

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

Complaint no. : 1053 of 2020

Date of decision : 25.08.2021

UPENDER S DAHIYA AND LAXMI DAHIYA
R/O : L-49 D, 1st Floor, Block-L,
Saket, New Delhi-110017

Complainants

Versus

1. M/S ANSAL PROPERTIES AND
INFRASTRUCTURES LTD.
ADDRESS : 115, Ansal Bhawan,
16 Kasturba Gandhi Marg,
New Delhi-110001
2. SAMYAK PROPERTIES PVT. LTD.
ADDRESS: 111, 1st Floor,
Antariksh Bhawan, 22 KG Marg
New Delhi-110001.

Respondents

APPEARANCE:

For Complainant:

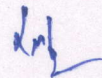
Ms. Shivali (Adv)

For Respondent:

None

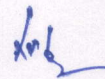
ORDER

1. This is complaint filed by Upender S Dahiya and Laxmi Dahiya (also called as buyers) under section 31 of The Real Estate (Regulation and 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 complainants, on 08.10.2011, they jointly booked a flat in respondent's project **The Fernhill**, situated at sector-91, Gurugram and they made payment of Rs 6,90,825 as booking amount. The respondent issued an allotment letter dated 10.10.2011 and allotted an apartment No. J-0103 admeasuring 1618 sq.ft for a total consideration of Rs 48,11,300 including BSP, PLC etc. A buyer's agreement was executed on 10.07.2013, followed by addendum to buyer's agreement dated 12.08.2014
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 10.01.2018 but respondent failed to


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complete the construction work and consequently failed to deliver the same till date.

4. As per the payment plan opted by the complainants, they made timely payment of Rs 25,54,823/- i.e 50 % of entire agreed consideration along with miscellaneous and additional charges etc, but to their utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement.
5. As per the local commissioner report i.e Annexure-6, there is no substantial progress at the project site and project is not complete and construction work is going on at very low pace.
6. 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 complainants have sought refund of entire amount of Rs 25,54,823 paid by them till now along with interest @ 24 % compounded quarterly, compensation of Rs 10,00,000 and Rs 1,00,000 as litigation charges.
7. The particulars of the project, in tabular form are reproduced as under:



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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-J-0103
2.	Unit measuring	1618 sq. ft.
3.	Date of Booking	08.10.2011
4.	Date of Allotment letter	10.10.2011
5.	Date of Buyer's Agreement	10.07.2013 (Annexure-A-2)
6.	Date of Addendum to Buyer's Agreement	12.08.2014 (Pg. no. 61)



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7.	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.	10.01.2018 (Calculated from the date of buyer's agreement since date of commencement of construction has not been placed on record)
8.	Delay in handing over of possession till date	3 years 07 months
PAYMENT DETAILS		
9.	Total sale consideration	Rs 48,11,300 /-
10.	Amount paid by the complainant	Rs 25,54,823 /-
11.	Payment Plan	Construction Linked Plan

12. The authority issued a notice dated 17.03.2020 of the complaint to the respondents by speed post and also 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



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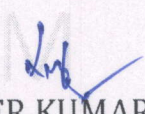
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10.02.2021 the respondents were ordered to be proceeded ex-parte. Their defence is struck off.

13. In the absence of any reply by the respondents contradicting plea taken by the complainants, claim of latter is presumed to be true. As per complainants, the respondent was bound by agreement to handover possession of the unit at the most till 10.01.2018 and project is nowhere near completion. The respondent has thus failed to deliver possession in agreed time, without any explanation. The same is thus liable to refund amount received from complainants, along with interest etc.

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

25.08.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 07.09.2021