

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint No. : 863 of 2018**  
**First date of hearing : 21.12.2018**  
**Date of Decision : 19.03.2019**

Mr. Dharampal Singh  
R/o: Village Hamirpur, Tehsil and District  
Gurugram, Haryana.

**Complainant**

Versus

M/s Ansal Housing & Construction Ltd.  
Office address: 15 UGF, Indr Prakash,  
21 Barakhamba Road, New Delhi

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Dharampal Singh Complainant in person  
Shri Deepankar Dutt Sharma Advocate for the respondent

**ORDER**

1. A complaint dated 11.09.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Dharampal Singh against the promoter M/s Ansal Housing and Construction Ltd., on account of violation of the clause 31 of the flat buyer's agreement executed on 18.3.2013 in respect of



flat number F-1202 in the project 'Ansal Heights, 86' for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 18.03.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.
3. The particulars of the complaint case are as under: -

**\*Nature of project:** Residential project

**\*DTCP License no.:** 48 of 2011 dated 29.05.2011

1.	Name and location of the project	"Ansal Heights, 86", Sector-86, Gurugram
2.	RERA Registered/ not registered.	<b>Not registered</b>
3.	Applied for registration of project under RERA on (as stated in reply)	26.9.2017
4.	Project area	12.843 acres
5.	Flat/unit no.	F-1202
6.	Flat measuring	1690 sq. ft.
7.	Date of execution of flat buyer's agreement	18.3.2013
8.	Payment plan	Construction linked payment plan



9.	Total cost of the said flat as per customer ledger dated 19.07.2018	Rs.61,77,025.50/-
10.	Total amount paid by the complainant as per customer ledger dated 19.07.2018	Rs.61,61,316/- (page 42 of complaint)
11.	Building plans approved on	03.09.2013
12.	Due date of delivery of possession as per clause 31 of flat buyer's agreement (42 months + 6 months grace period from the date of execution of agreement i.e. 18.03.2013 or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction i.e. 03.09.2013, whichever is later)	03.09.2017
13.	Delay in handing over possession till date of decision	1 year 6 months 16 days
14.	Penalty clause as per the said flat buyer's agreement	Clause 37 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area for any delay in offering possession.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A flat buyer's agreement is available on record for the aforesaid flat according to which the possession of the same was to be delivered by 3.9.2017. Neither the respondent has delivered the possession of the said unit till date to the complainant nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area



of the said flat for the period of delay as per clause 37 of flat buyer's agreement dated 18.3.2013. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 21.12.2018, 23.01.2019, 28.02.2019 and 19.03.2019. The reply filed on behalf of the respondent has been perused.

#### **Facts of the complaint**

6. The complainant was in need of a residential accommodation with good infrastructure and basic facilities for residing with family and on persuasion of the respondent the complainant was assured that the project "Ansal Heights" is good for him.
7. The complainant booked an apartment in Ansal Heights and made payment to the respondent of an amount of Rs.61,61,316/-. As per clause 31 of the application the respondent had to offer possession within 42 months with 6 months grace period from date of accompanying application of the aforesaid application. Also, as per clause 37 respondent shall be liable to pay Rs.5/- per sq. ft' per month on super area for any delay in handing over possession.



8. Consequently, the respondent allotted a flat bearing no.F-1201 having super area of 1690 sq. ft' on 12<sup>th</sup> floor to the complainant. Also, a flat buyer's agreement was executed between the parties on 18.03.2013.

### 8. Issues to be decided

The complainant has raised the following issues:

- i. Whether the complainant has paid Rs.61,61,316 to the respondent for the flat in question?
- ii. Whether the respondent has failed to register itself under the provisions of this Act?
- iii. Whether the respondent has failed to complete construction of the project as per the flat buyer's agreement?
- iv. Whether the respondent is entitled to refund of Rs.61,61,316 along with interest on prescribed rate?

### 9. Reliefs sought

The complainant is seeking the following reliefs:

- i. To direct the respondent to refund the amount of Rs.61,61,316 along with interest at prescribed rate since booking of flat till full realisation.
- ii. Any other relief which this authority may deem fit.



### Respondent's reply

10. The respondent submitted that the project namely 'Ansal Heights, 86' is being developed by the M/s Ansal Housing & Construction Ltd. under license no. 48 of 2011 dated 29.5.2011 received from DGTCP, Haryana on a land area of about 12.843 acres in Village Nawada Fatehpur of Gurugram, Haryana presently part of residential Sector-86 of the Gurugram Manesar Urban Plan 2021.
11. The respondent submitted that the land of the project is owned by M/s Resolve Estates Pvt. Ltd. M/s Resolve Estates Pvt. Ltd. had under an arrangement granted, conveyed and transferred all its rights, entitlement and interests in the development, construction and ownership of the total permissible FSI of 9,79,079 sq. ft. sanction or to be sanctioned on the land aforesaid to M/s Optus Corona Developers Pvt. Ltd. vide an agreement dated 22.03.2012. In this regards M/s Resolve Estates Pvt. Ltd. had also executed a registered general power of attorney dated 23.03.2012 authorizing M/s Optus Corona Developers Pvt. Ltd. to sell, mortgage or otherwise deal with the said FSI as it deemed fit. Subsequently, M/s Optus Corona Developers Pvt. Ltd. vide agreement dated 03.04.2013 had further granted, conveyed and transferred all its rights, entitlements and interest in the



development construction and ownership of the said permissible FSI on the land aforesaid to M/s Samyak Projects Pvt. Ltd. Further, M/s Ansal Housing & Construction Ltd through joint venture agreement dated 24.05.2013 has entered into an agreement with the M/s Samyak Projects Pvt. Ltd whereby the respondent got right to utilize the entire said FSI to promote, develop and market the said project.

