

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

Complaint no. : 651 of 2020

Date of decision : 29.09.2021

KAMLESH NARANG
R/O : H.No- 1, Block GD,
Vishaka Enclave,
Pitampura

Complainant

Versus

1. ANSAL HOUSING LIMITED
ADDRESS: 606, 6th floor,
Indraprakash, 21,
Barakhamba Road,
New Delhi-110001
2. Mr. DEEPAK ANSAL
Managing Director,
ADDRESS : Ansal Housing Limited
6 Aurangzeb Road, Delhi
3. Mr. KARUN ANSAL
President (Projects)
ADDRESS : Ansal Housing
Limited, Villa B,
6 Aurangzeb Road, Delhi
4. M/S IDENTITY BUILDTECH PVT. LTD.
ADDRESS: 110, Indraprakash,
21, Barakhamba Road,
New Delhi-110001.

Respondents

APPEARANCE:

For Complainant:

K.K. Kohli Advocate

For Respondents:

Ms. Meena Hooda

ORDER

1. This is a complaint filed by Smt. Kamlesh Narang (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/developers.
2. As per complainant, on 01.09.2012, she booked a flat in respondent's project **Ansal Highland Park**, situated at sector-103, Gurugram. She paid Rs 6,00,000 as booking amount. The respondent allotted a unit, bearing unit No. STRLG - 1303, admeasuring 1762 sq. ft. for a total consideration of Rs 93,71,121/- including BSP, PLC, EDC etc. An apartment buyer's agreement (ABA) was executed on 21.03.2013 between parties.
3. As per Clause 31 of ABA, possession of unit was proposed to be delivered within 48 months from the date of execution of buyer's agreement or from date of obtaining all sanctions and approvals for commencement of construction, whichever is



later, with further grace period of six months. The respondent failed to complete construction work and consequently to deliver possession of the unit, till date

4. Despite having received more than 70 % to 90 % from the allottees of the project, respondent discontinued the construction activity in the year 2017. When construction activity at the project did not resume, several meetings were held with respondents but letters did not disclose details of funds, they had received for the project.
5. As per payment plan opted by the complainant, she made timely payment of Rs 50,02,774/- i.e. 50 % of entire agreed consideration along with miscellaneous and additional charges etc, but to her utter dismay, respondents have not given any information regarding completion of construction work. Possession of the unit has not been offered till date.
6. The respondents in application for registration of project with H-RERA, mentioned the proposed date of completion of the project as 30.11.2021. However, in case of **Ansal Highland Park Residents Welfare Association vs Ansal Housing and Construction Limited, Compliant No. 1144 of 2019** Hon'ble Authority ordered for appointment of a Local Commissioner for inspection of the project in question. The local Commissioner submitted his report on 11.09.2019

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wherein it has been clearly stated that the overall work progress of the project is approximately 35-40 % only.

7. In this way, respondents have committed gross violation of the provisions of section 18(1) of the Act, by inordinately delaying the delivery of the possession, the booking of the unit was made in the year 2012 and even till date, the project is nowhere near completion, the complainant has sought refund of entire amount of Rs 50,02,774 paid by her till now, along with interest @ 24 % p.a., Rs 15,00,000 for loss or injury , Rs 15,00,000 for mental agony hardship and trauma, Rs 35,00,000 for benefit for loss of benefit of escalation of price of flat, Rs 1,00,000 as cost of litigation.
8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Ansals Highland Park", Sector 103, Gurugram,
2.	Project area	11.7 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	32 of 2012 dated 12.04.2012

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5.	Name of licensee	M/s Identity Buildtech Pvt. Ltd, M/s Agro gold Chemicals Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 16 of 2019

UNIT DETAILS

1.	Unit no.	STRLG - 1303
2.	Unit measuring	1762 sq. ft.
3.	Date of Booking	01.09.2012
4.	Date of Buyer's Agreement	21.03.2013
5.	Due Date of Delivery of Possession As per Clause 31 of ABA, possession of unit was proposed to be delivered within 48 months from the date of execution of buyer's agreement or from date of obtaining all sanctions and approvals for commencement of construction, whichever is later, with further grace period of six months	21.03.2017 (calculated from the date of agreement as date of approvals and sanctions are not on record)
6.	Delay in delivery of possession till date of order	4 years 09 months

