

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

Complaint no. : 4977 of 2020  
Date of first hearing : 23.02.2021  
Date of decision : 23.02.2021

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**HARERA**  
**GURUGRAM**

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1. Mr. Rajesh Kumar
2. Mrs. Usha Rani  
Both R/o 1041, Near Gramin Bank,  
Main Road, Badshapur, Gurugram-  
122101

**Complainants**

Versus

1. M/s Ansal Properties and Infrastructure  
Ltd.  
Regd. Office: 115, Ansal Bhawan, 16, K G  
Marg, New Delhi-110001
2. M/s Samyak Projects Pvt. Ltd.  
Office at: 111, F.F, Antriksh Bhavanarg,  
22, K.G Marg, New Delhi-110001

**Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Ms. Shivali & Shri Nilotpal  
Shyam  
Shri Gagan Sharma

Advocate for the  
complainants  
Advocate for the  
respondents

**ORDER**

1. The present complaint dated 18.01.2021 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
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	26.07.2011 [Page 23 of complaint]

7.	Unit no.	0704-G-0603, Tower G [Page 29 of complaint]
8.	Unit area	1618 sq. ft.
9.	Payment plan	Construction linked plan [page 52 of complaint]
10	Date of execution of flat buyer agreement	30.07.2013 [page 27 of complaint]
11	Total consideration	Rs. 52,07,710/- [as per customer ledger dated 14.08.2020 at page 67 of complaint]
12	Total amount paid by the complainant	Rs. 35,49,305.95/- [as per customer ledger dated 14.08.2020 at page 71 of complaint]
13	Commencement of construction	14.08.2014 (as per customer ledger dated 14.08.2020 at page 71 of complaint)
14	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)
15	Delay in handing over possession till date of decision i.e. 23.02.2021	2 year 9 days

A. Brief facts of the complaint:-

- The Complainant submitted that the Respondent No. 2 has claimed that they have acquired rights , title and interests from landowners (Aravali Heights Infratech Ltd. and SRP

Builders Ltd.) wherein the said land owners have obtained License from the Director General, Town & Country Planning, Haryana ("DGTCP") for development of the project land into group housing complex comprising of multi-storied residential apartments in accordance with law. The respondent No. 1 claimed that they have obtained marketable, construction and development rights with regard to the impugned project from respondent no. 2 wherein the respondent no.1 was further assigned to realize the sale price from the allottees including complainant in accordance with terms of agreements entered between respondents. Accordingly, all the payments were made by the complainant through respondent company only.

4. The complainants submitted that as the Complainants were looking for a good residential property, for themselves and his family members, therefore, on persuasion of the Respondents, the Complainants had shown his willingness to book a Flat in the impugned project.
5. The Complainants submitted that based on aforementioned representation and enquiries made, the complainants submitted application in 2011 along with cheque dated 30-04-2011 of Rs 400000/- for allotment of unit no. 0704-G-0603 of "THE FERNHILL" project. Accordingly, allotment

letter dated 26.07.2011 was issued for the impugned Unit by the respondent company in favour of complainants.

6. The complainants submitted that the parties entered into agreement i.e. Flat Buyer's Agreement(FBA) dated 30.07.2013 for the sale of said unit no. 0704-G-0603. The respondent company executed the agreement for sale wherein the complainant agreed to the terms and conditions of the standard form of contract i.e FBA as set forth under this agreement wherein form FBA made on dotted lines. The said FBA was followed by addendum dated 30.07.2014.
7. The complainants submitted that as per FBA, the respondent company agreed to sell/ convey/ transfer the flat unit number 0704-G-0603, with the right to exclusive use of parking space for an amount of Rs. 42,79,610/- which includes basic sale price and Rs. 2,00,000/- as car parking charges but excludes external development charges and infrastructure development charges, preferential location charges and interest free maintenance security and in addition to, club membership, electricity connection , plus applicable taxes. The complainants had already paid a sum of Rs. 35,49,305/- on account of part sale consideration, taxes , etc. in respect of the impugned project.



