

**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Complaint. No. 1239/2018- Aditi Mangal & Rajat Mangal
.....Complainants

Versus

Ashiana Realtech Pvt. Ltd.

.....Respondent

Date of Hearing: 05.03.2019 (2nd hearing)

Coram: - Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance: - Shri Prateek Rathee, Counsel for Complainants
Shri Subash Chand, Counsel for Respondent

ORDER:

The complainants' case is that on 02.01.13 they booked a 3 BHK apartment no. B1-1206, 12th floor measuring 1600 sq. ft. in a housing project named "The Cubix", Dharuhera, Rewari by paying an amount of Rs. 3,36,330/-. The apartment buyer agreement was executed between both the parties on 03.05.14 and allotment letter was given to the complainants on the same date. The complainants have already paid an amount of Rs. 38,14,023/- against the total sales consideration of Rs.

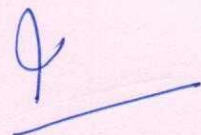


41,52,200/-. The complainants had opted for construction linked plan. The respondent had committed to deliver the possession of unit within 42 months plus 6 six months of grace period from the date of agreement which comes to 03.05.18. However, the respondent has failed to deliver possession of the unit within stipulated period of time. Learned Counsel for the complainants stated in the Court today that project is seventy percent complete.

In view of the above, the complainants pray for refund of the entire amount along with interest, revocation of registration granted by this Authority, compensation or any other relief as the Authority may deem fit.

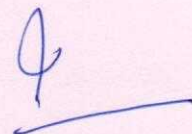
2. The respondent's case is that this Hon'ble Authority has no jurisdiction to entertain the present complaint as the project has been registered under RERA with a revised date of completion of project i.e. 31.03.19. Further, the project is being developed by two developers namely M/s Ashiana Realtech Pvt. Ltd. and M/s Intime Developers Pvt. Ltd. and the complainants have not impleaded M/s Intime Developers Pvt. Ltd. as a party, hence, the complaint is liable to be dismissed for non-joinder of a necessary party.

The respondent further submitted that there have been several reasons and circumstances beyond the control of respondent due to which there has been delay in delivery of possession. Orders dated



16.07.12, 31.07.12, 21.08.18 were passed by Hon'ble Punjab and Haryana High Court banning the ground water extraction in Gurgaon. Also, orders in the month of April, 2015 and November, 2016 were passed by the National Green Tribunal, New Delhi, whereby the Authority had directed to stop the construction for preventing dust emissions. The Tribunal also passed orders banning the mining of sand in Haryana and Rajasthan. The afore-mentioned circumstances along with demonetization have affected progress of the project. The respondent admits that appropriate compensation shall be paid to the complainants as per the terms and conditions of the allotment letter. The respondent further submitted that construction work has already been completed and finishing works are in progress. The project shall be completed by 31.03.19. Hence, on this ground alone, the complaint is liable to be dismissed.


3. The Authority observes that the project was committed to be delivered by 03.05.18, however, the possession of the apartment has not been given to the complainants till date. The respondent has stated in his written reply as well as through his Counsel in the Court today that project shall be completed by 31.03.19. However, the Counsel could not apprise the Authority regarding status of the Completion Certificate and Occupation Certificate. The Authority observes that as the project is at the stage of completion, therefore order of refund will jeopardize




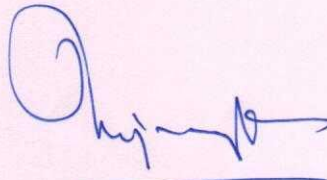
the whole project. Hence, the Authority directs the respondent to deliver the possession of the apartment to the complainants by 30.06.19 along with Occupation Certificate.

Further, the respondent is directed to provide compensation for delay in delivery of possession to the complainants. This Authority has disposed of a bunch of petitions with the lead case **Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd.** There was consensus on all the issues except on the issue of compensation for delayed delivery of possession. Further, logic and arguments in this regard were given by the dissenting member in **Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructures Pvt. Ltd.** It is hereby ordered that the ratio of the said judgements will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.

Disposed of. The order be uploaded on the website and files be consigned to the record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman