

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 14.02.2019
Complaint No.	1900/2018 Case Titled As P R Bishnoi V/S M/S Ansal Phalak Infrastructure Pvt. Ltd
Complainant	P R Bishnoi
Represented through	Shri Venkat Rao Advocate for the complainant
Respondent	M/S Ansal Phalak Infrastructure Pvt. Ltd
Respondent Represented through	None for the respondent
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S. L. Chanana

Proceedings

Project is registered with the authority.

Complainant has booked a flat No.FF 3024, 1st floor in scheme "Versalia", Sector-67-A Gurugram but no BBA to this effect was executed inter-se the parties. Complainant has so far made an amount of Rs.26,63,064/- to the respondent for the booked unit against a total sale consideration of Rs. 1,28,39,816/-. Till date the respondent has failed to deliver the unit to the complainant. Complainant has sought for refund of the deposited amount alongwith prescribed rate of interest.

As per averments made by the counsel for the complainant that there is no progress w.r.t. construction of work. Since there is no hope and scope for completion of project, no choice is left with the authority but to

direct the respondent to refund the amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
14.02.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 1900 of 2018
First date of hearing : 14.02.2019
Date of Decision : 14.02.2019

Mr P.R. Bishnoi,
R/o. House no 1421, Sector 46, Gurugram,
Haryana

Complainant

Versus

M/s Ansal Phalak Infrastructure Pvt. Ltd.
Regd. Office: 115, Ansal Bhawan, 16, K.G Marg,
New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Venkat Rao

Advocate for the complainant

None for the respondent

Advocate for the respondent

ORDER

1. A complaint dated 22.11.2018 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 P.R. Bishnoi, against the promoter M/s Ansal Phalak Infrastructure Pvt. Ltd, for not handing over possession on



the due date which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since, the allotment letter was issued on 15.10.2013 i.e prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the respondent in terms of section 34 (f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Versalia", Sector 67 A, Gurugram
2.	Nature of project	Residential plotted colony
3.	Unit no.	FF 3024, first floor
4.	Unit area	1685 sq. ft
5.	RERA registered/ not registered.	Registered
6.	RERA registration no	154 of 2017
7.	Completion date as per RERA registration certificate	31.08.2020
8.	Date of allotment letter	15.10.2013
9.	Date of execution of floor buyer's agreement	Not executed



10.	Payment plan	Construction linked payment plan
11.	Total sale consideration	Rs. 1,28,39,816.55/- (as per application form dated 10.01.2013)
12.	Total amount paid by the complainant till date	Rs. 26,63,064/- (as per receipts dated 25.09.2013, 10.10.2013 and 12.11.2013 attached by the complainant)
13.	Date of delivery of possession	Cannot be ascertained
14.	Penalty clause	Cannot be ascertained

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A floor buyer's agreement is not available on record. However an allotment letter dated 15.10.2013 is available on record.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 14.02.2019. The case came up for hearing on 14.02.2019. The reply filed on behalf of the respondent has been perused.



Facts of the complaint

6. The complainant submitted that he was in search of a property of their own for a long time when they stumbled upon the campaign of the respondent regarding their various projects/upcoming projects in the State of Haryana. Thereafter, representative(s) i.e zone investments of the respondent followed up with complainant for advance registration for a dwelling unit in upcoming real estate project "Versalia" (hereinafter referred as "Project") at Sector-67A, Gurugram, Haryana. Representative(s) of the respondent made tall claims regarding the upcoming project and reputation of Ansal Group.
7. The complainant submitted that thereafter, upon much persuasion from official/representatives of respondent, complainant made an application for allotment of a residential dwelling unit at agreed total sale consideration of Rs. 1,18,75,000/- exclusive of EDC / IDC , PLC and any other government charges in the upcoming project of the respondent. The complainant signed advance registration form and paid Rs 7,50,000/- as booking amount through a



cheque dated 06.09.2013 against which the respondent issued receipt dated 25.09.2013.

8. The complainant submitted that during September/ October 2013, the respondent referred a flat/ unit bearing no. FF 3024 in their project Versalia, Sec-67, Gurugram, Haryana in the payment receipts. It is pertinent to note that no separate allotment letter was issued to the complainant and it was informed that all the set of documents including allotment letter etc will be provided subsequently . It is also submitted that only receipts carried the details of unit no etc and it was assured that allotment letter and floor buyer agreement would carry all the said details.
9. The complainant submitted that complainant made a further payment of Rs.4,81,557/- towards the part payment of agreed sale consideration of the unit as sought and was assured that the payment is as per the payment schedule and all the payments would be adjusted against agreed sale consideration and a payment receipt dated 10.10.2013 was issued by the respondent.



10. The complainant submitted that on 05.11.2013, the respondent raised a further demand of Rs.12,31,507.84/. Accordingly, the complainant made a payment of Rs. 12,31,507.84/- through a cheque no 213797 dated 11.11.2013, duly realised against which the respondent issued payment receipt dated 12.11.2013.
11. The complainant submitted that thereafter, the complainant on 17.12.2013 made a payment of Rs.13,70,000/- through cheque no 213800 dated 17.12.2013 towards the consideration of the unit as sought and assured that the payment is as per the payment schedule and all the payments would be adjusted against unit. Till such date, complainant had paid an aggregate amount of Rs 38,33,064/-. It is pertinent to note that while the customer ledger pertains to the complainant, the unit no mentioned is unit no FF 3178 instead of unit no 3024 which was earlier communicated by the respondent. It may also be pertinent note the complete arbitrary and dominant manner of changing of the unit by the respondent without any consent from the complainant. Since 2013 , complainant had requested many times and also



personally visited the site office of the respondent . Also requested the respondent for floor buyer agreement/the status of the project/probable date of delivery of the unit etc but respondent did not give any heed to the requests of the complainant and kept on misleading the complainant on one pretext or other citing reasons such as inordinate delay in layout approvals, building plans etc by the state agencies.

12. The complainant submitted that instead of appraising on the status of project, respondent informed / sought no objection from complainant for the revision in layout plan of project in question. It is pertinent to note that respondent failed to inform relation between itself and Ansal Properties & Infrastructure Ltd nor the status of project even vide this communication.

13. The complainant submitted that respondent vide a letter dated 06.01.2015 offered a 'early payment rebate scheme' luring the complainant to prepone and make early payment of sale consideration. It is pertinent to note that there was neither any mention of status of the project/status of various approvals/plans nor the date of delivery of the unit/project.



The mere malafide intent of the respondent was to lure gullible investors/allottees to shell out more of our hard earned money.

14. The complainant submitted that complainant sent a mail to the respondent on October 03, 2018 seeking a latest statement of account, seeking the confirmation of amounts received and status of project, approvals etc. However, respondent once again failed to reply.
15. The complainant submitted that not receiving any response, it is submitted that the complainant sent a letter to the respondent on October 10, 2018 seeking a latest statement of account for seeking confirmation on payments made and status of project, licenses etc.
16. The complainant submitted that he received a customer ledger, copy of RERA registration and a copy of zoning plan of additional licensee. It is pertinent to note that the RERA registration and the approval of zoning plan pertains to plotted colony. It is also pertinent to note that respondents duly acknowledge the receipt of amounting to Rs 38,33,064/- with a transaction date of 30.09.16. It is pertinent to note that



complainant was utterly surprised to note the transaction date of September 2016 while all the payments were made in 2013 by the complainant. It is also pertinent to note that the complainant had paid/invested over five years ago and nothing is done by the respondent to start the project and fraudulently changed the date of transaction from the year 2013 to the year 2016.

17. The complainant submitted that he recently visited the site of the project on 15.10.2018 and took photographs at the site. There is nothing on the site, not even excavation is done by the respondent at the project site. The respondent has cheated and played fraud upon the complainant. A copy of the photographs taken by the complainant are annexed herewith the complaint.

18. The complainant submitted that the complainant further sought a detailed customer ledger on 12.11.2018, whereupon complainant sent a detailed customer ledger on 15.11.2018 acknowledging an aggregate amount of Rs 38,33,064/- received by the respondent along with cheque no and date of receipt etc. It is pertinent to that herein



respondent shifted stands and clearly acknowledges the receipt of amounts in the year 2013.

19. The complainant submitted that he had always paid all the instalments on time as per payment schedule whenever demands were raised by the respondents. The complainants had paid an huge amount of Rs. 38,33,064/- against the demands raised by the respondents from time to time according to payment schedule towards agreed total consideration of the unit. The respondent did not raise any demand after 05.11.2013 excepting a letter luring complainant for preponement of sale consideration as there was no construction. This clearly shows malafide intent on the part of respondent. It is pertinent to note that even after 5 years from the sale of project/acceptance of booking amounts in the project, respondent has failed to establish of having requisite approval such layout plans/building plans/environmental clearance etc for the development of the project.



20. The complainant submitted that non delivery of unit is a continuous default on the part of the respondent and a cause

of action arises on each such default arises continuously till date.

21. The complainant submitted that respondent is 'promoter' in terms of section 2 (zk) of Real Estate (Regulation and Development) Act, 2016 and as such this Act is applicable.

22. The complainant submitted that the project is an 'Ongoing Project' and is subject to registration under section 3 and promoter should make an application and provide all the information for such registration under section 4 of Real Estate (Regulation and Development) Act, 2016 read with Haryana Real Estate (Regulation and Development) Rules , 2017. The complainant could not ascertain as to whether the project/phase thereof, is registered or not. In case of non-registration of the project or the phase thereof , respondent has not only violated the provisions of section 3 of Real Estate (Regulation and Development) Act, 2016 but also has put to jeopardy rights of complainant under the Act.

