

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

**Complaint no. : 3621 of 2020**  
**Date of first hearing: 11.11.2020**  
**Date of decision : 23.02.2021**

Mr. Ram Avtar Gupta  
R/o House no. 1199, Sector-19  
Faridabad

**Complainant**

Versus

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Atul Mangla  
Shri Gagan Sharma

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 21.10.2020 has been filed by the complainants/allottees 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 complainants, 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
1.	Nature of the project	Residential Project
2.	DTCP license no.	48 of 2010 dated 21.06.2010
	DTCP license validity status	20.06.2016
	Name of licensee	SRP Builders
3.	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]
4.	Date of allotment letter	25.07.2011 [Page 34 of complaint]
5.	Unit no.	0704-D-0203 [Page 46 of complaint]



6.	Unit area	1348 sq. ft.
7.	Payment plan	Construction linked plan
8.	Date of execution of flat buyer agreement	18.07.2013
9.	Addendum to flat buyer agreement	29.07.2014
10.	Total consideration	Rs. 38,32,860/- [as per submissions made by the complainant at page 5 of complaint]
11.	Total amount paid by the complainant	Rs. 40,55,327/- [as per submissions made by the complainant at page 5 of complaint]
12.	Commencement of construction	14.08.2014 (as per call notice date 28.07.2014, pg. no. 76 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 whichever is later)	<b>14.02.2019</b> (Note: calculated from the date of Commencement of construction i.e. 14.08.2014)
14.	Delay in handing over possession till date of decision i.e. 23.02.2021	2 year 9 days

**A. Brief facts of the complaint:-**

3. The complainant submitted that the complainant booked an flat in the said project on 15.06.2011 and signed the flat buyer agreement dated 18.07.2013. All instalments are paid as demanded by the company time and again.

The total amount of Rs. 40,55,327/- has been paid to promoter/developer by the complainant till March 2017.

4. The complainant submitted that the respondent company has not given the possession of apartment/unit no. 0704-D-0203. As per the BBA the possession was to be handed over to complainant in January 2018 while it was not handed over till date
5. The complainant submitted that the complainant raised a concern before the respondent company several of times. Though the complainant was always ready and willing to pay the due installments if there is sustainable progress in the project, and it is also to mention of all efforts, it was difficult for the complainant to get the actual status of the construction.
6. The complainant submitted that the respondent has utterly failed to fulfil his obligations to deliver the possession in time or refund the money along with the interest and has caused mental agony, harassment and huge losses to the complainant.
7. The complainant submitted that the respondent is the defaulter in his various other projects by not delivering the possession of the units in time. It is the tactics of the respondent to cheat and dupe the innocent and gullible

buyers by diverting the money collected from them from their own use or benefits.

8. The complainant submitted that the promoter/respondent company has not given the possession of the apartment/unit no. 0704-D-0203. As per the BBA the possession was to be handed over to the complainant in January 2018 while it was not handed over till date.

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

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

**C. Findings of the authority.**

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

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."*

9. As per clause 5.1 of the said agreement dated 18.07.2013, 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. The date of start of construction is 14.08.2014. Therefore, the due date of possession comes out to be 14.02.2019. 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."*

10. 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.
11. The authority issued notice of the complaint to the respondent by speed post and also on given email address [atfernhillgrievancesgurgaon@ansalapi.com](mailto:atfernhillgrievancesgurgaon@ansalapi.com), [gagansharmaadvocate@gmail.com](mailto:gagansharmaadvocate@gmail.com) the delivery reports have been placed in the file. Despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
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. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
14. The Authority, on the basis of information and other submissions made and the documents filed by the

complainants and the respondent, is of considered view that there is no need of further hearing in the complaint.

15. 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.

16. 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 rule 28(2), 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 18.07.2013, 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. The date of start of construction is 14.08.2014. Therefore, the due date of possession comes out to be 14.02.2019. 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.

17. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer agreement dated 18.07.2013 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 complainants till date. As such the complainant is entitled to delayed possession interest at rate of the prescribed @ 9.30% p.a. w.e.f. 14.02.2019 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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

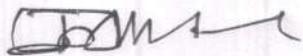
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30 % per annum for every month

- of delay on the amount paid by the complainants from due date of possession i.e. 14.02.2019 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 delay 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.
19. Complaint stands disposed of.
20. File be consigned to registry.

  
(Samir Kumar)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021

  
(Dr. K.K. Khandelwal)  
Chairman