

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

Complaint no: 963 of 2020
First date of hearing: 03.04.2020
Date of decision: 23.02.2021

1. Mrs. Gouri Verma
2. Mr. Deepak Kumar Taneja
Both R/o: House No. 270/4, Ram
Nagar,
Gurugram, Haryana-122001

Complainants

Versus

M/s Ansal Housing Ltd.
Office at:- Ansal Plaza Mall, 2nd Floor,
Near Vaishali Metro Station, Sector-1,
Vaishali, Ghaziabad, U.P.-201010

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Ms. Priyanka Agarwal
Ms. Meena Hooda

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 02.03.2020 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 allottee as per the flat 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	"Ansal Heights, 86", Sector-86, Gurugram
2.	Project area	12.843 acres
3.	RERA Registered/ not registered.	Not registered
4.	Nature of the project	Residential project
5.	DTCP license no.	48 of 2011 dated 29.05.2011
	DTCP license validity status	28.05.2017
	Name of licensee	Resolve Estate Pvt. Ltd
6.	Unit no.	I-0204 [Page 19 of complaint]
7.	Apartment measuring	1360 sq. ft.
8.	Date of execution of apartment buyer's agreement	18.09.2012
9.	Payment plan	Construction linked payment plan [page 32 of complaint]
10.	Total consideration	Rs.51,94,762/- as per customer ledger dated 08.09.2019 at page 41 of complaint
11.	Total amount paid by the	Rs.52, 61,797.07/- as

	complainant till date	per customer ledger dated 08.09.2019 at page 39 of complaint
12.	Due date of delivery of possession as per clause 31 of flat buyer's agreement i.e. 42 months from the date of execution of agreement or within 42 months from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later + 6 months grace period.	01.10.2017 Note: due date of possession has been calculated from the date of approval of building plan i.e 1.10.2013, pg 4 of complaint.
13.	Date of Approval of Building Plan	03.09.2013
14.	Delay in handing over possession	

A. Brief facts of the complaint.

3. The complainant submitted that that according to the statement the complainants paid a sum of Rs 52,61,796.55/- (Including Tax, Interest , etc.) to the respondent till Feb 2016 and before this builder was demanded more than 100% amount without doing appropriate work on the said project, which is illegal and arbitrary.
4. The complainant submitted that initial said unit was allotted to Mr. Rajat Shankar Berry and finally respondent endorsed to the said agreement in favour of complainants. By this endorsement complainants became legal allottee and purchaser of the said unit.

5. As per clause 31 of the flat buyer's agreement 18.09.2012, the possession was to be handed over within 42 months plus 6 months grace period from the date of execution of agreement or from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later.
6. The complainant submitted that complainants booked apartment dated 2011 (more than 8 year ago) and As per Flat Buyer Agreement Builder liable to offer possession on before 18th March 2016 so far. The builder started construction work almost 7 year back still respondent want to more year to complete the project that 8- 10 year long period make adverse effect on construction quality of project.

B. Relief sought by the complainants.

- i. Direct the respondent to hand over the actual physical possession of the flat to the complainant.
- ii. Direct the respondent to pay interest at the prescribed rate on the amounts paid by the complainant for the delayed period of handing over possession till handing over of possession.

C. Reply by the respondent.

7. The respondent in its reply has submitted that the delay caused was due to reasons beyond its control and as stated in the reply. The respondent contests the complaint on the following grounds:
8. The respondent in its reply has submitted that the complainant applied to the respondent for provisional allotment of a unit in the project. The complainant in pursuance of the aforesaid application form was allotted an independent unit bearing No.-I-0204, in tower-I, sale area 1360 sq. st.. The complainant consciously and wilfully opted for the construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant.
9. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the

respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court at Chandigarh duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process; simultaneously, orders at different dates passed by the hon'ble national green tribunal restraining thereby the excavation work causing air quality index being worse, may be harmful to the public at large without admitting any liability. Apart from these, the demonetization is also one of the main factor to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only Buy Liquid Cash. The sudden restriction on withdrawals led the respondent unable to cop with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies and autonomous bodies of Haryana Government.

10. That, it is submitted that several allottees, including the complainant, has defaulted in timely remittance of payment of instalment which was an essential, crucial

and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when proposed allottee default in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the Real Estate Regulatory Authority of the said project by giving afresh date for offering of possession. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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?

11. 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."

12. 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 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 31 of the flat buyer's agreement 18.09.2012, the possession was to be handed over within 42 months plus 6 months grace period from

the date of execution of agreement or from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. The grace period of 6 month is allowed to the respondent due to exigencies beyond the control of the respondent. In present case, the fire approval was obtained by the promoter on 24.11.2015 whereas the building plans were approved on 03.09.2013 and date of commencement of construction has been gathered from the statement of account submitted by the promoter wherein date of commencement of construction has been shown as 01.10.2013. Accordingly, the due date of possession is to be taken from the date of commencement of construction i.e 01.10.2013 Hence, the due date is being calculated from the date of commencement of construction, which comes out to be 01.10.2017. The last demand raised by the promoter does not seems to be justified as the same is applicable at the time of offer of possession. Occupation certificate has not yet been obtained by the respondent. Clause 31 of the flat buyer's agreement is reproduced below:

"31. The developer shall offer possession of the unit any time, within a period

of 42 months from the date of execution of agreement or within 42 months 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 dues by buyer and subject to force majeure circumstances as described in clause 32. Further there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit”.

13. However, the respondent filed the reply on 22.02.2021 and as per the reply the respondent annexed the approval of building plan as annexure II dated 03.09.2013 and date of commencement of construction has been gathered from the statement of account submitted by the promoter wherein date of commencement of construction has been shown as 01.10.2013. Hence, the due date is being calculated from the date of commencement of construction, which comes out to be 01.10.2017.

14. 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.

15. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainant is of considered

view that there is no need of further hearing in the complaint.

16. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 18.09.2012 executed between the parties. As such this project is to be treated as an on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

17. 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. As such the complainant is entitled to delayed possession at rate of the prescribed interest @ 9.30% p.a. w.e.f. 03.09.2017 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. 09.30% per annum for every month of delay on the amount paid by the

complainants from due date of possession i.e. 03.09.2017 till the offer of possession.

ii. 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 offer of possession shall be paid before 10th of each subsequent month as per rule 16(2) of the rules.

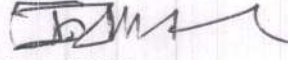
ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iii. The respondent shall not charge anything from the complainant which is not part of the flat buyer's agreement.

iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @09.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges as per section 2(za) of the act.

19. Complaint stands disposed of.

20. File be consigned to registry.



(Dr. K.K.
Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021

(Samir Kumar)
Member

Judgement uploaded on 08.06.2021



HARERA
GURUGRAM