

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

Complaint no. : 3244 of 2020
First date of hearing: 28.10.2020
Date of decision : 23.02.2021

1. Mrs. Sunita Malhotra
2. Ms. Garima Malhotra
Both R/o: Flat No. 201, Vaikunth Appt,
Prin S V Desai Marg, Opp. Nabard Vihar Flats
Navrangpura, Ahmedabad-380009

Complainants

Versus

M/s Ansal Housing & Construction 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 complainant
Advocate for the respondent

ORDER

1. The present complaint dated 19.10.2020 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 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 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	"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
6.	Unit no.	H-0505 [Page 22 of complaint]
7.	Apartment measuring	1360 sq. ft.
8.	Booking Date	30.11.2011 [page 15 of complaint]
9.	Date of execution of apartment buyer's agreement	19.12.2012
10.	Payment plan	Construction linked payment plan [page 35 of complaint]

11.	Total consideration	Rs.52,17,824/- as per customer ledger dated 17.05.2019 at page 41 of complaint
12.	Total amount paid by the complainant till date	Rs.49,63,475.79/- as per customer ledger dated 17.05.2019 at page 40 of complaint
13.	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.	03.09.2017 Note: due date of possession has been calculated from the date of approval of building plan i.e. 03.09.2013
14.	Date of Approval of Building Plan	03.09.2013

A. Facts of the complaint

3. The complainants submitted that based on promises and commitment made by the respondent, complainants booked a 2BHK flat admeasuring 1360 Sq Ft, along with one covered car parking in the unit no. H-0505, Tower-H in residential project "Ansal Heights 86", sector 86, Gurugram, Haryana. The initial booking amount of Rs. 643737/- (including tax) was paid.
4. The complainants submitted that the respondent to dupe the complainants in their nefarious net even executed flat buyer

agreement signed between M/S Ansal housing and construction Ltd. and complainants dated 19.12.2012 .Respondent create a false belief that the project shall be complete in the bound manner and in the garb of this agreement persistent raised demands due to which they are able to extract huge amount of money from the complainants.

5. The complainants submitted that they booked apartment dated 30.11.2011 and as per flat buyer agreement builder liable to offer possession on before 19.06.2016 so far. Still builder committed new date with Authority in December 2021 is impractical, unacceptable and he made his escape from the Authority legal action. Hence, this complaint inter-alia for the following reliefs:

- 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.
6. 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.

B. 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:

- i. That the respondent is a public limited company registered under the Companies Act, 1956 having its registered office at 606, Indraprakash, 21, Barakhamba Road, New Delhi - 110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Vaibhav Chaudhary, whose Authority Letter is attached herewith. The above said project is related to Licence No.48 of 2011 dated 29.05.2011 received from Director General Town and Country Planning (DGTCP), Haryana, Chandigarh over the land measuring 12.843 Acres comprising in Rect. No.19, Killa No.3 Min (6-0), 4 (8-0), 5 (8-0), 8/1 (0-8), 13/2 (0-8), 1/1 Min (0-4), 17/1 (17/1 (5-14), 24/2/1 (1-8), 25 (8-

0), 7 (8-0), 14 (8-0), 17/2 Min (0-18), Rect. No.14, Killa No.19 (8-0), 20 (8-0), Rect. No.15, Killa No.14/2 (3-7), 16 (8-0), 17 (8-0), 24/1 (4-8), 22/2 Min (0-5), 23 Min (7-15) situated within the revenue estate of Village Nawada-Fatehpur, Gurugram, which falls within Sector-86, Gurugram, Manesar-Urban Development Plan. **The building plans of the project** have been approved by the DGTCP, Haryana vide memo No. ZP-781/D /(BS)/2013/50373 **dated 03.09.2013**. Thereafter, the respondent herein was granted the approval of **Fire Fighting Scheme from the Fire Safety Point of view** of the Housing Colony measuring 12.843 acres by the Director, Haryana Fire Service, Haryana, Chandigarh vide Letter Memo No. DFS/F.A./2015/326 /66492 **dated 24.11.2015**.

- ii. 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.-H-0505, in Tower-H, Sale Area 1360 Sq. ft.. 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.

- iii. 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.

- iv. 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.

8. 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 and submission made by the parties.

C. Findings of the authority

9. 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 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 19.12.2012, 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. 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".

10. 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. The authority's attention was drawn by the counsel for the complainant that promoter is duty bound to apply for fire approval within 60 days from the date of approval of building plan and here the promoter failed to do so, therefore the authority is of the view that the

promoter cannot be allowed to take benefit of his own fault. Moreover, 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 which shows that the promoter has started the construction after the approval of building plans only. Accordingly, the due date of possession has been calculated from the date of approval of building plan i.e. 03.09.2013. Hence, the due date of possession comes out to be 03.09.2017. The last demand raised by the promoter does not seem 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.

11. 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 19.12.2012 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.
12. 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 delay possession charges at prescribed rate of interest @ 9.30% p.a. w.e.f. 03.09.2017 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules.

13. 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 date of handing over of possession. 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 date of handing over of possession shall be paid before 10th of each subsequent month.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

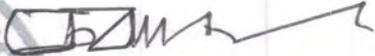
- iii. The respondent shall not charge anything from the complainant which is not part of the flat buyer's agreement.
- iv. Interest on the delay payments from the complainant shall be charged at the prescribed rate @09.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

16. Complaint stands disposed of.

17. File be consigned to registry.


(Samir Kumar)
Member


सत्यमेव जयते


(DR. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021

Judgement uploaded on 09.06.2021.

HARERA
GURUGRAM