

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

**Complaint no. : 900 of 2021
3023 of 2019**

Date of decision : 22.10.2021

VIPIN GUPTA
R/O : House No. 77/27,
New Kuth Mandi, Rohtak Road,
Jind, Haryana

Complainants

Versus

1. M/S ANSAL PROPERTIES AND
INFRASTRUCTURES LTD.
ADDRESS : 115, Ansal Bhawan,
16 Kasturba Gandhi Marg,
New Delhi-110001
2. SAMYAK PROPERTIES PVT. LTD.
ADDRESS: 111, 1ST Floor,
Antariksh Bhawan, 22 KG Marg
New Delhi-110001.

Respondents

APPEARANCE:

For Complainant:

Niloptal Shyam, Advocate

For Respondents:

None (ex-parte)



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ORDER

1. This is a complaint filed by Vipin Gupta (also called as buyer) 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 respondents/developer.
2. As per complainant, on 23.05.2011, he booked a villa in respondent's project **The Fernhill**, situated at sector-91, Gurugram and made payment of Rs 4,00,000 as booking amount. The respondent issued allotment letter dated 22.07.2011 and allotted a unit No. 0704-B-0803 admeasuring 1348 sq. ft. for a total consideration of Rs 45,74,260 including BSP, PLC, EDC and etc. A buyer's agreement was executed on 10.07.2013, followed by addendum to agreement dated 11.08.2014.
3. As per Clause 5.1 of buyer's agreement, possession of 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 whichever is later, with grace period of 6 months. The respondent failed to complete the

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construction work and consequently failed to deliver the same till date.

4. As per the payment plan opted by the complainant, he made timely payment of Rs 41,09,716 i.e 90 % of entire agreed consideration along with miscellaneous and additional charges etc. To his utter construction work is not complete. Last demand was raised on 24.01.2017 and no demand has been raised after that. The possession of the apartment has not been offered as agreed in buyer's agreement.
5. The respondent had promised to provide various amenities at the time of booking but none of the amenities has been turned into reality till date. The complainant has availed home loan from a bank for the said unit and he has to incur burden of payment of EMI for repayment of said loan. The respondent compelled him (complainant) to make payment of Rs 2,00,000 towards the covered parking. Respondent charged service tax and GST from him (complainant). If respondent would have handed over possession of the unit in accordance with BBA, the burden of GST would not have accrued .
6. Contending that the respondent has breached fundamental terms of the contract, by inordinately delaying delivery of possession, the booking of the unit was made in the year 2011 and till date, the project is nowhere near completion,

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the complainant has sought refund of entire amount of Rs 41,09,716 paid by him till now, along with interest @ 24 %, p.a. compounded quarterly from the date of payment of each instalment, refund service tax of Rs 1,40,700 and Rs 1,00,000 as litigation charges.

7. 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
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.	B-0803
2.	Unit measuring	1348 sq. ft.

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3.	Date of Booking	23.05.2011
4.	Date of Allotment	22.07.2011
5.	Date of Buyer's Agreement	10.07.2013
6.	Addendum to buyer's agreement	11.08.2014
7.	Clause 5.1 of buyer's agreement, the possession of the said premisses 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 whichever is later, with grace period of 6 months.	14.08.2018 (commencement of construction : 14.08.2014)
8.	Delay in handing over of possession till date	3 years 02 months
PAYMENT DETAILS		
9.	Total sale consideration	Rs 45,74,260
10.	Amount paid by the complainant	Rs 41,09,716
11.	Payment Plan	Construction Linked Plan

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12. As per records, notice of complaint was served upon respondents on 29.07.2019. On 12.10.2020, Mr. Gagan Sharma, advocate appeared on behalf of respondents. The letters (respondents) were directed to file written reply along with documents consisting of sanctioned plan of the project, statement of account of complainant, 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. The respondents failed to file reply or documents/information stated above. None appeared on behalf of respondents thereafter. Vide order dated 10.02.2021, the respondents were ordered to be proceeded ex-parte and defence of same (respondents) was struck off.
13. In the absence of any reply by the respondents, contradicting plea taken by the complainant, claim of latter is presumed to be admitted. As per complainant, the respondents were bound by agreement to handover possession of the unit at the most till 14.08.2018 and project is nowhere near completion. The respondents have thus failed to deliver possession in agreed time, without any explanation. The same are thus liable to refund amount received from complainant, including amount of service tax, along with interest.
14. The complaint in hands is allowed and respondents are directed to refund the amount paid by the complainant i.e



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Rs 41,09,716 along with interest @ 9.30 % p.a. from the date of each payment till the date of its realisation and also Rs 1,40,700 i.e. amount of service tax within 90 days from date of this order. The respondents are burdened with cost of litigation etc Rs 50,000/- to be paid to the complainant.

File be consigned to registry.

22.10.2021

(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 22.11.2021.

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