



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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

Complaint No. : 2557/2019
Date of Decision : 02.08.2021

Smt.Chander Kanta Bansal W/o Sh Ved Prakash Bansal
R/o 10, Vasudha Enclave, Pitampura, Delhi-110034 **Complainant**

V/s

M/s Ansal Phalak Infrastructure Pvt Ltd
115, Ansal Bhawan, 16, K G Marg, New Delhi-110001 **Respondent**

**Complaint under Section 31
of the Real Estate(Regulation
and Development) Act, 2016**

Present:

For Complainant: Mr. V P Bansal, AR

For Respondent: None

ORDER

This is a complaint filed by Smt Chander Kanta Bansal,(also referred as buyer) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (in brief 'The Act') read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 against M/s Ansal Phalak Infrastructure Pvt Ltd. (also called as promoter) seeking, directions for refund of a sum of Rs.70,94,182/- (Rupees Seventy lac ninety four thousand

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one hundred and eighty two only) alongwith interest @18%p.a. and also Rs.10,00,000/-as compensation.

2. As per case of the complainant, the respondent is a well known coloniser engaged in the business of real estate development. In the month of April-May, 2011, respondent through its representatives, represented the general public that it is in the process of developing a residential plotted colony at Sector 67, Village Badshahpur, District Gurugram. It also represented that all mandatory requisite licence, approvals and sanctions from the Department of Town and Country Planning(DTCP) for setting and developing the project in the name and style of "Esencia" at Sector 67, Gurugram have been receive. Respondent invited bookings of residential floors of various sizes. I

3. Initial booking in on-going project was made by Ms Pooja Gupta and Mrs Nirmal Gupta by depositing a sum of Rs.7,70,364/- and changed this initial booking in the name of complainants after charging administrative charges of Rs.25,000/- vide receipt No.565 dated 16.09.2011.(Annexure C/2). Floor Buyer Agreement in respect of allotted residential unit bearing No.E-2196 SF, E Block of Sovereign Floor measuring 1394 sq ft. for basic sale price of Rs.72,00,000/- was executed between the parties on 17.09.2011(Annexure C/3).

4. As per clause 5.1 of said Agreement, the respondent had agreed to offer possession of the allotted unit within a period of 30 months from the date of execution of Agreement or start of development work, whichever is later. After having plans approved, construction work started on 17.09.2011. In this way, possession was to be handed over latest upto 16.03.2014.

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5. Details of the complainants' case in tabular form are reproduced as under:

| Project related details | | |
|--------------------------------|---|---|
| I. | Name of the project | "ESENCIA" |
| II. | Location of the project | Sector 67, Gurugram |
| III. | Nature of the project | RESIDENTIAL |
| Unit related details | | |
| IV. | Unit No. / Plot No. | E-2196 SF |
| V. | Tower No. / Block No. | |
| VI | Size of the unit (super area) | Measuring 1394 sq ft |
| VII | Size of the unit (carpet area) | -DO- |
| VIII | Ratio of carpet area and super area | -DO- |
| IX | Category of the unit/ plot | Residential |
| X | Date of booking(original) | 11.05.2011 |
| XI | Date of Allotment(original) | 11.05.2011 |
| XII | Date of execution of FBA (copy of FBA be enclosed) | 17.09.2011 |
| XIII | Due date of possession as per SBA | 30 months from the start of construction with 6 months grace period i.e. 16.09.2014 |
| XIV | Delay in handing over possession till date | About four years |
| XV | Penalty to be paid by the respondent in case of delay of handing over possession as per clause of FBA vide clause 5.4 | - |

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| Payment details | | |
|-----------------|---------------------------------------|----------------|
| XVI | Total sale consideration | Rs.79,02,448/- |
| XVII | Total amount paid by the complainants | Rs.70,94,182/- |

6. The complainant deposited a total sum of Rs.70,94,182/- i.e. 98.53% of basic sale price. The details given in Annexure C-9. Respondent neither informed the status of the project nor supplied any sanctioned plan, zoning plan or site plan till date. In this way, there is complete deficiency and illegality on the part of respondent. The project could not be completed by the respondent in stipulated time and there is no likelihood of completion of the same in reasonable forceable period. Contenting all this, the complainant sought refund of amount paid to the respondent i.e. Rs.70,94,182/- alongwith interest @18% p.a. from date of deposit till the date of realisation and again consequential relief in the form of interest.

7. Respondent filed written reply. The facts that unit in question was initially booked in the name of Ms Pooja Gupta and Mrs. Nirmal Gupta. The same was transferred in the name of complainant after charging administrative charges of Rs.25,000/-. The FBA was entered into between the parties on 17.09.2011. The respondent, however, admitted to have received a sum of Rs.70,94,182/-. According to it, as per clause 5.1 of FBA/BBA the respondent was under liability to complete the development of project within 30 months with an extended period of six months from the date of execution of FBA or from the date of sanction of building plans whichever falls later, however subject to force majeure circumstances. According to it, the building plan was sanctioned on 22.10.2014.

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8. According to respondent, only structure of building is complete. The work of construction was stuck due to some issues with local contractor. Moreover, development work of project got stuck and delayed due to farmers agitation and other technical and force majeure reasons and stated that the respondent was committed to complete the development work of the project by December, 2019 and to deliver possession to the other buyers including the complainant. The respondent requested for dismissal of complaint.

9. None has appeared on behalf of respondent during arguments. Learned AR of complainant contended that respondent miserably failed to complete the project in time and the same did not provide necessary information about the development of the project despite being asked by his client. There is no likelihood of completion of project in near future and the same has requested for refund of amount alongwith interest and compensation. According to respondent, building plan was sanctioned on 22.10.2014 and hence date of possession should be calculated from this date. It is apparent from record that date for sanctioning of building plan was left blank and it is filled up in ink obviously later. Although there is no evidence to substantiate that building plan was actually sanctioned on 22.10.2014. The FBA/BBA was executed between the parties on 17.09.2011. A lot of amount had been paid by the complainant. In such a situation, it was not proper for the respondent not to get building plans sanctioned and that too for more than three years. Respondent again took shelter behind its own fault i.e. not getting building/site plans sanctioned in time. Said date of 22.10.2014 is taken as the date for calculating the date of handing over possession trite it to say that respondent agreed to hand over possession to the buyer within 30 months. The due date for possession comes as 22.04.2017.

10. Even as per admission of respondent, delivery date is falling on 14.08.2019 only and basic structure of the building was complete. I find weight in the submission of complainant saying that building is nowhere near completion.

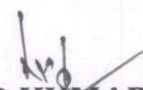
11. Although the allegations of complainant that respondent neither informed about status of development of the project nor supplied any sanction plan, zonal plan/site plan etc till date are denied by the respondent, in its reply, there is nothing on record, to verify that the respondent ever supplied aforesaid documents/information to the complainant. This is also a reason for the complainant to claim refund of deposited amount.

12. On the basis of above discussion, the complaint in hand is allowed and the respondent is directed to refund the amount received from the complainant i.e. Rs.70,94,182/- within 90 days from today alongwith interest @ 9.30%p.a. from the date of receipt of amount till the realisation of same.

13. Respondent is further directed to pay a sum of Rs.1,00,000/- to the complainant as cost of litigation.

14. File be consigned to the Registry.

02.08.2021


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 28.10.2021.