



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

सत्यमेव जयते

गृह, सिविल लाईस, गुरुग्राम, हरियाणा

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

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

**Complaint No. : 1010/2019
Date of Decision : 15.09.2021**

**Smt. Usha Rani Kharbanda
R/o 349, Mehrauli Gurugram Road,
Opp Auto Needs, Gurugram**

Complainant

V/s

**M/s Ansal Properties and Infrastructures Ltd.
115, Ansal Bhawan, 16, Kasturba Gandhi Marg,
New Delhi-110001**

**M/s Samyak Projects Pvt Ltd.
111, First Floor, Antriksh Bhawan,
22, Kasturba Gandhi Marg,
New Delhi-110001**

Respondents

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

Present:

For Complainants:

Mr. Karamjit Singh, Advocate

For Respondent:

None

ORDER

This is a complaint filed by Smt. Usha Rani Kharbanda, complainant(hereinafter referred to as buyer) under Section 31 of the Real

Krd
A.D.
15-9-21

Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) against M/s Ansal Properties And Infrastructures Ltd. & M/s Samyak Projects Pvt Ltd. (also called as developers) seeking directions to the latters to refund a sum of Rs.26,40,755.92p. alongwith interest @ 18% p.a. from the date of payment, till realisation of amount and litigation expenses amounting to Rs.50,000/-. In addition to this, the complainant has also sought Rs.1,00,000/- as compensation for mental agony and harassment.

2. As per case of complainant, the respondents' are the companies incorporated under The Companies Act, 1956 which launched a project, known as "The Fernhill" located in Sector 91 of Gurugram, Haryana. Said project was launched somewhere in the year 2011. She approached the respondents for booking of flat on 15.11.2011 in their project "The Fernhill" Lured by said representation, she applied for booking of a residential unit in the said project on 15.11.2011. A Builder Buyer Agreement(BBA) was entered between them on 27.07.2013. As per clause 5.1of the BBA, the possession of allotted unit/flat was to be delivered within a period of 48 months i.e. by July, 2017, with extension of six months from the date of execution of BBA or from the date of commencement of construction of particular tower/block, in which said unit is situated and subject to sanction of building plans, whichever is later. The complainant paid a total sum of Rs.26,40,755.92p. to the respondent till date.

3. It is further the case of the complainant that she was dependent on her son who expired on 18.06.2007. Now, she has no source of income to pay further instalments of booked unit.

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A.O.
15-9-21

4. Details of the complainants' case in tabular form is reproduced as under:

Project related details		
I.	Name of the project	"The Fernhill"
II.	Location of the project	Sector 91, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	0704-K-0203
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 1618 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)	15.11.2011
XI	Date of Allotment(original)	27.07.2013
XII	Date of execution of BBA (copy of BBA be enclosed as annexure-B)	27.07.2013
XIII	Due date of possession as per BBA	July, 2017
XIV	Delay in handing over possession till date	More than 4 years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	
Payment details		

XVI	Total sale consideration	Rs. 47,34,161.85p.
XVII	Total amount paid by the complainants	Rs.26,40,755.92p.

5. I have heard learned counsel for the complainant. None appeared for respondent.

6. Contesting the claim of complainant, respondents had filed written reply. It is admitted by respondent that complainant applied for flat/unit bearing No.K-0203 in Tower-K, Phase-II in aforesaid project. Total sale consideration was Rs. 47,34,161.85p. Allotment letter in this regard was issued on 29.11.2011. Flat Buyer Agreement was executed between it and the complainant on 10.07.2013. Respondent claimed that as per clause 5.1 of FBA, due date of possession was to be calculated from the date of execution of FBA or from the date of commencement of construction of tower/block in which the unit in question is situated subject to sanctioning of building plan whichever is later. Construction work at site was commenced on 14.08.2014. According to it, despite commencement of construction, the project came to stand still due to Government's notification wherein govt. notified some part of project to be covered under newly notified green belt. Due to this environmental notification, project got delayed and only after great persuasions and follow ups the issue got resolved. According to it, construction work of basement of Tower-K, Phase-II in which the allotted unit is located has been completed and further construction and development work is going on.

