



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

23

Day and Date	Friday and 24.02.2023
Complaint No.	CR/1941/2019 Case titled as AKSHAT GUPTA Vs ANSAL HOUSING AND CONSTRUCTION LIMITED
Complainant	AKSHAT GUPTA
Represented through	Ms. Aditi Bhatia proxy counsel
Respondent	ANSAL HOUSING AND CONSTRUCTION LIMITED
Respondent Represented	Shri Rameshwar Rathi proxy counsel
Last date of hearing	21.12.2022
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint was filed on 08.05.2019 and the reply on behalf of respondent was received on 02.07.2019. The CRA was filed on 07.04.2022.

The succinct facts of the case are as follows:

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Highland Park", Sector 103, Gurugram.
2.	Total area of the project	11.70 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	32 of 2012 dated 12.04.2012 valid up to 11.04.2025
5.	Name of licensee	M/s Identity Buildtech Pvt. Ltd. M/s Agro Gold Chemicals India LLP
6.	Registered/not registered	Registered

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण



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CR/194/2019

New PWD Rest House, Civil Lines, Gurugram, Haryana

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		Vide registration no. 16 of 2019 dated 01.04.2019 valid up to 30.11.2021
7.	Unit no.	EDNBG-704 [pg. 57 of CRA]
8.	Area of the unit	1940 sq. ft. [pg. 57 of CRA]
9.	Date of execution of buyer's agreement	08.05.2013 [pg. 54 of CRA]
10.	Possession clause	Clause 31. 31. The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for 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 48 months as above in offering the possession of the unit. <i>(Emphasis supplied)</i> [pg. 63 of CRA]
11.	Date of construction as per customer ledger dated 29.10.2017 at pg. 98 of CRA	18.05.2013
12.	Due date of possession	18.11.2017 (Note: 48 months from date of commencement of construction i.e., 18.05.2013 being later + 6 months grace period allowed being unqualified)
13.	Delay in handing over possession till the date of filing of this	1 year 5 months 20 days

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CRA/19/41/2019

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	complaint i.e., 08.05.2019	
14.	Basic sale consideration as per payment plan annexed with BBA at page 71 of CRA.	₹ 1,00,06,403.20/-
15.	Total amount paid as per customer ledger dated 29.10.2017 at page 97 of CRA	₹ 86,11,721.18/-
16.	Offer of possession	Not offered
17.	Occupation certificate	Not yet obtained

The complainant is seeking the following relief:

1. Refund entire amount paid (₹ 86,11,721.18/-) by the complainant along with the interest.

The instant matter falls in the category where the promoter has failed to complete or unable to give possession of the unit in accordance with terms of the agreement for sale or duly completed by the date specified therein and still OC has not been obtained/possession has not been handed over.

Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

The due date of possession as per agreement for sale as mentioned in the table above is **18.11.2017** and there is delay of 1 year 5 months 20 days on the date of filing of the complaint.

The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.***



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CR/19/91/2019

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".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

The authority hereby directs the promoter to return the amount received by him i.e., **Rs.86,11,721.18/-**) with interest at the rate of



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10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

Order pronounced. Matter stands disposed off. Detailed order will follow. File be consigned to the registry.


Sanjeev Kumar Arora

Member

24.02.2023