12. The respondent submitted that the District Town and Country Planning Haryana has granted the approval/sanction to develop the project vide license bearing no. 48 of 2011 dated 29.05.2011. The building plans of the project has been approved by the DTCP Haryana vide memo no. ZP-781/D/(BS)/2013/50373 dated 3.09.2013.
13. The respondent submitted that it has already completed the development work and has applied for occupancy certificate for part occupancy of the project vide application dated 26.04.2017 and further removed the objections raised by the department vide letter dated 31.05.2017.
14. The learned counsel for the respondent raised the preliminary objection that the said project is not covered under RERA as the respondent had applied for the occupancy certificate on 26.04.2017 and further removed the objections raised by the



department vide letter dated 31.5.2017 and as per rule 2(o)(i) of the rules ibid the said project does not fall under the ambit of RERA. Thus, the complaint filed by the complainant is highly misplaced, misconceived and is not maintainable before this hon'ble authority under the facts and circumstances as aforesaid. The respondent submitted that the present complaint is not maintainable for non-joinder of parties as M/s Resolve Estate Pvt. Ltd., M/s Optus Corona Pvt. Ltd. and M/s Samyak Properties Pvt. Ltd. are the necessary parties and the complainant has not made them respondents.

15. The respondent denied that the officials of the respondent represented to the complainant that the project would be complete in 2-3 years. The respondent admitted that the complainant booked a unit in the project "Ansal Heights 86" being developed by the respondent. The respondent submitted that it charged as per the payment plan opted by the complainant.

16. The respondent submitted that due to several unforeseen events such as ban by NGT, jaat agitation and demonetization, etc. the pace of construction has slowed down but the respondent has put great efforts in completing the project. The respondent stated that it has diligently performed its part.





### Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

17. With respect to the **first issue** raised by the complainant, the complainant has asserted that he has paid Rs.61,61,316 towards the purchase of the flat to the respondent and the respondent has accepted this contention in its reply. Also, as per customer ledger dated 19.07.2018 issued by the respondent, the complainant has paid an amount of Rs. 61,61,316/-.
18. With respect to the **second issue**, the respondent has made application for registration with RERA on 26.9.2018 but has not been granted the certificate yet. The respondent has not registered itself within 3 months from the commencement of Act and incomplete application is no application in the eyes of law. The matter with regard to registration will be dealt by registration branch separately.
19. With respect to the **third issue and fourth issue**, the authority came across clause 31 of the flat buyer's agreement dated 18.3.2013, as per which the possession of the unit was to be handed over within 42 months plus grace period of 6



months from the date of execution of agreement or the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. In the present case, the flat buyer's agreement was executed on 18.3.2013 and the building plan was approved on 03.09.2013. Therefore, the due date of handing over the possession shall be computed from 03.09.2013. The clause regarding the possession of the said unit is reproduced below:

*"31. The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of agreement or within 42 months from the date of commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.*

Accordingly, the due date of possession was 3.9.2017 and hence, the period of delay in delivery of possession is computed as 1 year, 3 months and 18 days till the date of decision. The grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond control of the respondent.

20. As the possession of the flat was to be delivered by 3.9.2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.



21. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it will lead to flooding of complaints before this authority by each and every allottee, which shall hamper the very purpose of the completion of project. Also, as per local commissioner report dated 12.03.2019, about 57% work has been completed at site. Therefore, the authority is of the considered view that the relief sought by the complainant regarding refund of the deposited amount cannot serve the ends of justice and hence is not allowed. However, as the respondent has failed to fulfil its obligation under section 11 of the Act *ibid*, the promoter is liable under proviso to section 18 of the Act *ibid* to pay interest to the complainant at prescribed rate, for every month of delay till the handing over of possession.

### Findings of the authority

22. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning



Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

23. The complainant made a submission before the authority under section 34(f) to ensure compliance/ obligations cast upon the promoter under section 11 of the Act *ibid*. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil its obligation.
24. As per clause 31 of the builder buyer agreement dated 18.03.2013 for unit no. F 1202 in project Ansal Heights 86, Sector 86, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of execution of flat buyer's agreement or from the date of obtaining all required sanctions and approvals necessary for commencement of construction, whichever is later + 6 months grace period which comes out to be 03.09.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.61,61,316/- to the respondent against a total sale consideration of Rs.61,77,025.50/-. As such, complainant



is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 04.09.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

### **Directions of the authority**

25. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- (i) Since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
- (ii) The respondent is directed to pay the interest at prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 03.09.2017 till the offer of possession.
- (iii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till



offer of possession shall be paid before 10<sup>th</sup> of subsequent month.

- (iv) The respondent is directed to adjust the payment of delayed possession charges towards due from the complainant, if any.

26. The order is pronounced.

27. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Dated:19.03.2019

Judgement Uploaded on 12.04.2019

HARERA  
GURUGRAM

