out of her responsibility by making false and baseless allegations against the respondent company.
- iii. It is submitted that the present complaint has been filed prematurely well before the agreed date for handover of possession of the flat/unit in dispute. That seeing the downturn in the real estate market the complainant is unwilling to make further payments against the provisionally allotted unit and has approached this Learned Authority to extract refund of the deposited amount and other unlawful gains from the respondent company. That the complainant has filed the present complaint prior to arising of any cause of action in its favour or against the respondent.
- iv. That the complainant approached the respondent company in the month of April, 2011 and applied for booking of a unit in the "Fernhill Project" at Gurgaon, Haryana of the respondent company by filing application form dated 26.05.2011.
- v. Based on the representation made by the complainant in the aforesaid application, a flat/unit no. C-12A02 in Tower-C, Phase-1 of the project was provisionally allotted in name of the complainant for a total sale consideration of Rs.53,37,150/- and an allotment



letter dated 28.07.2011 was duly issued in name of the complainant in this regard. Thereafter, a flat buyer agreement dated 10.07.2013 was executed between the parties stipulating all the relevant terms and conditions therein.

- vi. That due to delay in sanctioning of the building plan, license etc, on account of environmental clearance issues, increased FAR and other technical issues, that were beyond the reasonable control of the respondent company, the construction of the tower-H consisting of the provisionally allotted unit of the complainant commenced some times later than the date of execution of the FBA.
- vii. It is pertinent to mention that post issuance of the license for development of the project by the concerned authorities, the respondent also got issued layout plan and zoning plan and the respondent was fully committed to complete the project on time. However, the construction and development activities of the project came to a standstill due to a Government notification wherein the Government notified some part of the project to be covered under newly notified green belt. That due to this environmental notification hindrance the project got delayed and only after great persuasions and follow ups the issue got resolved and respondent could move

ahead with the construction and development work. The license dated 21.06.2010, show cause notice dated 17.05.2013, approval letter dated 04.06.2013 & 03.12.2013, letter dated 03.12.2013 & 27.05.2014, request letter dated 22.07.2014 and environmental clearance letter dated 17.10.2014 were issued for the present matter.

- viii. That on the present date the Phase 1 of the project stands almost completed with construction work of Phase 2 also going on. It is submitted that out of total 14 (fourteen) towers, Tower-N and Tower-P along with lift facilities are fully completed and occupancy certificate has also been applied for the same. The Tower-C in which the flat of the applicant is there is almost complete. It is pertinent to mention herein that there was continuous default in making timely payment by the complainant and the complainant by way of present case is trying to take advantage of its own wrong.
- ix. 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 upto the date of possession according to the payment plan applicable to him/her (Clause 4.3). That timely payment of the installment amount was the essence of the contract however, the Complainants have failed to

honour the same. That out of total sale consideration of Rs. 53,37,150/- of the unit/flat, only a sum of Rs.25,03,784/- has been received by the Respondent Company despite repeated requests and reminders to the Complainant towards the same. That on one side the Complainant refused to pay the total sale consideration and on the other hand he is alleging delay in handover of possession of the unit which shows malafide and ill-will on part of the Complainant.

- x. That the respondent company has also got the project registered under RERA, Haryana as per RERA Guidelines and norms, wherein a RERA registration Certificate dated 22.12.2017 was issued for Phase - 1 of the project has been duly issued in favour of the respondent company.
- xi. That the complainant is fully aware of these facts however, allegedly feeling aggrieved by the alleged delay in development and handover of the unit the complainant went ahead and filed the present complaint making baseless allegations against the respondent company.
- xii. It is submitted that delay in sanctioning of the building plan, license etc, on ground of environmental clearance issues, increased FAR and other technical

issues, was beyond the reasonable control of the respondent company and now the respondent company has got all the clearances, licenses, plans in place. Further, in terms of the said FBA it cannot be said that the respondent company has breached any terms or conditions agreed between the parties and that there is any delay in handover of possession of unit to the complainants. That as on the present date the terms of the FBA still subsists and the respondent company is contractually liable, obligated and committed to complete the construction work of the project and handover the possession of the subject unit complete in all respect to the complainant.

8. 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 complainants at a later stage.

D. Findings of the authority.

**Issue:** Whether the complainants are entitled to delay possession charges? if so, at what rate of interest and what period?

9. The present complaint has been filed seeking delay possession charges as provided under the proviso to section 18(1) of the Act and hence the complaint is maintainable. Sec. 18(1) proviso reads as under.

*"Section 18: - Return of amount and compensation*

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided 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 the handing over of the possession, at such rate as may be prescribed."*

10. Clause 5.1 of the flat buyer agreement is reproduced below:

*"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 said Residential Project and the said Flat as far as possible within **48 (Forty Eight) months** with an extension period of 6 (Six) 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 building plan whichever is later."*

11. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention

as per provisions of section(11)(4)(a) of the act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 5.1 of the flat buyer agreement executed between the parties on 10.07.2013, possession of the unit in question was to be handed over within a period of 48 months plus 6 months grace period from the date of execution of agreement or from the date of commencement of construction of the particular tower/block in which the said unit is situated whichever is later. The grace period of 6 months is allowed to the respondent due to exigencies beyond the control of the respondent. Both the parties failed to provide the sufficient document pertains to the date of commencement of construction. Therefore, the due date of possession calculated from the date of flat buyer agreement and the due date comes out to be 10.01.2018. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

12. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

13. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer agreement dated 10.07.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. In this case, the respondent has not offered the possession of the unit to the complainant till date. As such the complainant is entitled to delayed possession interest at rate of the prescribed @ 9.30% p.a. w.e.f. 10.01.2018 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

14. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 10.01.2018 till the offer of possession.
- ii. 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 offer of



- possession shall be paid before 10th of each subsequent month.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the flat buyer agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
15. Complaint stands disposed of.
16. File be consigned to registry.

(Samir Kumar)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021

(Dr. K.K. Khandelwal)  
Chairman