23. The complainant submitted that respondent has utterly failed to fulfil his various obligations under the Act and especially under section 14 (1) of the Act by not developing



and completing the project in terms sanctioned plans/lay out plans as approved (if at all approved) by the competent authority i.e Director Town & Country Planning, Haryana and under section 14 (2) of the Act for changing the layout plans etc.

24. The complainant submitted that accordingly, promoter is liable to be prosecuted and penalties under section 59 , 60 and 61 of the Act.
25. The complainant submitted that promoter has utterly failed to deliver the possession of the unit or refund amounts on demand in terms of section 18 of the Act. Accordingly, complainant is entitled for refund of amounts under section 18 of the Act along with the interest as prescribed under rule 15 of the Rules. Hence, the complaint is maintainable .

Issues raised by the complainant

26. The issues raised by the complainant are as follows :
- Whether the respondent is liable to refund entire amount paid by the complainant with interest under section 18 of the Act?



- ii. Whether the respondent is required to register the project in question in terms of section 3 and 4 of Real Estate (Regulation and Development) Act, 2016.
- iii. Whether the respondent has violated the provisions of section 3, 4 and 14 of the Act and liable to be prosecuted and penalties be imposed under section 59, 60 and 61 of the Act.

Relief sought:

27. The complainant is seeking the following relief :

- i. To direct the respondent to refund the entire amount paid by the complainant along with prescribed interest from the date of respective deposits till its actual realisation.
- ii. To conduct such inquiry under section 35 of the Act into the affairs of the respondents;
- iii. To pass such direction, as may be deemed fit and proper ,under section 37 and 38 of the Act, towards giving effect to any one or more of the above sought reliefs.
- iv. To refer the complaint for adjudication of compensation under section 18 of RERA to the adjudicating officer



Reply

28. The respondent submitted that the present reply is being filed on the behalf of the respondent company through its authorized representative Mr F.N Rai who has been duly authorized vide board resolution dated 27.05.2016 to sign, institute, verify and file the present reply, application and vakalatnama etc.
29. The respondent also submitted that the present complaint filled by the complainant is false, frivolous, baseless and nothing but gross abuse of the process of law.
30. The respondent also submitted that the present complaint is liable to be dismissed as the same has been filed without any cause of action attributable to the respondent.
31. The respondent also submitted that the present complaint has been filled prematurely well before the agreed date for handover of possession of the unit in dispute.
32. The respondent also submitted that delay in procurement of requisite licenses was beyond the reasonable control of the respondent company and now the respondent company has got all the licenses in place.



33. The respondent also submitted that as per the terms of the floor buyer agreement, the respondent company was liable to complete the construction within a period of 36 months plus 6 months as stipulated in clause 5.1 of the agreement and handover the possession of the subject unit complete in all respect to the complainant. However post registration with this authority, the respondent company has been mandated by the provisions of RERA to complete the development work of the project with revised timeline of August, 2020. It was further submitted that the respondent company has neither violated the terms of application form/agreement nor the provisions of Act.

34. The respondent also submitted that a floor buyer agreement has not been executed between the parties thereby making it apparent that the timelines for handover of the dwelling unit was tentative and not fixed and the complainant was fully aware of this fact.



Determination of issues:

35. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the

authority decides seriatim the issues raised by the parties as under:

36. With respect to the **first issue**, after perusal of the averments made by the counsel for the complainant, the authority is of the view that there is no progress with respect to construction work of the project in question and there is no hope and scope for completion of project. Therefore the respondent is liable to refund the total amount deposited by the complainant
37. With respect to **second and third issue**, the respondent is liable to register the project in question with this authority under section 3 and section 4 of the Act and in the present case the respondent has duly registered the project in question with this authority vide RERA registration certificate no 154 of 2017 dated 28.08.2017

Jurisdiction of the authority-

38. **Subject Matter Jurisdiction**

The authority has complete jurisdiction to decide the complaint regarding 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.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

39. In the present case, the authority has observed that the complainant has booked a flat no FF-3024, 1st floor in scheme "Versalia", Sector 67 A, Gurugram but no agreement to this effect was executed inter-se the parties. Complainant has so far made an amount of Rs 26,63,064/- to the respondent for the booked unit against a total sale consideration of Rs 1,28,39,816/-. Till date the respondent has failed to deliver the unit to the complainant. Complainant has sought for refund of the deposited amount along with prescribed rate of interest. As per averments made by the counsel for the complainant that there is no progress w.r.t. construction of



work. Since there is no hope and scope for completion of project, no choice is left with the authority but to direct the respondent to refund the amount deposited by the complainant with prescribed rate of interest i.e 10.75% per annum within a period of 90 days from the date of this order.

Decision and directions of the authority

40. After taking into consideration all the material facts as adduced and produced 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 following direction to the respondent

- i. To refund the amount paid by the complainant to promoter along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

41. The order is pronounced.

42. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 14.02.2019