

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

**Complaint no. : 2367 of 2018**

**Date of decision : 03.11.2021**

GIRISH MITTAL AND  
LAL CHAND MITTAL  
R/O : House No. 3159,  
2<sup>nd</sup> Floor, Sector-23,  
Gurugram, Haryana.



**Complainants**

**Versus**

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

**Respondent**

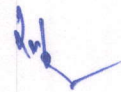
**APPEARANCE:**

For Complainants:

Ms. Priyanka Agarwal Advocate

For Respondent:

Meena Hooda Advocate

  
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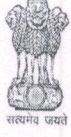




**ORDER**

1. This is a complaint filed by Girish Mittal and Lal Chand Mittal (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/promoter.
2. As per complainants, on 30.11.2011, they jointly booked a flat in respondent's project **Ansal Heights-86**, situated at sector-86, Gurugram and made payment of Rs 10,98,776 as booking amount. The respondent allotted a unit No. I-0605 admeasuring 1360 sq. ft. for a total consideration of Rs 52,61,644 including BSP, PLC, EDC and etc.. A flat buyer's agreement (FBA) dated 02.02.2013 was executed between them, 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 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 the construction work and consequently failed to deliver said unit till date.
4. They (complainants) were constrained to avail home loan of Rs 30,50,000 from HDFC bank to pay for subject unit. They (complainants) have to bear burden of EMI of Rs 2744 per month. Due to delay in possession they lost exemption in





income tax u/s 80 c and 24 of Income Tax Act 1961, which can be availed only if builder gives possession within 5 year from the date of sanctioning of loan.

5. As per the demands raised by respondent they made timely payment of Rs 52,28,700/- i.e 95 % of entire agreed consideration along with miscellaneous and additional charges etc, but to their utter dismay, the possession of the apartment has not been offered, as agreed in FBA.
6. They (complainants) are not liable to incur the additional burden of GST due to delay caused by respondent, since GST was imposed in year 2017 and the possession of unit was due much before imposition of GST. The respondent in its application for registration of the subject project with RERA, Gurugram has given a new date of possession of unit in the year 2021, which is unreasonable and unjustified.
7. Contending that the respondent has breached the fundamental terms of the contract, by inordinately delaying the delivery of possession, the booking of the unit was made in the year 2011 and even in 2018, the project is nowhere near completion, the complainants have sought refund of entire amount of Rs 52,28,700 paid by them till now, along with pendent lite interest @ 24 p.a. an order for payment of GST amount levied upon complainants.

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8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
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
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	<b>Not registered</b>
<b>UNIT DETAILS</b>		
1.	Unit no.	I-0605
2.	Unit measuring	1360 sq. ft.
3.	Date of Booking	30.11.2011
4.	Date of Buyer's Agreement	02.02.2013
5.	Clause 31 of buyer's agreement: the possession of the said premises was to be delivered by the developer to the allottee within 42 months from the date of execution of buyer's	02.08.2016 (Calculated from the dated of agreement)





	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.	
6.	Delay in handing over of possession till date	5 years 03 months
<b>PAYMENT DETAILS</b>		
7.	Total sale consideration	Rs 52,61,644
8.	Amount paid by the complainant	Rs 52,28,700
9.	Payment Plan	Construction Linked Plan

10. The respondent contested the complaint by filing a reply dated 17.01.2019 and raised an objection project is not registered with RERA, Gurugram, and hence the provisions of Act of 2016, are not applicable to this project. On this reason, present complaint is not maintainable before RERA. It is further contended that the complainants did not deposit the instalments in time which affected the progress of project. The construction work 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. Offer of

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possession was subject to force majeure clause 31 of buyer's agreement. Again Hon'ble Punjab and Haryana High Court vide its orders dated 16.07.2012, 31.07.2012 and 21.08.2012 banned extraction of ground water. NGT vide its various orders passed on different dates, restrained excavation work, causing Air Quality Index being worse. Moreover, demonetisation also caused abrupt stoppage of construction work in many projects since the payments to the workers were to be made in cash. GST has been levied by central government, which is beyond the control of respondent. Contending all this respondent prayed for dismissal of complaint.

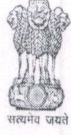
12. Further, as per clause 29 of FBA, if developer is unable to deliver the unit to the buyer, then buyer agreed that the developer if it decides in its sole discretion to refund, then it shall be liable to refund the amounts received from him/her, without any interest or compensation whatsoever.

13. Contending all this, respondent prayed for dismissal of complaint.

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

15. 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 5000 vide order dated 05.03.2020. The respondent





neither filed those documents nor paid the cost. Accordingly, the matter is being decided on the basis of documents already on record.

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

17. So far as pre-objection of respondent that Act of 2016 or Rules 2017 are not applicable in this case is concerned, it is not plea of respondent that completion certificate had been received, when this Act came into force. In this way, it was an ongoing project. The respondent was obliged to apply for registration within 3 months. Provision of Act of 2016 are well applicable in this case also.

18. No details of orders passed by Hon'ble High Court or NGT has been given. It is not clear as till when said orders (if any) remained in force. Moreover, there is no evidence to show 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 their accounts in banks. Moreover, the demonetization came to force on 08.11.2016, much after the due date of completion of project/unit in question.

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19. It is not denied that complainants have paid Rs 52,28,700 out of total sale consideration of Rs 52,61,644. Surprisingly, the respondent found fault in complainants and blamed the latter for not paying instalments in time. When buyers have made payment of almost 95 % of total consideration of unit, same were well within their 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, despite its claim in written reply which was filed on 17.01.2019 that construction work is in full swing and possession will be offered very soon.

20. Considering facts stated above, complaint in hands is allowed and respondent is directed to refund entire amount paid by complainants i.e. Rs 52,28,700 within 90 days from today, with interest @ 9.3 % p.a. from the date of payment, till realisation of amount. A cost of Rs 1,00,000 is also imposed upon respondent to be paid to complainants.

**03.11.2021**

  
**(RAJENDER KUMAR)**

**Adjudicating Officer**

**Haryana Real Estate Regulatory Authority**

**Gurugram**

Judgement uploaded on 27.11.2021.