

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

Complaint no. : 2328 of 2018

Date of decision : 09.09.2021

RAJENDRA KUMAR GOYAL
AND PRIYANKA
R/O : E-007, Rail Vihar, Sector-57,
Sushant Lok-3, Gurugram
Haryana- 122003.

Complainants

Versus

M/S ANSAL PROPERTIES AND
INFRASTRUCTURES LTD.
ADDRESS : 2nd Floor, Ansal Plaza,
Sector-1, Near Vaishali Metro Station
Ghaziabad, U.P. - 201010

Respondent

APPEARANCE:


For Complainants:

Ms. Priyanka Agarwal

✓ (AR of complainants)

For Respondent:

Meena Hooda (Adv)



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ORDER

1. This is a complaint filed by Rajendra Kumar Goyal and Priyanka (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, they approached respondent for purchase of a flat, in respondent's project Ansal Heights-86, situated at sector-86, Gurugram. The respondent suggested a flat admeasuring 1360 sq. ft. for a total consideration of Rs 54,17,880 including BSP, PLC, EDC and etc.. The subject flat which was previous booked in the name of Mr. Vijay Kumar on 30.11.2011 and was allotted to him vide buyer's agreement dated 19.12.2012. The flat buyer's agreement was endorsed in favour of complainants vide letter dated 17.01.2014.
3. As per the Clause 31 of buyer's agreement, the possession of the said premisses was to be delivered by the developer to the allottee within 42 months from the date of execution of buyer's agreement or from date of obtaining all required sanctions and approval necessary for commencement of construction, with grace period of 6 months. The respondent failed to complete the construction work and consequently failed to deliver the same till date.



4. Complainants have availed the home loan facility of RS 35,00,000 from HDFC bank for the subject unit. Since the possession of unit has been delayed by the respondent, they (complainants) have to bear the combined payment burden of EMI of Rs 34944 and rent of Rs 17500 per month.
5. As per the payment plan opted by the complainants, they made timely payment of Rs 53,88,850/- i.e 95 % 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.
6. The complainants are not liable to incur the additional burden of GST due to delay caused by respondent, since GST was imposed in the year 2017 and the possession of unit was due much before imposition of GST. The respondent in its application for registration of the subject project with RERA, Gurugram has given a new date of possession of unit in the year 2021 which is unreasonable and unjustified.
7. 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 by the original allottee in the year 2011 and even in 2018, the project was nowhere near completion, the complainants have sought refund of entire amount of

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Rs 53,88,850 paid by them till now along with pendent lite interest @ 24.

8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Ansal Heights 86 ", Sector 86, Gurugram,
2.	Project area	12.843 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
5.	Name of licensee	Resolve Estate
6.	RERA Registered/ not registered	Not registered
UNIT DETAILS		
1.	Unit no.	H-0205
2.	Unit measuring	1360 sq. ft.
3.	Date of Booking	30.11.2011 (Original Allottee)
4.	Date of Buyer's Agreement	19.12.2012 (Annexure-P-1) (Original Allottee)
5.	Endorsement made in favour of complainants	17.01.2014



6.	Clause 31 of buyer's agreement: the possession of the said premises was to be delivered by the developer to the allottee within 42 months from the date of execution of buyer's agreement or from the date of obtaining all required sanctions and approval necessary for commencement of construction whichever is later, with grace period of 6 months.	19.06.2016 (Calculated from the dated of agreement)
7.	Delay in handing over of possession till date	4 years 09 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 54,17,880
9.	Amount paid by the complainant	Rs 53,88,850
10.	Payment Plan	Construction Linked Plan

11. The respondent contested the complaint by filing a reply dated 09.10.2019 and raised the objection that it has applied for registration of subject project with RERA, Gurugram, and before registration, the provisions of Act of 2016, are not applicable to the project and accordingly, complaint is not maintainable before RERA. The complainants did not deposit

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the instalments in time which affected the progress of project. The construction work of the project is in full swing, and letter of possession is likely to be issued very soon..

12. Moreover, there had been various force majeure circumstances which were beyond the control of respondent. The Hon'ble Punjab and Haryana High Court vide its order dated 16.07.2012, 31.07.2012 and 21.08.2012 banned the extraction of water of water. NGT vide its various orders at different dates restrained the excavation work causing Air Quality Index being worse. It is further averred that demonetisation also caused abrupt stoppage of construction work in many projects since the payments to the workers were to be made in cash. It is further averred that GST has been levied by central government which is beyond the control of respondent. Contending all this respondent prayed for dismissal of complaint.

13. I have heard the learned counsels for parties and perused the record.

14. As far plea of respondent with respect to various High Court and NGT orders restraining the extraction of water and construction work, respectively is concerned, copy of the same has not been placed on record. Moreover, there is no evidence on record to prove that no water was actually available in the market at the relevant time to carry out construction. The delay cannot be justified on such bald allegations without

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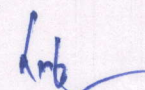
substantiating the same by hard evidence showing actual non-availability of water etc. in market.

15. As far as demonetization is concerned, I fail to appreciate how it could have affected the construction since there was no restriction on payment by means of cheques/demand drafts and through other modes of banking transactions. Moreover, the demonetization came to force on 08.11.2016, much after the last date stipulated for completion of the construction had already expired.

16. When a buyer has made payment of almost 95 % of total consideration of unit, same was well within his right to claim possession of his dream unit. A buyer cannot be made to wait indefinitely.

17. Considering facts stated above, complaint in hands is accordingly allowed and respondent is directed to refund entire amount paid by complainants i.e. Rs 53,88,850 within 90 days from today, with interest @ 9.3 % p.a. from the date of payment, till realisation of amount. A cost of Rs 50,000 is also imposed upon respondent to be paid to complainants.

09.09.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram