

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

Complaint no. : 750 of 2021

Date of decision : 29.09.2021

SONIKA GARG
R/O : NGQ-221,
DLF New Town Heights,
Sector-90, Gurugram

Complainant

Versus

ANSAL HOUSING LTD.
ADDRESS : Ansals Plaza,
2nd Floor, Sector-1,
Vaishali, Ghaziabad,
Uttar Pradesh-201010

Respondent


APPEARANCE:

For Complainant:

Ms. Surbhi Garg (Adv)

For Respondent:

Shri. Himanshu Garg (Adv)


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ORDER

1. This is a complaint filed by Sonika Garg (also called as buyer) 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 complainant, on 06.01.2011, she booked an apartment in respondent's project **Ansal Heights**, situated at sector-92, Gurugram and they made payment of Rs 4,79,051 as booking amount. The respondent vide allotment letter dated 11.03.2011, allotted a unit No. D-1006 admeasuring 1320 sq. ft. for a total consideration of Rs 40,18,200 including BSP, PLC, EDC and etc. An allotment letter with terms and conditions was issued on 02.09.2011. Subsequently a flat buyer's agreement dated 09.04.2012 was executed in this regard.
3. As per the Clause 29 of buyer's agreement, the possession of the said premisses was to be delivered within 36 months from the date of execution of buyer's agreement or from date of obtaining all required sanctions and approval necessary for commencement of construction, with grace period of 6 months.
4. As per the payment plan opted by the complainant, she made timely payment of Rs 41,46,291 but till date offer of



possession has not been made as agreed in buyer's agreement.

5. The respondent vide letter dated 12.03.2018 titled as 'Offer of possession for fit-outs', raised demand of Rs 4,88,174 apart from maintenance charges of Rs 1,34,600 and registration charges of Rs 29,500. It was informed that occupation certificate has been applied. The said offer of possession of unit was made without obtaining Occupation certificate.
6. She (complainant) raised objection to such arbitrary charges and maintenance charges before actual handover of possession. Upon which, respondent threatened that if possession is not taken within 180 days, holding charges to the tune of Rs 5/- per sq. ft. shall be imposed.
7. The respondent has collected Rs 75,000 and Rs 78,540 towards club membership charges and fire fighting charges respectively but none has been in place. In 2016, complainant got married and later shifted to Canada in 2019 and the whole purpose of purchase of said unit has been turned futile.
8. Despite lapse on the part of respondent, complainant made payments towards said unit and kept on waiting for the offer of possession but to of no avail. The respondent vide letter dated 15.05.2020 raised demand of Rs 6,05,362.96 with delayed payment interest of Rs 1,17,188.54. Final demand could be raised, in construction linked plan only alongwith



offer of possession. Imposition of delay payment charges is arbitrary.

9. Contending that the respondent has breached the fundamental terms of the contract, by inordinately delaying the delivery of the possession of unit, the booking of the unit was made in the year 2011 and even in 2021 i.e. after lapse of 10 years, offer of possession has not been made, the complainant has sought refund of entire amount of Rs 41,46,291 paid by her till now, along with interest at the prescribed rate from the date of each payment till realisation, Rs 5,00,000 as compensation on account of loss/injury as well as mental agony and Rs 40,000 as litigation charges.

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

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Ansal Heights", Sector 92, Gurugram,
2.	Project area	10.563 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	76 of 2010 dated 01.10.2010 valid upto 30.09.2020
5.	RERA Registered/ not registered	Not registered

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UNIT DETAILS

1.	Unit no.	D-1006
2.	Unit measuring	1320 sq. ft.
3.	Date of Booking	06.01.2011
4.	Date of allotment	11.03.2011
5.	Allotment letter with terms and conditions	02.09.2011
6.	Date of Buyer's Agreement	09.04.2012
7.	Clause 29 of buyer's agreement: the possession of the said premisses was to be delivered by the developer to the allottee within 36 months from the date of execution of buyer's agreement or from the date of obtaining all required sanctions and approval necessary for commencement of construction whichever is later, with grace period of 6 months.	09.10.2015 (Calculated from the dated of agreement)
8.	Delay in handing over of possession till date	6 years
9.	Offer of possession for fit-out	12.03.2018
PAYMENT DETAILS		
10.	Total sale consideration	Rs 40,18,200

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11.	Amount paid by the complainant	Rs 41,46,291
12.	Payment Plan	Construction Linked Plan

