

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 1633 of 2018
First date of hearing : 06.03.2019
Date of decision : 06.03.2019

M/s. Iqbal Impex Pvt. Ltd.,
(through its authorized representative Mr.
Manjit Singh Sabharwal)
Office: 1/64, West Punjabi Bagh, New Delhi -
110026

Complainant

Versus

M/s Ansal Housing & Construction Ltd.
Office at: 15, UGF, Indra Prakash - 21
Barakhamba Road, New Delhi - 110001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Subhash Chander Kush

**Chairman
Member**

APPEARANCE:

Shri Virender Singh Advocate for complainant
Shri Deepankar Dutt Sharma Advocate for respondent

ORDER

1. A complaint dated 01.11.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) rules, 2017 by the complainant M/s. Iqbal Impex Pvt. Ltd., against the promoter M/s Ansal Housing & Construction Ltd., on account of violation of the clause 31 of



the flat buyer's agreement executed on 05.03.2013 in respect of apartment described below in the project 'Ansal Heights', Sector 86 for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 05.03.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Ansal Heights", Sector-86, Gurugram
2.	Project area	12.843 acres
3.	RERA Registered/ not registered.	Not registered
4.	Nature of the project	Residential
5.	DTCP License no.	48 of 2011 dated 29.05.2011
6.	License valid/renewed upto	30.09.2016
7.	Apartment/unit no.	301, tower-A
8.	Apartment measuring	2780 sq. ft'
9.	Date of execution of flat buyer's agreement-	05.03.2013
10.	Payment plan	Construction linked payment plan



11.	Total cost of the said flat	Rs.1,18,28,360/- (Annexure-A, page 49)
12.	Total amount paid by the complainant till date	Rs.1,25,76,021/- (Annexure-P4, page 51)
13.	Building plans approved on	03.09.2013
14.	Date of delivery of possession as per clause 31 of apartment buyer's agreement (42 months + 6 months grace period from the date of execution of agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later)	03.09.2017
15.	Delay in handing over possession till date	1 year 6 months 2 days
16.	Penalty clause as per the said flat buyer's agreement	Clause 37 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area for any delay in offering possession.

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondents. A flat buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 03.09.2017. Neither the respondent has delivered the possession of the said unit till date to the complainant nor it has paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said flat for the period of delay as per clause 37 of the flat buyer's agreement dated 05.03.2013.



Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent, for filing reply and appearance. The reply has been filed by the respondent and has been perused.

Facts of the complaint

6. Respondent approached the complainant in December, 2012 and assured that construction of the project would commence within a month's period i.e. by end of January, 2013 and possession will be handed over within 36 months and believing upon the same the complainant made an application for booking the unit on 25.01.2013 and was allotted unit bearing no. 301, tower-A by making a payment of Rs. 6,00,000/-.
7. The complainant asked for flat buyer's agreement but respondent delayed the same deliberately and took money regularly from the complainant. The agreement was finally signed on 05.03.2013 in which the possession was told to be given within 42 months instead from the date of agreement instead of 36 months which was initially told.
8. The total consideration of the unit was Rs. 1,07,94,260/- and the complainant has paid Rs. 1,25,76,071/- till date. The



complainant sent a letter dated 14.03.2017 seeking progress of construction and handing over of possession which was duly acknowledged by the respondent but there was no response regarding the same. Thereafter, the complainant visited the site in January, 2018 and was shocked to see that there was no construction being carried on.

9. That almost a period of 67 months have been lapsed from the date of booking of the unit and further a period of almost 65 months have gone since the agreement was executed between the petitioners and the respondents. Despite passing of huge time the respondents had deliberately failed to handover the possession of the unit to the complainant.
10. As per clause 19(4) of the RERA Act, the allottee is entitled to claim for compensation with interest in the event of delay in the project. The complainant therefore sent a legal notice dated 15.02.2018 and no response was there from the respondent.

Issues to be decided

11. The complainant has raised the following issues:
 - i. Whether the complainant is entitled to refund of Rs. 1,25,76,071/- along with interest?



- ii. Whether the complainant is entitled to get the interest at the rate prescribed under HRERA Act?

12. Reliefs sought

The complainant is seeking the following reliefs:

- i. To direct the respondent to provide refund of Rs. 1,25,76,071/-.
- ii. To direct the respondent to provide interest upon the said payments at the rate prescribed under RERA Act.

