

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

Complaint no. : 336 of 2019

Date of decision : 02.11.2021

NITIN GIRDHAR AND
OM PRAKASH GIRDHAR
R/O : AB1-803, Mapsko
Casa Bella, Sector 82,
Gurugram, Haryana

Complainants

Versus

M/S ANSAL PROPERTIES AND
INFRASTRUCTURES LTD.
ADDRESS : 115, Ansal Bhawan,
16 Kasturba Gandhi Marg,
New Delhi-110001

Respondent

APPEARANCE:

For Complainants:

Gaurav Bhardwaj Advocate

For Respondent:

None

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ORDER

1. This is a complaint filed by Nitin Girdhar and Om Prakash Girdhar (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainants, on 05.05.2011, Sh. Sukhwant Singh booked a flat in respondent's project **The Fernhill**, situated at sector-91, Gurugram and made payment of Rs 4,00,000 as booking amount. The respondent allotted a unit No. 0704-A-0804 admeasuring 1348 sq. ft. for a total consideration of Rs 44,39,460 including BSP, PLC, EDC and etc. Subsequently said flat was jointly purchased by complainants from original allottee on 16.03.2012. The respondent made endorsement in favour of complainants on 16.05.2012. A buyer's agreement was executed on 18.07.2013.
3. As complainant no. 1 was in job employee and complainant no. 2 had retired, it was difficult for them to make payment of sale consideration, they were constrained to take loan of Rs twenty lakhs from HDFC bank. A tripartite agreement dated

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01.03.2016 was executed among complainants, respondent and HDFC Bank.

4. As per Clause 5.1 of buyer's agreement, the possession of the said premises was to be delivered by the developer to the allottee within 48 months from the date of execution of said agreement or from date of commencement of construction of particular Tower/block, or sanction of building plan, whichever is later, with grace period of 6 months. As per statement of account, the construction work commenced on 14.08.2014 thus, due date of possession comes to be 14.08.2018. The respondent failed to complete the construction work and consequently failed to deliver the same till date.
5. The respondent started construction only on 14.08.2014, this delay of more than one year in commencing the construction work is totally inordinate and shows laxity on the part of respondent. The complainants have made numerous visits to the project site to ascertain as when the project will be completed. They (complainants) vide email dated 31.01.2017 and 28.08.2017, enquired about the current status of project. The employee of respondent Mr. Rahul Arora replied to emails of complainants, wherein he intimated that the internal plaster is in process in tower A. Handing over of possession was planned in June-September 2018. The respondent vide email dated 16.08.2018 assured that work of tower A, will be completed before 31.12.2018 but till date, same has not given possession to them

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(complainants). They visited the project site on 10.11.2018 and found that work was running very slow and most part of tower A was incomplete.

6. As per the payment plan opted by them (complainants), they made timely payment of Rs 40,38,198.41/- i.e 91 % of entire agreed sale consideration along with miscellaneous and additional charges etc, but to their utter dismay, construction work is not complete, the possession of the apartment has not been offered as agreed in buyer's agreement.
7. Contending that the respondent has breached fundamental terms of the contract, by inordinately delaying the delivery of the possession, the booking of the unit was made in the year 2011 and even in 2019, the project was nowhere near completion, the complainants have sought refund of entire amount of Rs 40,38,198.41 paid by them till now, along with interest @ 24 % p.a.
8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" The Fernhill ", Sector 91, Gurugram,
2.	Project area	14.412 acres
3.	Nature of the project	Residential Group Housing Colony

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4.	DTCP license no. and validity status	48 of 2010 dated 21.06.2010 valid up to 20.06.2016
5.	Name of licensee	SRP Builders.
6.	RERA Registered/ not registered	Registered vide no. 392 of 2017 (Phase-I) 389 of 217 (Phase-II)

UNIT DETAILS

1.	Unit no.	0704-A-0804
2.	Unit measuring	1348 sq. ft.
3.	Date of Booking	05.05.2011 (original allottee)
4.	Date of Agreement to sell	16.03.2012
5.	Endorsement made in favour of complainants	16.05.2012
6.	Date of Buyer's Agreement	18.07.2013
7.	Clause 5.1 of buyer's agreement, the possession of the said premises was to be delivered by the developer to the allottee within 48 months from the date of execution of buyer's agreement or from date of commencement of construction of the particular Tower/block subject to sanction of building plan	14.08.2018 (commencement of construction : 14.08.2014)

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	whichever is later, with grace period of 6 months.	
8.	Delay in handing over of possession till date	3 years 03 months
PAYMENT DETAILS		
9.	Total sale consideration	Rs 44,39,460
10	Amount paid by the complainants	Rs 40,38,198.41/-
11	Payment Plan	Construction Linked Plan

12. As per records notice of complaint was sent to respondent through speed post as well on its email. On 12.10.2020, Mr. Gagan Sharma, advocate appeared on behalf of respondent. Respondent was directed to file written reply along with documents consisting of sanctioned plan of the project, statement of account of complainants, environment clearance certificate, copy of BBA and latest status report of project duly verified by a responsible person, connected with construction work by way of an affidavit. Service of notice and also the fact that Mr. Gagan Sharma was authorised to appear on behalf of respondent is not denied by the counsel of latter.

13. The respondent failed to file either reply or document/information stated above. The respondent was

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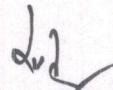
given further time of 15 days to file the written reply but till date neither reply nor any document has been filed by respondent.

14. In the absence of any reply by the respondent contradicting plea taken by the complainants, claim of latters is presumed to have been admitted. As per complainants, the respondent is bound by agreement and to handover possession of the unit at the most till 14.08.2018. The project is nowhere near completion. The respondent has thus failed to deliver possession in agreed time, without any explanation. The same is thus liable to refund amount received from complainants, along with interest etc.

15. The complaint in hands is allowed and respondent is directed to refund the amount paid by the complainants i.e Rs 40,38,198.41 within 90 days from date of this order along with interest @ 9.30 % p.a from the date of each receipt till its realisation. The respondent is also burdened with cost of litigation of Rs 50,000/- to be paid to the complainants.

File be consigned to registry.

02.11.2021


(RAJENDER KUMAR)

Adjudicating Officer

**Haryana Real Estate Regulatory Authority
Gurugram**