

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

Complaint no. : 3251 of 2020

Date of decision : 26.08.2021

SUBHASH KHURANA
R/O : House No. 323/24,
Sanik Public School,
Campus, Hansi, Hisar

Complainant

Versus

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

Respondent

APPEARANCE:

For Complainant:

Harshit Batra (Adv)

For Respondent:

Ex-parte.

ORDER

1. This is a complaint filed by Subhash Khurana (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 complainant, on 05.07.2011 he booked a flat in respondent's project **The Fernhill**, situated at sector-91, Gurugram and he made payment of Rs 9,00,000 as booking amount. The respondent issued an allotment letter dated 27.07.2011 and allotted an apartment No. B-1404 admeasuring 1618 sq.ft., The said allotment was unilaterally changed by respondent vide letter dated 03.05.2014 and new unit no. L-1103 was allotted to him (complainant). The respondent allotted a new unit admeasuring 1618 sq. ft. for a total consideration of Rs 52,88,610 including BSP, EDC, IDC etc. A buyer's agreement was executed on 10.07.2013, followed by addendum to buyer's agreement dated 08.11.2014
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. In this way the possession ought to have been delivered by 10.01.2018 but respondent failed to



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

4. As per payment plan opted by the complainant, he made timely payment of Rs 47,63,407/- out of entire agreed consideration along with miscellaneous and additional charges etc, but to his utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement.
5. The respondent had no sanctions for construction of 14th floor yet they illegally and unlawfully offered allotment of a unit on the said floor. The complainant requested respondent to update him about the status of the project, but respondent failed to address the concerns of complainant.
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 complainant has sought refund of entire amount of Rs 47,63,407/- along with prescribed interest, compensation of Rs 5,00,000 on account harassment and mental agony 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. (Old Unit)	B-1404, 14 th floor
2.	Unit No. (New Unit)	0704-B-L-1103
3.	Unit measuring	1618 sq. ft.
4.	Date of Booking	05.07.2011
5.	Date of Allotment letter	27.07.2011
6.	Date of Buyer's Agreement	10.07.2013 (Annexure-C-2)
7.	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

Ans

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	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)
8.	Delay in handing over of possession till date	3 years 07 months
PAYMENT DETAILS		
9.	Total sale consideration	Rs 52,88,610 /-
10.	Amount paid by the complainant	Rs 47,63,407/-
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 also on its email address. The delivery reports have been placed in the file. Despite service of notice, the respondent 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

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be true. As per complainant, 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, without any explanation.

14. The complaint in hands is thus allowed and respondent is directed to refund the amount paid by the complainant along with interest @ 9.3% 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.

ie Rs. 47,63,407/-

File be consigned to the registry.

26.08.2021

(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 13.09.2021.