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

Complaint no. : 160 of 2019
Date of decision : 16.09.2021

GAURAV KUMAR AND
RUCHI KHURANA
R/O : 52, Chander Nagar,
A-Block, Janak Puri
New Delhi-110058

Complainants

Versus

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

Respondent

APPEARANCE:

For Complainants: Nilotpal Shyam, (Adv)

For Respondent: Deepanshu Jain (Adv)

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ORDER

1. This is a complaint filed by Gaurav Kumar and Ruchi 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 complainants, on 10.04.2011, 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 vide allotment letter dated 22.07.2011, allotted a unit No. 0704-G-0904, admeasuring 1618 sq. ft. for a total consideration of Rs 51,26,810 including BSP, PLC, EDC and etc. A buyer's agreement was executed on 30.07.2013, followed by addendum to agreement dated 27.06.2014.
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.

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4. As per the payment plan opted by the complainants, they made timely payment of Rs 34,95,159 but to their utter dismay construction work is not complete, 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 2019, the project was nowhere near completion, the complainants have sought refund of entire amount of Rs 34,95,159 paid by him till now, along with prescribed rate of interest and Rs 50,000 as litigation charges.

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

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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-G-0904
2.	Unit measuring	1618 sq. ft.
3.	Date of Booking	10.04.2011
4.	Date of Allotment	22.07.2011
5.	Date of Buyer's Agreement	30.07.2013 (Annexure C-3)
6.	Addendum to buyer's agreement	27.06.2014.
7.	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.	14.08.2018 (commencement of construction : 14.08.2014)
8.	Delay in handing over of possession till date	3 years 01 month

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PAYMENT DETAILS		
9.	Total sale consideration	Rs 51,26,810
10.	Amount paid by the complainants	Rs 34,95,159
11.	Payment Plan	Construction Linked Plan

12. 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 latter.

13. 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.

14. The respondent has filed an application on 12.07.2021 for setting aside the ex-parte order dated 10.02.2021.

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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.

15. 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 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 refund amount received from complainants, along with interest etc.

16. The complaint in hands is allowed and respondent is directed to refund the amount paid by the complainants i.e Rs 34,95,159 within 90 days from date of this order along with interest @ 9.30 % p.a from the dates of receipt till its

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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.