PAYMENT DETAILS

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7.	Total sale consideration	Rs 93,71,121/-
8.	Amount paid by the complainant	Rs 50,02,774/-
9.	Payment Plan	Construction linked

9. Upon notice respondent no. 1 contested the complaint by filing a written reply. It is averred that complainant has no locus standi and cause of action to file the complaint. The complaint has been filed on an erroneous interpretation of the provisions of Act of 2016 as well as terms and conditions of ABA. Respondent no. 1 claimed that despite there being defaulters in the project, it (respondent no. 1) infused funds into project and developed the same.
10. Moreover, there had been various force majeure circumstances which were beyond the control of respondent. The Hon'ble Punjab and Haryana High Court vide its orders dated 16.07.2012, 31.07.2012 and 21.08.2012 passed in Civil Writ Petition of 20032 of 2008, banned the extraction of ground water. NGT vide its various orders of different dates restrained excavation work, causing Air Quality Index being worse. Directions issued by chairman of EPCA to MCG, Gurugram and MCG program vide order in October 2018 stopped all construction activities in Delhi and NCR. Moreover, demonetisation also caused abrupt stoppage of construction

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work in many projects since the payments to the workers were to be made in cash.

11. It is further averred that project has not been registered with RERA and this forum lacks jurisdiction to entertain present complaint. The construction work of the project in question is going in full swing and application for registration with RERA has been submitted with fresh date for completion of project.
12. Contending all this, respondent no. 1 prayed for dismissal of compliant.
13. I have heard learned counsels for both of parties and have perused the documents on record
14. It is an admitted position that the project is not complete till date. The plea of respondent that the project is not registered with RERA or forum lacks jurisdiction is concerned, admittedly it was ongoing project. It is not plea of respondent that completion certificate was received when this Act came into force. The respondent was obliged to apply for registration within 3 months. In this way, provisions of Act of 2016 are well applicable.
15. So far as plea of respondent regarding various orders passed by Hon'ble High Court and NGT, restraining extraction of water and stoppage of construction work, are concerned, no copy of any such order has been placed on record. Moreover, there is no evidence, to prove that water was not available in the area at the relevant time, to carry out construction. Demonetization of some

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currency notes \ was remotely connected with completion of project. There was no restriction on payment through electronic transfer/e-banking transactions. The delay cannot be justified on such grounds, without any evidence to substantiate the same

16. As per clause 31 of ABA, the developer was obliged to offer possession within 48 months of ABA or within 48 months of date of obtaining all required sanctions and approval for construction, whichever is later. Developer was entitled for grace period of 6 months in offering possession. As per respondent, last approval i.e. fire safety approval was received on 27.11.2014. Although no evidence is adduced to prove this fact, even if same was true, due date for possession comes to 27.11.2018. It is well settled that developer is entitled for grace period only when same could not complete project due to force majeure events. Complainant is stated to have paid Rs 50,02,774 for the unit in question. The respondent failed to prove force majeure circumstances due to which same could not complete the project/unit in question. It is not case of respondent that occupation certificate for said unit has been obtained till date or that construction work is complete.

17. A buyer cannot be made to wait for his/her dream house indefinitely. Even counsel for respondents is not in position to tell as till when project/unit in question will be completed or possession of same will be offered to the complainant. In such

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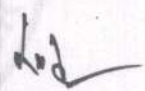


a situation the complainant is well within her right to seek refund of her amount along with interest etc.

18. The complaint in hands is, thus, allowed. ABA is shown to have been executed between complainant and respondent no. 1 only. It is told that the latter has received payments from the complainant. Same (respondent no. 1) is liable to refund the amount. Respondent no. 1 is directed to refund amounts received from complainant till now i.e. Rs 50,02,774/- within 90 days from today, along with interest @ 9.3% p.a. from the date of each receipts till realization of amount. The respondent no. 1 is also burdened with litigation cost of Rs.1,00,000/- to be paid to the complainant.

File be consigned to the Registry.

29.09.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 22.11.2021.