

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

**Complaint no. : 196 of 2019**

**Date of decision : 16.09.2021**

RAHUL SACHDEV AND POOJA SACHDEV  
R/O : 1119, Sector-4,  
Urban Estate,  
Gurgaon-122001

**Complainants**

Versus

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

**Respondent**

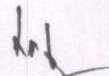
**APPEARANCE:**

For Complainants:

Nilotpall Shyam, (Adv)

For Respondent:

Deepanshu Jain (Adv)



A.O.

16.9.21





ORDER

1. This is a complaint filed by Rahul Sachdev and Pooja Sachdev (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/developer.
2. As per complainants, on 13.05.2011, they jointly booked a flat in respondent's project **The Fernhill**, situated at sector-91, Gurugram and made payment of Rs 4,00,000 as booking amount. The respondent allotted a unit No. 0704-E-0501 admeasuring 1618 sq. ft. for a total consideration of Rs 53,77,600 including BSP, PLC, EDC and etc. A buyer's agreement was executed on 10.07.2013, followed by addendum to agreement dated 01.07.2014.
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 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. The 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 46,01,185.53 i.e 85 % of entire





agreed consideration along with miscellaneous and additional charges etc, but to their utter dismay structure of construction work is not complete, the possession of the apartment has not been offered as agreed in buyer's agreement.

5. The complainants have availed the home loan facility from HDFC and have executed a tripartite agreement dated 06.06.2016 whereby a loan of Rs 28,00,000 was sanctioned towards the said unit.
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 2019, the project was nowhere near completion, the complainants have sought refund of entire amount of Rs 46,01,185.53 paid by him till now, along with prescribed rate of interest @ 24 %, refund service tax of Rs 1,40,700 and Rs 1,00,000 as litigation charges.
7. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
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)
<b>UNIT DETAILS</b>		
1.	Unit no.	0704-E-0501
2.	Unit measuring	1618 sq. ft.
3.	Date of Booking	13.05.2011
4.	Date of Buyer's Agreement	10.07.2013 (Annexure C-2)
5.	Addendum to buyer's agreement	01.07.2014.
6.	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	14.08.2018 (commencement of construction : 14.08.2014)





	subject to sanction of building plan whichever is later, with grace period of 6 months.	
7.	Delay in handing over of possession till date	3 years 01 month
<b>PAYMENT DETAILS</b>		
8.	Total sale consideration	<b>Rs 53,77,600</b>
9.	Amount paid by the complainants	<b>Rs 46,01,185.53</b>
10.	Payment Plan	Construction Linked Plan

11. As per records notice of complaint was sent to respondent through speed post as well on its email. On 12.10.2020, Mr. Gagan Sharma, advocate appeared on behalf of respondent. Respondent was directed to file written reply along with documents consisting of sanctioned plan of the project, statement of account of complainants, environment clearance certificate, copy of BBA and latest status report of project duly verified by a responsible person, connected with construction work by way of an affidavit. Service of notice and also the fact that Mr. Gagan Sharma was authorised to appear on behalf of respondent is not denied by the counsel of latter.

*dnk*

A.O.

Page 5 of 7

16-9-21





12. The respondent failed to file either reply or document/information stated above. Vide order dated 10.02.2021, the respondent was ordered to be proceeded ex-parte.
13. The respondent has filed an application on 12.07.2021 for setting aside the ex-parte order dated 10.02.2021. Respondent has taken a plea that due to covid 19 pandemic, state government had imposed restriction on vehicular movement throughout the state, due to which the counsel for respondent could not appear. Respondent did not file any reply even along with said application. No document has been filed in compliance of order dated 12.10.2020. On 10.02.2021, this forum held proceedings. Even counsel for complainants came on that date to join proceedings. There was no lockdown at that time. No reason to recall said order. Application in hands is hereby dismissed.
14. In the absence of any reply by the respondent contradicting plea taken by the complainants, claim of latter is presumed to be true. As per complainants, the respondent is bound by agreement and to handover possession of the unit at the most till 14.08.2018. The project is nowhere near completion. The respondent has thus failed to deliver possession in agreed time, without any explanation. The same is thus liable to

*[Handwritten Signature]*

A.O.

16-9-21





refund amount received from complainants, along with interest etc.

15. The complaint in hands is allowed and respondent is directed to refund the amount paid by the complainants i.e Rs 46,01,185.53 within 90 days from date of this order along with interest @ 9.30 % p.a from the dates of receipt till its realisation. The respondent is also burdened with cost of litigation of Rs 50,000/- to be paid to the complainants.

File be consigned to registry.

**16.09.2021**

  
**(RAJENDER KUMAR)**

**Adjudicating Officer**

**Haryana Real Estate Regulatory Authority**

**Gurugram**

Judgement uploaded on 25.09.2021.