

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

Complaint no. : 394 of 2020

Date of decision : 26.08.2021

PANKAJ SAINI AND KAVITA SAINI
R/O : 29 C, Pocket C, Ashok Vihar
Phase-3, Delhi

Complainants

Versus

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

Respondent

APPEARANCE:

For Complainants:

Harshit Batra

For Respondent:

None

ORDER

1. This is a complaint filed by Dr. Pankaj Saini and Kavita Saini (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 booked a flat in respondent's project **The Fernhill**, situated at sector-91, Gurugram. The respondent allotted a flat admeasuring 1618 sq. ft., vide allotment letter dated 03.12.2011, for a total consideration of Rs 49,65,010/-. A buyer's agreement was executed on 10.07.2013, followed by addendum to flat buyer's agreement dated 28.06.2014.
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 the payment plan opted by the complainants, they made timely payment of Rs 47,99,148/- but to their utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement.
5. 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 47,99,148/- along with prescribed interest, compensation of Rs 10,00,000 on account of mental agony and harassment and Rs 1,00,000 as cost.

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

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-0401, Tower - F
2.	Unit measuring	1618 sq. ft.
3.	Date of Allotment letter	03.12.2011



4.	Date of Buyer's Agreement	10.07.2013 (Page No. 22)
5.	Date of Addendum to buyer's agreement	28.06.2014
6.	Clause 5.1 of buyer's agreement, the possession of the said premisses 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.	10.01.2018 (Calculated from the date of buyer's agreement since date of commencement of construction has not been placed on record)
7.	Delay in handing over of possession till date	3 years 07 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 49,65,010/-.
9.	Amount paid by the complainant	Rs 47,99,148/-
10.	Payment Plan	Construction Linked Plan

11. The authority issued a notice dated 27.02.2020 of the complaint to the respondent by speed post and on its email address. The delivery reports have been placed in the file. Despite service of

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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.

12. In the absence of any reply by the respondent contradicting plea taken by the complainants, claim of latters is presumed to be true. As per complainants, 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.

13. The complaint in hands is allowed and respondent is directed to refund the amount paid by the complainants 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 complainants. *ie Rs. 4799,148*

File be consigned to the registry.

26.08.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 30.09.2021