

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

Complaint No. : 38 of 2019
First date of Hearing : 06.03.2019
Date of Decision : 06.03.2019

Mr. Amit Kalra
R/o Ward no. 8, VPO Pataudi,
Gurugram, Haryana

Complainant

Versus

M/s Ansal Housing and Construction Limited
Address: 2nd Floor, Ansal Plaza, Sector-1, Near
Vaishali Metro Station, Vaishali, Ghaziabad,
Uttar Pradesh-201010

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Subhash Chander Kush

Chairman
Member

APPEARANCE:

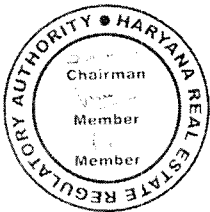
Ms. Priyanka Aggarwal

Authorised representative for
the complainant

Ms. Meena Hooda

Advocate for the respondent

ORDER

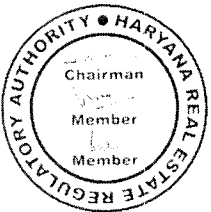


1. A complaint dated 09.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Amit Kalra, against the promoter M/s Ansal Housing and

Construction Limited, with respect to the apartment described below, on account of violation of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer's agreement has been executed on 24.01.2013, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, 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, 86", Sector 86, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Project area	12.843 acres
4.	RERA registered/ not registered	Not registered
5.	DTCP license	48 of 2011 dated 29.05.2011
6.	Unit no.	I-0306
7.	Unit area	1360 sq. ft.
8.	Date of flat buyer's agreement	24.01.2013
9.	Total consideration	Rs. 57,81,010/- (as per customer ledger dated 16.12.2018, annexure P/2 pg 32 of the complaint)
10.	Payment plan	Construction linked plan



11.	Total amount paid by the complainants	Rs. 56,96,857/- (as per customer ledger dated 16.12.2018, annexure P/2 pg 35 of the complaint)
12.	Due date of possession Clause 31- 42 months from date of execution of agreement or date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later+ 6 months grace period, Note: No building plan approval or environment clearance or other approvals have been attached in the file. Therefore, the due date is calculated from the date of execution of agreement.	24.01.2017
13.	Delay in handing over possession	2 years 1 month approx.
14.	Penalty clause as per flat buyer's agreement dated 03.06.2013	Clause 37-- Rs.5/- per sq. ft. per month of the super area for the period of delay

4. The 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 respondent. A flat buyer's agreement dated 24.01.2013 is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 24.01.2017 as per the said agreement. The promoter has failed to deliver the possession of the said unit to the complainants.



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 for appearance. The case came up for hearing on 06.03.2019. The reply has been filed on behalf of the respondent and the same has been perused.

Brief facts of the complaint

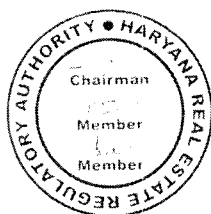
6. The complainants submitted that based on promises and commitment made by the respondent, they booked a 2 BHK flat admeasuring 1360 sq. ft, along with one covered car parking in the unit no. I-0306, tower 'I' in residential project "Ansal Heights, 86". The initial booking amount of Rs 7,39,845/-(excluding tax) was paid through cheque no- 976146 and 446063 dated 01.0.2012 and 30.03.2012.



7. The complainants submitted that there was a flat buyer agreement signed between both the parties dated 24.01.2013 just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement

persistently raised demands due to which they were able to extract huge amount of money from the complainants.

8. The complainants submitted that the total BSP of the said flat is Rs 57,81,010/- and out of this a sum of Rs 56,96,857/- has been paid by the complainants in time bound manner till Feb 2016 and this amount was demanded by the respondent without doing appropriate work on the said project, which is illegal and arbitrary.
9. The complainants submitted that as per section 19(6) of Real Estate (Regulation and Development) Act, 2016, they have fulfilled their responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants are not in breach of any of its terms of the agreement.
10. The complainants submitted that they are paying house rent which creates extra financial burden due to delay in possession.
11. The complainants submitted that they have paid all the instalments timely and deposited Rs. 56,96,857/-. That the



respondent in an endeavour to extract money from allottees devised a payment plan under which respondent has linked more than 35 % amount of total paid against an advance. Rest 60% amount is linked with the construction of super structure only, which is not dependent or co-related to the finishing of flat and internal development of facilities, amenities and after taking the same, the respondent has not bothered to undertake any development on the project till date as whole project is not more than 40% complete and in terms of particular tower just built a super structure only. The respondent extracted the huge amount and did not spend the money in project that is illegal and arbitrary and matter of investigation.

