

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

Complaint no. : 1172 of 2020

Date of decision : 08.09.2021

NITIN GUPTA AND NANCY GUPTA
(THROUGH POA HOLDER
VIVEK SHARMA)

R/O : F-1403, Tower-5, Park View
Residency, Sector-3, Palam Vihar
Gurgaon, Haryana.

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 Complainants:

Ms. Shivali (Adv)

For Respondents:

None

ORDER

1. This is complaint filed by Nitin Gupta and Nancy Gupta (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 respondents/promoters.
2. As per complainants, they jointly booked a flat in respondent's project **The Fernhill**, situated at sector-91, Gurugram and made payment of Rs 6,08,038 as booking amount. The respondent issued an allotment letter dated 27.07.2011 and allotted an apartment No. F-503 admeasuring 1348 sq.ft. for a total consideration of Rs 44,69,183 including BSP, PLC, EDC etc. A buyer's agreement was executed on 10.07.2013, followed by addendum to buyer's agreement dated 29.07.2014.
3. As per the 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. The 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 complainants, they made timely payment of Rs 38,17,292/- i.e 80 % 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. 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 38,17,292 paid by them till now along with interest @ 24 % compounded quarterly, compensation of Rs 10,00,000, refund service tax of Rs 87,004 paid by complainants 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-F-0503
2.	Unit measuring	1348 sq. ft.
3.	Date of Allotment letter	27.07.2011
4.	Date of Buyer's Agreement	10.07.2013 (Annexure-A-2)
5.	Date of Addendum to Buyer's Agreement	29.07.2014 (Pg. no. 71)
6.	Clause 5.1 of buyer's agreement, the possession of the said premisses was to be delivered by the developer to the allottee	10.01.2018 (Calculated from the date of buyer's agreement since date of commencement of



	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.	construction has not been placed on record)
7.	Delay in handing over of possession till date	3 years 08 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 44,69,183
9.	Amount paid by the complainant	Rs 38,17,292
10.	Payment Plan	Construction Linked Plan

11. As per records notice of complaint was issued to respondents in compliance of order of authority dated 07.03.2020, through speed post as well as through e-mail. On 12.10.2020, Mr. Gagan Sharma, advocate appeared on behalf of respondents and stated that reply is not ready. Respondents were directed to file written reply along with documents consisting of sanctioned plan of the project, statement of account of complainant, environment clearance certificate, copy of BBA and latest status report of project duly verified by a responsible person connected with construction work by way of an affidavit.

[Signature]

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12.The respondents failed to file reply failed to file reply or documents/information stated above. Vide order dated 10.02.2021, the same (respondents) were ordered to be proceeded ex-parte.

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

14.The complaint in hands is allowed and respondents are directed to refund the amount paid by the complainants i.e. Rs 38,17,292 within 90 days from the date of this order till its realisation along with interest @ 9.30 % p.a. The same are also burdened with a cost of Rs 50,000/- to be paid to the complainants.

08.09.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority
Gurugram