

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

Complaint no. : 987 of 2019

Date of decision : 26.10.2021

RUPESH GOYAL
R/O : H.No. - 270,
Sector-7, Gurugram.



Complainant

**M/S ANSAL PROPERTIES AND
CONSTRUCTION LTD.**
ADDRESS : 15, UGF,
Indra Prakash,
21, Barakhamba Road,
New Delhi-1100012

Versus

Respondent

APPEARANCE:

For Complainant:

Mr. Sanjeet Manan Advocate

For Respondent:

Ms Meena Hooda Advocate

ORDER

1. This is a complaint filed by Rupesh Goyal (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 respondent/developer.

2. As per complainant, he booked a unit in respondent's project **Ansal Heights-86**, situated at sector-86, Gurugram on 24.03.2012 and paid Rs 7,63,000 as booking amount. The respondent vide allotment letter dated 26.02.2013, allotted unit no. H-0102 admeasuring 1360 sq. ft. for total consideration of Rs 60,73,400 including BSP, PLC, EDC and etc. A flat buyer's agreement (FBA) dated 05.01.2013 was executed between parties, in this regard.
3. As per the Clause 31 of FBA, possession of the said premisses was to be delivered by the developer to the allottee within 42 months from the date of execution of FBA or from date of obtaining all required sanctions and approvals necessary for commencement of construction, with grace period of 6 months. The respondent failed to complete construction work and consequently failed to deliver the same till date.
4. He (complainant) had been visiting the proposed site since the date of booking. The construction was going at very slow pace. There is no trace of construction activity at the project site now.
5. As per payment plan opted by the complainant, he made timely payment of Rs 60,15,990/- i.e 99 % of entire agreed consideration along with miscellaneous and additional

charges etc, but to his utter dismay, the possession of the apartment has not been offered as per FBA.

6. The complainant visited the office of respondent, met its officials and requested for refund of his money. Though complainant completed of all requisite formalities as required by respondent but despite that, respondent did not refund the amount.
7. Contending that the respondent has breached the fundamental term of the contract, by inordinately delaying the delivery of the possession, the booking of the unit was made by the original allottee in the year 2012 and till date, the project is nowhere near completion, the complainant has sought refund of entire amount of Rs 60,15,990 paid by him till now, along with prescribed interest from the date of each payment, till its actual realisation.
8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Ansal Heights 86", Sector 86, Gurugram,
2.	Project area	12.843 acres
3.	Nature of the project	Residential Group Housing Colony

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4.	DTCP license no. and validity status	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
5.	Name of licensee	Resolve Estate
6.	RERA Registered/ not registered	Not registered
UNIT DETAILS		
1.	Unit no.	H-0102
2.	Unit measuring	1360 sq. ft.
3.	Date of Booking	24.03.2012
4.	Date of Allotment	26.02.2013
5.	Date of Buyer's Agreement	05.01.2013
6.	Clause 31 of buyer's agreement: the possession of the said premisses was to be delivered by the developer to the allottee within 42 months from the date of execution of buyer's agreement or from the date of obtaining all required sanctions and approval necessary for commencement of construction whichever is	05.07.2016 (Calculated from the dated of agreement)

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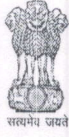


	later, with grace period of 6 months.	
7.	Delay in handing over of possession till date	5 years 03 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 60,73,400
9.	Amount paid by the complainant	Rs 60,15,990
10.	Payment Plan	Construction Linked Plan

11. The respondent contested the complaint by filing a reply. It is averred that complainant had opted for construction linked plan and he is bound to make payment as per the payment plan. It (respondent) infused funds into project and has diligently developed the project in question. The construction work is in full swing and work will be completed within prescribed time period as given by the respondent to the authority. The complainant did not deposit instalments in time, which affected the progress of project.

12. 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 order 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 at different dates restrained

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the excavation work, causing Air Quality Index being worse. Also the direction issued by chairman of EPCA to MCG, Gurugram and MCG Gurugram vide order in October 2018 stopped all construction activities in Delhi and NCR. It is further averred that demonetisation also caused abrupt stoppage of construction work in many projects since the payments to the workers were to be made in cash.

13. The provisions of Act of 2016 are not retrospective in nature.

The provisions of Act of 2016 cannot undo or modify the terms of agreement executed prior to coming into effect of the Act of 2016.

14. Further, the complaint is barred by limitation as the complainant himself has alleged that possession of the unit was to be delivered by January 2017, therefore cause of action, if any accrued in favour of complainant in January 2016. The complaint seeking interest as a form of indemnification for alleged delay is barred by limitation.

15. Contending all this respondent prayed for dismissal of complaint.

16. I have heard learned counsels for parties and perused the record.

17. It is an admitted position that the project is not complete till date. The plea of respondent that Act of 2016 cannot be applied retrospectively 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.

18. As far plea of respondent with respect to various orders passed by High Court orders and NGT, restraining extraction of water and construction work, respectively are concerned, no copy of any such order has been placed on record. Moreover, there is no evidence on record, to prove that water was not available in the area at the relevant time, to carry out construction. The delay cannot be justified on such grounds, without any evidence to substantiate the same. Demonetization of some currency notes was remotely connected with completion of project. There was no restriction on payment through electronic transfer/e-banking transactions. Most of people in India have opened bank accounts. I do not find any substance in plea of respondent that claim of complainant is time-barred. When respondent failed to deliver possession of unit in question, cause of action arose in favour of complainant and same is accruing every day. Claim of refund is not barred by limitation.

19. When a buyer has made payment of almost 99 % of total consideration of unit, same was well within his right to claim possession as per agreement. A buyer cannot be made to wait indefinitely, for his/her dream unit. It is not claimed on behalf

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of respondent that unit allotted to complainants, or the project is complete even till now.

20. Considering facts stated above, complaint in hands is allowed and respondent is directed to refund entire amount paid by complainant i.e. Rs 60,15,990 within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. A cost of Rs 1,00,000 is also imposed upon respondent to be paid to complainant.

26.10.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

HARERA
GURUGRAM

Judgement uploaded on 22.11.2021.