

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

Complaint no. : 4678 of 2020

Date of decision : 27.08.2021

SUBHASH SAHAY AND MADHUR SAHAY
R/O : 1604, Tower-5
The Palms, South City-I
Gurgaon, Haryana-122001

Complainants

Versus

M/S ANSAL PHALAK INFRASTRUCTURES
PVT. LTD.
ADDRESS : 1202, Antariksh Bhawan,
16 Kasturba Gandhi Marg,
New Delhi-110001

Respondent

APPEARANCE:

For Complainants:

Sanjeev Sharma (Adv)

For Respondent:

None

ORDER

1. This is a complaint filed by Subhash Sahay and Madhur Sahay (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. According to complainants, on 20.08.2014, they jointly booked a unit in respondent's project **Versalia**, situated at sector-67A, Gurugram. The respondent allotted a flat admeasuring 1855 sq. ft., vide allotment letter dated 28.08.2014, for a total consideration of Rs 1,48,62,623. A buyer's agreement was executed on 25.09.2015.
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 36 months from the date of execution of buyer's agreement, with grace period of 6 months. In this way, the possession ought to have been delivered by 25.03.2019 but respondent failed to complete the construction work and consequently failed to deliver the same till date.
4. They (complainants) made timely payment of Rs 48,09,813/- but to their utter dismay, the possession of the apartment has not been delivered as agreed in buyer's agreement.
5. The complainant had entered into MoU dated 21.08.2018 with the respondent, as per the said MoU, respondent had agreed to refund the amount paid by the complainants i.e. Rs 48,09,813/- along with 10 % interest p.a. and thereby, the respondent agreed to refund a total amount of Rs 64,99,118 to the complainants.

6. As respondent failed to abide by the terms of the MoU dated 21.08.2018, the complainants had filed a complaint against the respondent before the Real Estate Regulatory Authority, Gurugram, bearing complaint no. 1372 of 2019, the same was allowed against the respondent vide order dated 17.12.2019 and it was directed to pay the delayed possession charges at the prescribed rate of 10.20 % with effect from 25.03.2019.
7. Contending that the respondent has breached the fundamental term of the contract by inordinately delaying the delivery of possession and has also failed to refund the amount as agreed between the parties as per MoU dated 21.08.2018, the complainants have sought refund of entire amount of Rs 48,09,813/- along with interest as assured and promised by respondent vide MoU dated 21.08.2018, and also interest for every month at prevailing rate of interest as per the RERA Act.
8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	"Versalia", Sector 67 A, Gurugram,
2.	Project area	38.262 acres
3.	Nature of the project	Residential Plotted Colony

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4.	DTCP license no. and validity status	81 of 2013 dated 19.09.2013 valid up to 19.09.2019
5.	Name of licensee	Ansal Properties Infrastructures Ltd.
6.	RERA Registered/ not registered	Registered vide no. 154 of 2017
UNIT DETAILS		
1.	Unit no.	FF-3032
2.	Unit measuring	1855 sq. ft.
3.	Date of Allotment letter	28.08.2014
4.	Date of Buyer's Agreement	25.09.2015
5.	Clause 5.1 of buyer's agreement, the possession of the said premises was to be delivered by the developer to the allottee within 36 months from the date of execution of buyer's agreement with grace period of 6 months.	25.03.2019
6.	Delay in handing over of possession till date	2 years 05 months
PAYMENT DETAILS		
7.	Total sale consideration	Rs 1,48,62,623
8.	Amount paid by the complainant	Rs 48,09,813

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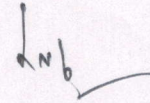
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9. As per record notice of complaint was issued to respondent in compliance of order of authority dated 14.01.2021, through speed post as well as through e-mail. Postal receipt and tracking report of speed post are on file. Envelope reached at the given address on 10.01.2021 but could not be delivered as addressee was reported to have left without instructions. Considering it proper service, vide order dated 10.02.2021, the respondent was ordered to be proceeded ex-parte.
10. Complainants have put on file copy of one MoU dated 21.08.2018. If the same is taken as true, respondent had agreed to refund Rs 64,99,118 to the complainants in lieu of surrender of unit in question, till 31.11.2018. No reason to disbelieve it.
11. Complaint in hands is thus allowed, respondent is directed to refund Rs 64,99,118 to the complainants within 90 days along with interest @ 9.3 % p.a. from 31.11.2018 i.e. date agreed between parties till the date of its realisation. The same is burdened with a cost of Rs 1,00,000 to be paid to the complainants.

File be consigned to the registry.

27.08.2021



(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram