

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 5170 of 2019

Date of decision : 25.08.2021

J. M. CHHABRA
R/O : 1184/1, 1ST Floor,
Arjun Nagar, Kotla,
Mubarakpur, New Delhi-110001

Complainant

Versus

M/S ANSAL PROPERTIES AND
INFRASTRUCTURES LTD.
ADDRESS : 115, Ansal Bhawan,
16 Kasturba Gandhi Marg,
New Delhi-110001

Respondent

APPEARANCE:

For Complainant:

In person

For Respondent:

None

ORDER

1. This is complaint filed by J. M. Chhabra (also called as buyer) under section 31 of The Real Estate (Regulation and

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Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/promoter.

2. As per complainant, on 31.08.2011, Mr. Jagdish Chander Yadav and Mr. Anil Yadav had booked a flat in respondent's project **The Fernhill**, situated at sector-91, Gurugram. Subsequently the said booking was transferred in the name of complainant^{ant} vide letter of transfer dated 28.01.2012. The respondent allotted a flat admeasuring 1348 sq.ft., for a total consideration of Rs 39,00,260/-. A buyer's agreement was executed on 22.07.2013, followed by addendum to buyer's agreement dated 17.07.2014
3. As per the Clause 5.1 of buyer's agreement, the possession of the said premisses was to be delivered by the developer to the allottee within 48 months from the date of execution of buyer's agreement or from date of commencement of construction of the particular Tower/block subject to sanction of building plan whichever is later, with grace period of 6 months. In this way the possession ought to have been delivered by 22.01.2018 but respondent failed to complete the construction work and consequently failed to deliver the same till date.
4. As per the payment plan opted by the complainant, he made timely payment of Rs 42,38,307/- but to his utter dismay, the

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possession of the apartment has not been offered as agreed in buyer's agreement.

5. Contending that the respondent has breached the fundamental term of the contract by inordinately delaying the delivery of the possession, the booking of the unit was made in the year 2011 and even in 2020 the project was nowhere near completion, the respondent has thus committed gross violation of the provisions of section 18(1) of the Act, the complainant has sought refund of entire amount of Rs 42,38,307/-along with prescribed interest and 12 % interest on left out balance of advance payment of Rs 2,71,177.
6. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" The Fernhill ", Sector 91, Gurugram,
2.	Project area	14.412 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	48 of 2010 dated 21.06.2010 valid up to 20.06.2016



5.	Name of licensee	SRP Builders.
6.	RERA Registered/ not registered	Registered vide no. 392 of 2017 (Phase-I) 389 of 217 (Phase-II)
UNIT DETAILS		
1.	Unit no.	0704-C-0803
2.	Unit measuring	1348 sq. ft.
3.	Date of Booking (Original Allottee)	31.08.2011
4.	Date of Transfer of unit in the name of complainant	28.01.2012.
5.	Date of Buyer's Agreement	22.07.2013 (Page No. 15)
6.	Date of Addendum to buyer's agreement	17.07.2014
7.	Clause 5.1 of buyer's agreement, the possession of the said premises was to be delivered by the developer to the allottee within 48 months from the date of execution of buyer's agreement or from date of commencement of construction of the particular Tower/block subject to sanction of building plan whichever is later, with grace period of 6 months.	22.01.2018 (Calculated from the date of buyer's agreement since date of commencement of construction has not been placed on record)

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8.	Delay in handing over of possession till date	3 years 07 months
PAYMENT DETAILS		
9.	Total sale consideration	Rs 39,00,260/-
10.	Amount paid by the complainant	Rs 42,38,307/-
11.	Payment Plan	Construction Linked Plan

12. The authority issued a notice dated 12.10.2020 of the complaint to the respondent by speed post and on its email address. The delivery reports have been placed in the file. Despite service of notice, the respondents did not file reply to the complaint, accordingly, vide order dated 10.02.2021 the respondent was ordered to be proceeded ex-parte.

13. In the absence of any reply by the respondent contradicting plea taken by the complainant, claim of latter is presumed to be true. As per complainant, the respondent was bound by agreement to handover possession of the unit at the most till 22.01.2018 and project is nowhere near completion. The respondent has thus failed to deliver possession, without any explanation. The same is thus directed to refund amounts received from complainant, along with interest etc.

14. The complaint in hands is allowed and respondent is directed to refund the amount paid by the complainant along with


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interest @ 9.5 % p.a. within 90 days from the date of this order. The same is also burdened with a cost of Rs 1,00,000/- to be paid to the complainant.

25.08.2021

(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 03.09.2021



HARERA
GURUGRAM