

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

Complaint no. : 2400 of 2018

Date of decision : 03.11.2021

MUKESH KUMWAT
R/O : A-50 Bhan Nagar,
Queens Road, Jaipur
Rajasthan-302021



Complainant

Versus

M/S ANSAL PROPERTIES AND
CONSTRUCTIONS LTD.
ADDRESS : 2nd Floor, Ansal Plaza,
Sector-1, Near Vaishali Metro Station
Ghaziabad, U.P. - 201010

Respondent

APPEARANCE:


For Complainant:

Ms. Priyanka Agarwal Advocate

For Respondent:

Ms. Meena Hooda Advocate

ORDER


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1. This is a complaint filed by Mukesh Kumawat (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 respondent/promoter.
2. As per complainant, on 29.12.2011, he booked a flat in respondent's project **Ansal Heights-86**, situated at sector-86, Gurugram and made payment of Rs 5,00,000 as booking amount. The respondent allotted a unit No. E-0106 admeasuring 1690 sq. ft. for a total consideration of Rs 66,86,009.50 including BSP, PLC, EDC and etc. A flat buyer's agreement (FBA) dated 10.11.2012 was executed between parties, in this regard.
3. As per Clause 31 of FBA, possession of 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 approval necessary for commencement of construction, with grace period of 6 months. The respondent failed to complete the construction work and consequently failed to deliver the same till date.
4. As per demands raised by respondent, he (complainant) made timely payment of Rs 66,30,713/- i.e 95% of entire agreed consideration along with miscellaneous and

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

5. The complainant is not liable to incur additional burden of GST due to delay caused by respondent, since GST was imposed in the year 2017 and the possession of unit was due in May 2016 i.e. much before imposition of GST. The respondent has now given a new date of possession of unit in the year 2021, which is unreasonable and unjustified.
6. 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 in the year 2011 and even till date, the project is nowhere near completion, the complainant has sought refund of entire amount of Rs 66,30,713 paid by him till now along with interest @ 24 % p.a., compounded quarterly.
7. 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.	E-0106
2.	Unit measuring	1690 sq. ft.
3.	Date of Booking	29.12.2011
4.	Date of Buyer's Agreement	10.11.2012.
5.	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 later, with grace period of 6 months.	10.05.2016 (Calculated from the date of agreement)

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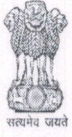


6.	Delay in handing over of possession till date	5 years 05 months
PAYMENT DETAILS		
7.	Total sale consideration	Rs 66,86,009.50
8.	Amount paid by the complainant	Rs 66,30,713
9.	Payment Plan	Construction Plan Linked

10. The respondent contested the complaint by filing a re`ply dated 29.01.2019 and raised the objection that project is not registered with RERA, Gurugram, and before registration, the provisions of Act of 2016, are not applicable to the project and accordingly, complaint is not maintainable before RERA. The complainant did not deposit the instalments in time which affected the progress of project. The construction work of the project is in full swing, and letter of possession is likely to be issued very soon.

11. Moreover, there had been various force majeure circumstances which were beyond the control of respondent and offer of possession was subject to force majeure clause 31 of buyer's agreement. The Hon'ble Punjab and Haryana High Court vide its order dated 16.07.2012, 31.07.2012 and 21.08.2012 banned the extraction of ground water. NGT vide its various orders at different dates restrained the excavation work, causing Air

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Quality Index being worse. 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. It is further averred that GST has been levied by central government which is beyond the control of respondent.

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

13. A direction was given to respondent for filing of certain documents on record vide order dated 19.11.2019 but respondent failed to file the same. Further opportunity was given to respondent to file those documents subject to payment of cost of Rs 5,000 vide order dated 05.03.2020. The respondent neither filed those documents nor paid the cost. Accordingly, the matter will be decided on the basis of documents already on record.

14. I have heard learned counsels for parties and perused the documents on record.

15. It is an admitted position that the project is not complete till date. So far plea of respondent that Act of 2016 or Rules 2017 are not applicable in this case 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

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months. In this way, provisions of Act of 2016 are well applicable.

16.As described earlier, as per respondent Hon'ble High Court orders and NGT passed various orders, restraining extraction of ground water and to stop construction work, respectively, copy of no such order has been placed on record. Even otherwise it is not clear as till when said order remained in force. Moreover, there is no evidence, 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.

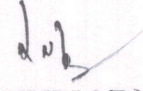
17.Demonetization of some currency notes, was remotely connected with completion of project. There was no restriction on payment through electronic transfer/e-banking transactions. Moreover, the demonetization came to force on 08.11.2016, much after the due date of completion of project/unit in question.

18.When a buyer has made payment of almost 95 % 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 of respondent that unit allotted to complainants, or the project is complete even till now.

19.Considering facts stated above, complaint in hands is allowed and respondent is directed to refund entire amount

paid by complainant i.e. Rs 66,30,713 within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. A litigation cost of Rs 1,00,000 is also imposed upon respondent to be paid to complainant.

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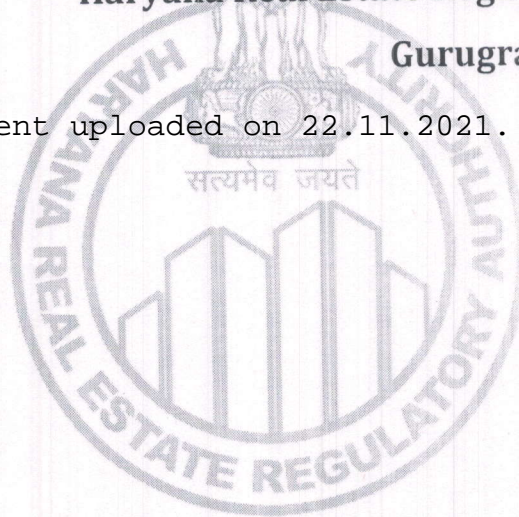
(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 22.11.2021.



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