7. After, filing reply, none appeared on behalf of respondent and the same was proceeded ex-parte vide order dated 10.02.2021.

8. It is contended by learned counsel for complainant that construction is nowhere near completion even till today i.e. date of arguments. The complainant was financially dependent upon her son, who expired on 18.06.2007. Even then, she managed some money to pay instalments and paid the same as per demands raised by the respondent. Latters failed to complete the construction in agreed time and requested for refund of amount.

9. As mentioned above, respondent claimed that according to BBA, due was to commence from 14.08.2014 i.e. date of commencement of construction Admittedly, the complainant booked the unit in question on 15.11.2011. Said unit was allotted in her favour by the respondent on 29.11.2011. BBA was executed on 10.07.2013. Even, if the respondent started construction of tower where the unit in question is located on 14.08.2014, the same used money paid by the complainant for about three years without any reasons. No construction was started for these three years. In this way, it was sweet will of respondents as when same wanted to commence the due date for possession. Terms of agreement appear to be one sided and tilted in favour of developer and oppressive to buyer.

10. According to Indian Contract Act, terms of the contract should be reasonable. Famous writer Dr. R H Bangia in his book "Law of Contract with specific relief Act" 7th Addition 2017 stated that it is not enough that terms of the contract have been brought to the knowledge of the other party by a sufficient notice, before contract is entered into, it is also necessary that terms of the contract themselves should be reasonable. If the terms of the contract are unreasonable and opposed to public policy, they will not be enforced merely because they are printed on the reverse of bill or a receipt or have been expressly or impliedly agreed upon between the parties. In case, **R.S. Deboo Vs Hindleker AIR 1995, Bombay 68**. It was a dispute

between the customer and a dry-cleaner. The receipt given against garments for dry-cleaning, restricted launderer's liability to 20 times, the service charges or 50% of the value of the garments, whichever was less. It was held by Bombay High Court that condition of contract in the receipt was unreasonable, arbitrary and opposed to public policy and hence the same was void. Similarly, in case **Naveen Khatri Vs Pareena Infrastructure & Ors** Consumer Case No.628/2017 National Consumer Disputes Redressal Commission, New Delhi struck down provision of forfeiture of 20% of sale consideration as earnest money by the developer on account of default from buyer, saying that only a 'reasonable amount' can be forfeited as earnest money....20% of the sale price cannot be said to be a reasonable amount, which petitioner company could have forfeited. On the same analogy, terms and conditions of agreement between parties of this case are unreasonable and favouring only the developer, the same are not enforceable.

11. Considering all this, being oppressive terms of said agreement ^{are} is not binding upon the complainant. Respondents were liable to complete construction and to hand over possession of unit in question to the complainant within reasonable time. Even if due date is to be taken from the date of BBA i.e. 10.07.2013, the possession should have been handed till 10.07.2017 and as mentioned above, according to learned counsel for complainant, project is not complete even till date.

12. This forum vide order dated 12.10.2020, allowed respondent to file written reply within 15 days alongwith some documents, consisting of sanctioned plan of project, statement of account of complainant, environment clearance certificate, copy of FBA and latest status report of the project duly verified by responsible person connected with construction department. No such status report is filed. Even as per respondent(as mentioned in written reply) only construction of basement of relevant tower

is complete. As per respondent, delay caused due to sanctioned plan and licence, environmental clearance, issue of loading factor and technical issues.

13. None of these issues can be termed as force majeure circumstances.

14. On the reasons mentioned above, respondents failed to fulfil its promise as per BBA. Construction could not be completed within reasonable time. The complainant is well within her right to claim refund of her hard earned money. Thus, the respondent^{an} is directed to refund amount of Rs.26,40,755.92p. within 90 days from today alongwith interest @9.30%p.a. from the date of each payment till realisation of amount. Respondent^{an} is burdened with cost of Rs.1,00,000/- to be paid to the complainant.

15. File be consigned to the Registry.

^{an}
15.09.2021

^{an}
(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 25.10.2021.