Reply on behalf of respondent

13. The respondent submitted that the project namely 'Ansal Heights' is being developed by the M/s Ansal Housing & Construction Ltd. under license no. 48 of 2011 dated 29.05.2011 received from DTCP, Haryana on a land area of about 12.843 acres in Village Wazirpur of Gurugram, Haryana presently part of residential Sector-86 of the Gurugram Manesar Urban Plan 2021.

14. The respondent submitted that the land of the project is owned by M/s Resolve Estates Pvt. Ltd. The landowners had under an arrangement granted, conveyed and transferred all its rights, entitlement and interests in the development, construction and ownership of the total permissible FSI to M/s



Optus Corona Developers Pvt. Ltd. vide an agreement dated 22.03.2012. The respondent has entered into an arrangement with the confirming party to jointly promote, develop and market the proposed project being developed on the land as aforesaid. The respondent further represents that in view of the agreement entered into between the landowners and the confirming party and subsequent agreement between the respondents and the confirming party, the respondent has undertaken the development and marketing of the project and has offered for sale residential apartment of various types and sizes.

15. The respondent submitted that the building plans of the project has been approved by the DTCP, Haryana dated 03.09.2013. The respondent has filed application for registration of the project under RERA and the same is pending with RERA.

16. The respondent submitted that he would hand over the possession to the complainant within the time scheduled had there been no force majeure circumstances beyond the control of the respondent. The respondent submitted that due to several unforeseen events such as ban by NGT, jaat agitation and demonetization, etc. the pace of construction has slowed down but the respondent has put great efforts in completing



the project. The respondent stated that it has diligently performed its part.

17. The respondent submitted that the present complaint is not maintainable for non-joinder of parties as M/s Resolve estate Pvt. Ltd., M/s Optus Corona Pvt Ltd. and M/s Samyak Properties Pvt. Ltd. are the necessary parties and the complainant has not made them necessary parties.

18. The complainant submitted that no cause of action has arose against the respondent as in terms of RERA Act. The respondent has changed the completion date and has undertaken to complete the project on or before 30.06.2019.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

19. With respect to the **first and second issue** raised by the complainant, the authority came across clause 31 of the flat buyer's agreement dated 05.03.2013 which is reproduced below:

“clause 31 - 42 months + 6 months grace period from the date of execution of agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later.”



Accordingly, the due date of possession was 03.09.2017 hence, the period of delay in delivery of possession is computed as 1 year 6 months 3 days till the date of decision.

20. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that complainant cannot be refunded the amount at this point of time as it will hamper the interest of the other allottees who wish to continue with the project.
21. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to refund the amount and pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession.

Findings of the authority

22. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority,



Gurugram shall be entire Gurugram District. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

23. The complainant made a submission before the authority under section 34(f) to ensure compliance/ obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil its obligation.
24. Counsel for the respondent intimated that the project shall be completed and after obtaining occupation certificate, possession will be handed over to the complainant before 30.11.2021. Counsel for the complainant submitted that she has filed 59 cases as per the list given by her belonging to same project with similar facts. Accordingly, authority with the consent of the parties decided to take up these cases in a bunch so that these cases may be disposed of by single order. After perusing the facts and status of the project the authority decided that at this stage refund will be not in the interest of other allottees and also the project will be adversely affected .



25. Moreover, as per clause 31 of the buyer's agreement dated 03.06.2013, the possession of the unit was to be handed over to the complainant within a period of 42 months plus six months grace period from the date of execution of agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction whichever is later. The building plans were approved on 3.9.2013 as such the due date of possession comes out to be 03.9.2017. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest.

Directions of the authority

26. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- (i) Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.



- (ii) The respondent is directed to pay interest to the complainant @10.75% p.a. from 03.09.2017 for every month of delay till the date of this order, to be paid within 90 days from issuance of this order.
- (iii) Thereafter interest will be paid on or before 10th of each subsequent month till the offer of possession.

27. The order is pronounced.

28. Case file be consigned to the registry.

(Dr. K.K. Khandelwal)
Chairman

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 06.03.2019

judgement uploaded on 18.03.2019

HARERA
GURUGRAM

