

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

Complaint no. : 3228 of 2020
Date of first hearing : 11.11.2020
Date of decision : 23.02.2021

1. Pradeep Saini
2. Arun Bala Saini
Both R/o House No. 7, Prabhu Prem
Puram, Ambala Cantt. 133006

Complainants

Versus

1.M/s Ansal Properties and Infrastructure
Ltd.
Regd. Office: 115, Ansal Bhawan, 16, K G
Marg, New Delhi-110001
2. Chaahat Agencies (through Amit Pruthi)
Office at: A-40, South Extention, Part-I, New
Delhi-110049

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri. Gagan Sharma

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 09.10.2020 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 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	15.12.2011 [Page 13 of complaint]
7.	Unit no.	0704-A-0502, Tower No. A [Page 48 of complaint]

8.	Unit area	1618 sq. ft.
9.	Payment plan	Construction linked plan [page 72 of complaint]
10.	Date of execution of flat buyer agreement	10.07.2013 [page 46 of complaint]
11.	Total consideration	Rs. 49,24,560/- [as per averments in para v at page 4 of complaint]
12.	Total amount paid by the complainant	Rs. 50,16,753/- [as per averments in para vii at page 4 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)	10.01.2018 (Note: calculated from the date of flat buyer agreement as failed to provide the date of commencement of construction)
14.	Delay in handing over possession till date of decision i.e. 23.02.2021	3 years 1 month 13 days

A. Brief facts of the complaint:-

3. The complainants submitted that they believed that the respondent no. 1 is developing the project on time, made a total payment of Rs. 50,16,753/- from 15.12.2011 to 15.02.2017 as per details and attached amount of Rs, 92,064/- was paid/adjusted by Respondent no. 2 and Rs. 1,740/- dated 10.07.2017 was remitted through RTGS as demanded by the respondent no. 1 vide his reminder letter 10.06.2017 in which receipts of Rs 42,19,913/- only has been acknowledged as against total

receipts for which receipts have been received from the respondent no. 1. Other receipts copy-vide e-mail dated 21.01.2020 the respondent no. 1 was requested to inform the date on which possession of the flat will be allowed.

4. The complainants submitted that on 10.07.2013 both the parties executed the flat buyer agreement. After investing a huge amount of money in the project of the respondent no. 1 came to realize about the fraudulent commitment of the promoter and seeing no tenable progress at the work site which had caused mental agony to the complainant as the unprofessional work ethics of the promoter had broken the complainant to financial turmoil.
5. The complainants submitted that at the time of booking of the unit, the respondent no. 1 and 2 had assured that all the formalities have been done and development work shall commence immediately and the possession of the unit shall be handed over to complainant in time. However, such representation were falsely made.
6. The complainants submitted that respondent no. 1 has withheld the hard earned money of the complainant for their benefit and used the money for their own purpose and did not invest the money for the completion of the project for which the complainants has duped to pay. It is also anticipated that

the respondent no.1 and 2. Have colluded and by their mala fide activities have caused the complainants to undergo mental harassment and financial distress.

7. 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 pertains to the date of commencement of construction. Therefore, the due date of possession 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:

B. Relief sought by the complainants

- i. Direct the respondent to hand over the unit alongwith the interest towards delay in handing over of the unit;
8. The authority issued notice of the complaint to the respondent by speed post and also on given email address, 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. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.

9. 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.
10. 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.
11. 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.

C. Jurisdiction of the authority.

12. 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.

D. Findings of the authority.

13. 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) of the act, 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. 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 pertains to the date of commencement of construction. Therefore, the due date of possession 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. 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."*

14. 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 interest at rate of the prescribed @ 9.30% p.a. w.e.f. 10.01.2018 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
15. 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 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 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.

16. Complaint stands disposed of.

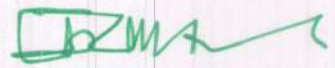
17. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021


(Dr. K.K. Khandelwal)

Chairman