

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

Complaint no. : 4704 of 2020  
Date of first hearing : 23.02.2021  
Date of decision : 23.02.2021

1. Seema Gupta  
2. Nitin Gupta  
Both R/o N-352, First Floor, Mayfield  
Garden, Sector-51, Gurugram

**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 Properties Pvt. Ltd.  
Office at: 111, First Floor, Antriksh  
Bhawan, 22 Kasturba Gandhi Marg,  
New Delhi-110001  
3. Wellfore Realty Care Pvt. Ltd.  
Office at: 501, IID Trade Centre,  
Sohna Road, Gurugram

**Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Shanti Parkash  
Shri. Gagan Sharma

Advocate for the complainants  
Advocate for the respondents

**ORDER**

1. The present complaint dated 15.01.2021 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 Application Form	02.03.2012



		[Page 31 of complaint]
7.	Unit no.	0704-B-1103, Tower No. B [Page 42 of complaint]
8.	Unit area	1348 sq. ft.
9.	Payment plan	Construction linked plan [page 66 of complaint]
10.	Date of execution of flat buyer agreement	10.07.2013 [page 40 of complaint]
11.	Total consideration	Rs. 47,76,460/- [as per schedule for payment at page 66 of complaint]
12.	Total amount paid by the complainant	Rs. 48,97,791.41/- [as per averments in para 10 at page 17 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 of the particular tower in which the said unit is located, whichever is later)	<b>10.01.2018</b>  (Note: calculated from the date of flat buyer agreement as failed to provide the date of commencement of construction) has not been provided in record by either of the parties
14.	Delay in handing over possession till date of decision i.e. 23.02.2021	3 years 1 month 13 days

**A. Facts of the complaint.**

3. The complainants submitted that on 10.07.2013 both the parties executed the flat buyer agreement. The first party and the third party unilaterally increased the rate from 3395/- per sq. ft. to Rs. 3543/- per sq. ft. ( clause 3.1 ) and the complainants were

compelled and forced to sign the said agreement because they have already deposited Rs. 17,46,034/- before this agreement and there was no other option as the first party was not willing to refund the deposited amount Rs. 17,46,034/- and showed the tall promises.

4. The complainants submitted that the first party and third party agreed to complete the project and hand over the possession of the allotted flat within 48 months with an extended period of 6 months from the date of execution of this agreement i.e. 10.07.2013 as per clause 5.1 of the agreement. The complainants were again compelled and forced to sign the Addendum to the flat buyer agreement on 09.07.2014 in which party first and party third modified Recital H, clause 31, 3.2, 3.3, 3.5, 6.1, 6.5 and insertion of new clause 2.5, 6.5(A) and other terms and conditions in 9 to 15 of this Addendum agreement unilaterally and there was no other option as the first party was not willing to refund the deposited amount Rs. 17,46,034/- and showed again the tall promises.
5. The complainants submitted that the complainants after the above agreements again deposited Rs. 3,88,958.41 on 19.08.2014 vide cheque no. 176481 ( Receipt no.358687), Rs. 3,90,542/- on 06.10.2015 vide cheque no.189301 (Receipt no.395494), Rs. 7,82,054/- on 16.02.2016 vide cheque no.366643 (Receipt no. 405066), Rs. 10,09,576/- on 12.09.2016 vide cheque no. 671608 (Receipt no.415131) an Rs. 5,08,627/- on 23.02.2017 vide cheque

no.846034 (Receipt no. 421895). Thus total deposit Rs. 48,97,791.41.

6. The complainants submitted that the complainants visited the site where the project to be developed by the respondents & shocked to see that the site is plane and no construction work was in progress by the respondents and from physical verification at the project site, the complainants were/are sure that the respondents will not be able to deliver the possession of apartment/flat in near future. on the date agreed for the delivery of possession of said unit as per Agreement and later on according to the Agreement, the complainants had approached the Respondents and its officers inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the complainants about the completion and delivery of the said flat. The complainants thereafter kept running from pillar to post asking for the delivery of their home but could not succeed as the construction of the said flat not commenced.

Hence, this compliant for the aforementioned relief:

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

7. The authority issued notice of the complaint to the respondent by speed post and also on given email address proof of service i.e 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.
8. But on the date of hearing the respondent appeared through 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.
9. 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.
10. 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.
11. 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.

**B. Findings of the authority.**

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 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 10.07.2013, 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.
13. The grace period of 6 months is allowed to the respondent due to exigencies beyond the control of the respondent. Both the parties failed to provide the sufficient document pertaining to the date of commencement of construction. Therefore, the due date of possession is calculated from the date of flat buyer agreement and the due date comes out to be 10.01.2018. 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.
14. As per clause 5.1 of the said agreement dated 10.07.2013, 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. Both the parties failed to provide the sufficient document pertaining to the date of commencement of construction. Therefore, the due date of possession is calculated from the date of flat buyer agreement and the due date comes out to be 10.01.2018. 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."*

15. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer agreement dated 10.07.2013 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 charges at the prescribed rate of interest @ 9.30% p.a. w.e.f. 10.01.2018 till the



offer of possession plus two months as per provisions of section 18(1) of the Act and rule 15 of the Rules read with section 19 of the act.

16. 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. 10.01.2018 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 the date of handing over 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 due 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.

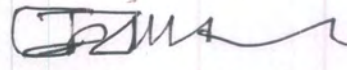
17. Complaint stands disposed of.

18. File be consigned to registry.

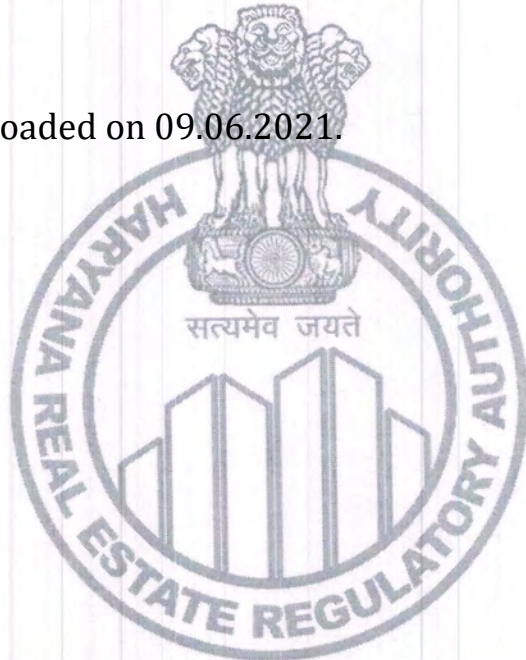
  
**(Samir Kumar)**  
**Member**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021

  
**(Dr. K.K. Khandelwal)**  
**Chairman**

Judgement uploaded on 09.06.2021.



**HARERA**  
**GURUGRAM**