

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

Complaint no. : 6283 of 2019
Date of first hearing : 14.02.2020
Date of decision : 23.02.2021

1.Satpal Sharma
2.Rajesh Kumar
Both R/o House No. 122, Sector-22-A
Gurugram, Haryana

Complainants

Versus

1.M/s Ansal Properties and Infrastructure
Ltd.
2. Mr. Pranav Ansal (Director)
Both Regd. Office: 115, Ansal Bhawan, 16,
K G Marg, New Delhi-110001.
3. M/s Samyak Projects Pvt. Ltd.
Office at: 111, 1st Floor, Antriksh Bhawan
22, Kasturba Gandhi Marg, New Delhi-
110001

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

Chairman
Member

APPEARANCE:

Shri Satish Tanwar
Shri Gagan Sharma

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 18.12.2019 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
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 Pvt. Ltd.
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.	Unit no.	0704-F-1001, Tower F [Page 66 of complaint]
7.	Unit area	1618 sq. ft.
8.	Payment plan	Construction linked plan [page 89 of complaint]
9.	Date of execution of flat buyer agreement	23.07.2013 [page 64 of complaint]
10.	Total consideration	Rs. 52,88,610/- [as per customer ledger dated 31.10.2017 at page 93 of complaint]
11.	Total amount paid by the complainant	Rs. 45,67,402.89/- [as per customer ledger dated 31.10.2017 at page 102 of complaint]
12.	Commencement of construction	14.08.2014 (as per customer ledger dated 31.10.2017 at page 95 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)	14.02.2019 (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 complainant.

3. The complainants submitted that the original allottees were Smt. Asha Sachdeva & Jitan Sachdeva. The original allottees transfer the said unit in favour of the complainants on

16.08.2012. On 23.07.2013 the flat buyer agreement executed between the parties.

4. The complainants submitted that they visited the site where the project to be developed by the respondents and shocked to see that the construction work was not going on in progress by the respondents and from physical verification at the project site and the respondents will not be able to deliver the possession of the unit in near future.
5. As per clause 5.1 of the said agreement dated 23.07.2013, 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.

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. Reply by the respondent.

6. The respondent contests the complaint on the following grounds:

- i. 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.
- ii. 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.

- iii. 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 26.04.2011.
- iv. Based on the representation made by the complainant in the aforesaid application, a flat/unit no.F-1001 in Tower-F, Phase-2 of the project was provisionally allotted in name of the complainant for a total sale consideration of Rs.52,88,610/- and an allotment letter dated 26.07.2011 was duly issued in name of predecessor of the complainant in this regard. Thereafter, a flat buyer agreement dated 23.07.2013 was also executed between the parties stipulating all the relevant terms and conditions therein.



- v. That the respondent company in its standard flat buyer agreement, by way of clause 5.1 provided for the timeline for handover of possession of the units to its various buyers. As per said clause 5.1, the handover of the units was to be calculated from the date of execution of the flat buyer agreement or from the date of commencement of construction of the particular tower/block in which the said unit is situated subject to sanction of the building plan, whichever is later.
- 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. 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 at a very fast space. 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 structure of the tower F

is complete and the internal/finishing work is going on at a fast pace. The tower is likely to be completed and offered for possession within next six(6) months.

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.52,88,610/- and GST as applicable for the unit/flat, only a sum of Rs.45,67,402/- has been received by the respondent.

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 with validity upto 31.12.2020 for Phase - 2 of the project has been duly issued in favour of the respondent company.

xi. 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.

7. 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.

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?

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."

8. 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), 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 23.07.2013, 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.

9. 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. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer agreement dated 23.07.2013 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.

11. 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.

12. 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.

13. 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.

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

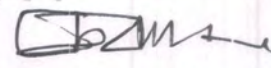
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 14.02.2019 till the offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the 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.
15. Complaint stands disposed of.
16. File be consigned to registry.


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)
Chairman

Dated: 23.02.2021

Judgement uploaded on 09.06.2021.