8. The complainants submitted that the respondent company issued allotment letter dated 26.07.2011 wherein the total consideration for the said unit no. 0704-G-0603 was fixed as Rs. 42,79,610/-.
9. That the possession of flat was proposed to be handed over in accordance with clause 5 of FBA wherein as per clause 5.1 of the FBA, the possession date for the impugned unit 0704-G-0603 was agreed to be within 48 months with an extended period of 6 months from the date of commencement of construction.
10. The complainants submitted that the clause 5.1 of FBA is part of standard form of agreement which is biased, one sided, amounting to unfair trade practice as the complainants was compelled to sign on dotted lines in view of one sided standard form of agreement i.e. FBA. Therefore , it is not binding on the complainants in view of the judgement of Hon'ble Supreme Court in Pioneer Urban Land & Infrastructure Ltd. V. Geetu Gidwani Verma and Anr. CA No. 1677 of 2019 judgement dated 04/02/2019.
11. It is matter of record that the FBA signed between complainant and respondents is a standard form of agreement which was signed by every other allottees wherein there was no option to the complainant but to sign



on the dotted lines of a contract which was framed by the builder with no room of any negotiation power whatsoever vested with complainants. The said clause of 5.1 provides for unreasonable condition such as due possession date from commencement of construction of particular tower and which started only in august 2014 in so far as impugned tower relates wherein the complainants made the first payment on 30<sup>th</sup> April 2011, the FBA was executed on 30<sup>th</sup> July 2013, therefore, further the delaying the time period of handing over possession i.e. 4years + 6 months from 30<sup>th</sup> July 2013 is arbitrary and amounts to unfair trade practice. Further, the said clause 5.1 further stipulates that the possession is subject to all the buyers/ allottees in the impugned project, the said clause 5.2 further stipulates that the possession is subject to all the buyers/allottees in the impugned project, the said condition is ex facie arbitrary and unreasonable as the complainants has no control over the timely payments of other allottees who are neither privy to the instants FBA nor holds any interest in impugned unit . Therefore, in view of the binding judgement of Hon'ble Supreme Court, The said clause 5.1 of FBA in so far as it subject the delivery of possession of impugned unit to such



arbitrary condition and delay it to four years from the date of start of construction.

12. The complainants further submits that even assuming clause 5.1 of FBA to be valid, the respondent company failed to handover the possession within stipulated time i.e by 30<sup>th</sup> December 2017 wherein extended period is included. Therefore, the complainants has statutory right to claim interest for delayed period in view of section 18 of Real Estate (Regulation and Development) Act, 2016. The complainants prays to claim interest for delayed period therefore, the instant complaint may be treated as demand of said interest in accordance with section 18 of RERA Act, 2016 of the RERA Act, 2016. It has been almost 8 years from the date of first payment made by the complainants to the respondent company with still no clear deadline as to the completion of construction and handing over of possession. The complainants money has been held in ransom for such a prolonged period for no fault of the complainants and the complainants cannot be forced to continue in the impugned project endlessly especially wherein there is no tangible deadline for handing over the possession insight . without prejudice to the above, the respondents are liable to pay

delayed interest till the date possession is actually handed over by the respondents to the complainant.

B. Relief sought by the complainants.

To direct the respondent to hand over the subject unit along with the interest towards delay in handing over of the unit;

13. The Authority issued notice of the complaint to the respondent by speed post and also on given email address a [info.legitmeindia@gmail.com](mailto:info.legitmeindia@gmail.com), [fernhillgrievencesgurgaonala@nsalapi.com](mailto:fernhillgrievencesgurgaonala@nsalapi.com). The delivery reports have been placed on record. Despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period.
14. But on the date of hearing, the respondent appeared through an Advocate and 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. 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.
16. 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."*

17. 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) , 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 30.07.2013, 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. . 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."*

As per customer ledger dated 14.08.2020 the date of start of Construction is 14.08.2014 and the agreement was executed on 30.07.2013. Therefore, the due date of possession has been calculated from the date of commencement of construction i.e 14.08.2014 being a later date. Hence, 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.

18. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer agreement dated 30.07.2013 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 complainants are entitled for delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. 14.02.2019 till the date of handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

19. 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. 14.08.2018 till the date of handing over 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 handing over of the possession shall be paid before 10th of each subsequent months as per rule 16(2) of the rules.



- 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 as per section 2(za) of the act.
20. Complaint stands disposed off.
21. File be consigned to registry.

(Samir Kumar)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021

(Dr. K.K. Khandelwal)  
Chairman

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