12. The complainants submitted that they booked apartment dated 20.03.2012 (more than 6 years ago) and as per flat buyer agreement, the builder is liable to offer possession on or before December 24.07.2016 so far (FBA clause no.31). Despite this, the builder committing new date of December 2021 with the authority is impractical and unacceptable thereby making escape from authority's legal action.

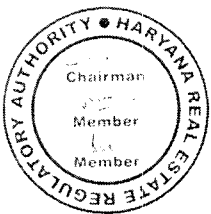


13. The complainant submitted that builder started construction work almost 6 years back and still respondent wants more than 3 years to complete the project that is 8-10 years long period that will make adverse effect on construction quality of project.
14. The complainants submitted that as the delivery of the apartment was due on July 2016 which was prior to the coming into of force of the GST Act, 2016 i.e. 01.07.2017, it is submitted that the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainants.
15. The complainants submitted that the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and their family.
16. The complainant submitted that the respondent had illegal and unjustified demands towards VAT of Rs. 35016/- that was



intimidation attempt to coerce and obtain an illegal and unfounded claim amount.

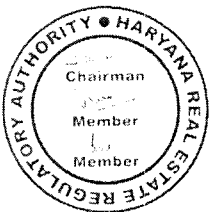
17. The complainant submitted that keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured unit in near future seems bleak and the same is evident from the irresponsible attitude and conduct of the respondent.
18. The complainant also submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this authority as the apartment which is the subject matter of this complaint is situated in sector 86, Gurugram which is within the jurisdiction of this hon'ble authority.
19. **Issues raised by the complainants**



The relevant issues as culled out from the complaint are:

- i. Whether the respondent has breached the provisions of the Act as well as the agreement by not completing the construction of the said unit in time bound manner?

- ii. Whether the respondent has unjustly enriched itself by misusing the hard-earned money of the complainants for more than 6 years without paying any interest or penalty for the delay in delivery of the said unit?
- iii. Whether the respondent is liable to pay interest on the amount paid to them by the complainants at the same rate of 24% which they charged from the complainants in case of delayed payment by the complainants?
- iv. Whether or not the respondent is liable to pass the input credit to complainant which was the additional burden of GST imposed on the complainant due to inordinate delay in handing over of the possession?
- v. Whether the respondent has legal right to sale the project and collected the money from buyer without legal and valid license to develop this project?



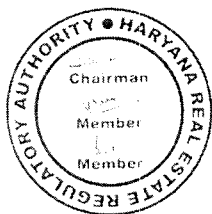
20. Relief sought

The complainants are seeking the following reliefs:

- i. Pass an order for refund with interest of paid amount Rs. 56,96,857/- along with pendent lite and future interest thereon @24 %.
- ii. Pass an order for payment of GST amount levied upon the complainants and taken benefit of input credit by builder.

Respondent's reply

21. The respondent submitted that the true facts of the case are that the land of the project is owned and possessed by the respondent through its subsidiary M/s Optus Coron Developers Pvt. Ltd., having its registered office at J-181, Saket, New Delhi and M/s Samyak Project Pvt. Ltd., having its registered office at 111, First Floor, Antriksh Bhawan, K.G. Marg, New Delhi. It is also worthwhile to mention here that the respondent has applied for registration of the project with RERA which is pending.
22. The respondent submitted that the complaint is not maintainable or tenable under the eyes of law as the complainants have not approached to this Hon'ble Authority with clean hands and has not disclosed the true and material facts relating to this case of complaint. If there had been disclosure of these material facts and proceedings, the question of entertaining the present complaint would have not



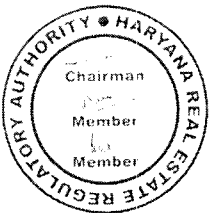
arisen in view of the case law titled as ***S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page 1*** in which the Hon'ble Apex Court of the land opined that non-discloser of material facts and documents amounts to a fraud on not only the opposite party, but also upon the hon'ble authority and subsequently the same view was taken by even hon'ble national commission in case titled as ***Tata Motors vs. Baba Huzoor Maharaj bearing RP no.2562 of 2012 decided on 25.09.2013.***

23. The respondent submitted that without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no. 20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing air quality index being worse, may be



harmful to the public at large without admitting any liability. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana government.