13. Respondent filed a reply and raised preliminary objection that authority lacks jurisdiction. It is further contended that the provisions of Act of 2016, are not applicable in this case as same are not retrospective in nature. No provision of Act can modify terms of agreement, which was executed prior to coming into effect of Act. Accordingly, complaint is not maintainable before RERA. In view of law aid down by Hon'ble Bombay High Court in case titled as **Neelkamal Realtors Suburban Pvt. Ltd Vs Union of India 2018 (1) RCR (C) 298**

14. The complainant did not deposit the instalments in time which affected the progress of project. It (respondent) has applied for registration of project and construction work of the project is in full swing, project will be completed soon.

15. Moreover, there had been various force majeure circumstances which were beyond the control of respondent. The Hon'ble Punjab and Haryana High Court vide its orders dated 16.07.2012, 31.07.2012 and 21.08.2012 banned the extraction of ground water. NGT vide its various orders on different dates restrained the excavation work, causing Air Quality Index being worse. Demonetisation of currency notes also caused abrupt stoppage of construction work in many projects, as



payments to the workers were to be made in cash. Due to covid 19, the lockdown was imposed which badly affected the construction activities throughout the country. It is further averred that taxes have been levied by central government which is beyond the control of respondent and as per clause 7 and 8 of BBA, complainant had agreed to pay additional charges i.e. EDC, IDC etc.. Contending all this respondent prayed for dismissal of complaint.

16. I have heard learned counsels for parties and perused the record.

17. Admittedly, Act of 2016 had not come in force, when buyer's agreement in this case was executed. Despite same, even as per respondent, it was an ongoing project and it has applied for its registration (after act came into force). On this reason, plea of respondent that provisions of act of 2016 do not apply to present case, has no force and liable to be declined. So far as plea of respondent about various High Court orders and NGT orders, restraining extraction of water or stoppage of construction work, is concerned, no copy of any such order has been placed on record. Moreover, no evidence is adduced to establish that developer could not arrange water from any where, so that construction could be continued. There is nothing to show as during which period order of NGT (if any) stopping construction remained in existence. The delay cannot be justified on these grounds, demonetization of some currency

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was very remotely connected with completion of project. There was no restriction on payment through electronic transfer/e-banking transactions. Most of citizens have bank account in their names or in names of their family members. Moreover, it is pointed out that the demonetization of some currency notes came to force much after the due date of completion of project/unit in question. As per complainant, possession of unit was to be delivered till 09.10.2015..

18. It is an admitted position that requisite Occupation Certificate in respect of subject unit has not been obtained by the respondent till date of arguments. The respondent could not have offered possession of allotted unit to the complainant without first obtaining the requisite Occupation certificate. Offer of possession for fit outs dated 12.03.2018 cannot be said to be valid offer of possession. There is no denial that unit in question was not worth occupying on that date.

19. When a buyer has made timely payment towards the allotted unit, same was well within her/his right to claim possession as per agreement. A buyer cannot be made to wait indefinitely, for his/her dream unit. It is not claimed on behalf of respondent that unit allotted to complainants, or the project in which same is situated, is complete even till now.

20. Considering facts stated above, complaint in hands is accordingly allowed and respondent is directed to refund entire amount paid by complainant i.e. Rs 41,46,291 within

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HARERA
GURUGRAM

Complaint No. 750 of 2021

90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. Cost of litigation Rs 50,000 is also imposed upon respondent to be paid to complainant.

29.09.2021

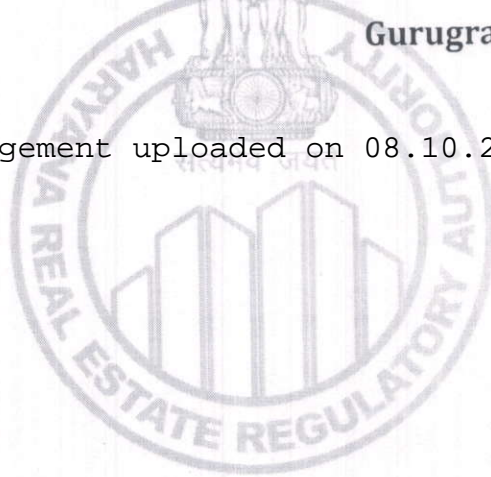
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(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 08.10.2021.



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