24. The respondent submitted that it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered with RERA and as such the hon'ble authority lacks jurisdiction to entertain the present complaint.
25. The respondent submitted that the allegations levelled in the complaint are with regard to cheating and alluring which only can be decided by the hon'ble civil court and in this scenario the hon'ble authority lacks jurisdiction.
26. The respondent submitted that the complainants had wilfully after going through the terms and conditions of booking application followed with builder buyer agreement and after putting their respective signatures in token of tis correctness and genuine and giving their consent to abide by the terms and conditions, the parties to the flat buyer agreement entered into the same without any pressure or coercion.
27. The respondent submitted that the complainant did not deposit their instalments in time causing thereby the respondent inconvenience in construction plan. It is wrong



and denied that the respondent is in an endeavour to extract money as alleged. However, the respondent completed the structure and very soon is likely to issue letter for offer of possession. It is further submitted that the respondent did not mortgage or hypothecate the project with any financial institution to avail the loan facility, rather he is spending the amount so received by homebuyers in competing the project.

Determination of issues:

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

28. With respect to the **first , second and third issue** as per clause 31 of the agreement, the due date of possession comes out to be 24.01.2017. However, the respondent failed in handing over the possession on or before the said due date, thereby breaching the terms and conditions stipulated in the agreement dated 24.01.2013. Further, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. The authority is of the view that the delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of



delay as against interest of 24% p.a. charged on delayed payments from the allottees in unjustified. Also, some terms of the agreement are drafted mischievously by the respondent as in this case and are completely one sided as also held in para 181 of *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

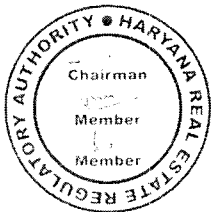
However, on account of failure in handing over possession on the due date, the respondent is liable to pay delayed possession interest at the prescribed rate of 10.75% per annum.



29. With respect to the **fourth issue**, the complainants shall be at liberty to approach any other suitable forum regarding levy of GST.
30. With respect to the **fifth issue**, as per the agreement, the respondent has license no. 48 of 2011 dated 29.05.2011 with respect to the project in question.

Findings of the authority

31. **Jurisdiction of the authority-** The authority has complete subject matter jurisdiction to decide the complaint regarding 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.



32. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

33. The complainants 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 obligations.
34. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.
35. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observed that 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.
36. 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



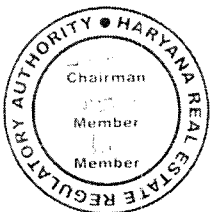
bunch so that these cases may be disposed of by single order.

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 .

The authority decided to allow interest at the prescribed rate i.e. 10.75% for every month of delay till actual possession is handed over.

37. As per clause 31 of the BBA dated 03.06.2013, the possession of the unit was to be handed over to the complainant within a period of 42months+six months grace period which comes out to be 24.01.2017. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest @ 10.75 p.a. from 24.01.2017 till handing over the actual possession of the booked unit.

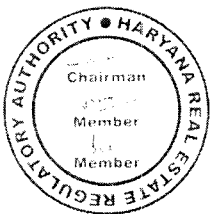
38. Interest accrued so far shall be paid within a period of 90 days from the issuance of the order and thereafter interest on 10th of each subsequent month shall be paid to the complainant.



Decision and directions of the authority

39. After taking into consideration all the material facts as adduced and produced 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 to the respondent in the interest of justice and fair play:

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 24.01.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be



initiated against the respondent under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.

40. The order is pronounced.

41. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Dr. K.K. Khandelwal)
Chairman

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.03.2019

Judgement Uploaded on 25.03.2019

