

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

**Complaint No. :** 1156 of 2018  
**First date of hearing :** 02.01.2019  
**Date of Decision :** 30.04.2019

Mr. Laxman Yadav,  
R/o. C-446-A, Sushant Lok-1,  
Gurugram, Haryana.

**Complainant**

Versus

M/s. Ansal Housing and Construction Ltd.  
Regd. Office: 15 UGF, Indra Prakash,  
21, Barakhamba Road, New Delhi -110001.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Rajat Sahni Advocate for the complainant  
Shri Deepankar Dutt Sharma Advocate for the respondent

**ORDER**

1. A complaint dated 17.10.2018 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. Laxman Yadav, against the promoter M/s Ansal Housing and Construction Ltd. on account of non-refund of entire paid

amount of the complainant on cancellation of booked office/unit no. 707, Ansal Town Walk in sector 10, Gurugram which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the allotment letter was executed on 28.1.2013 prior to the commencement of the Real Estate Regulation and Development) Act,2016 and the Rules,2017, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Ansals town walk", Sector 104, Gurugram,
2.	office/ unit no.	707
3.	Admeasuring super area of the unit	744.86 sq. ft.
4.	RERA registered/not registered	Not registered
5.	Date of execution of buyer's Agreement	Not Executed
6.	Payment Plan	Construction linked payment plan
7.	Total consideration amount as per SOA	Rs. 40,96,730/- (BSP)
8.	Total amount paid by the complainant till date	Rs. 10,55,830/- ( <b>Annx P/3</b> )

9.	Due date for delivery of possession	Cannot be ascertained.
10.	Delay in handing over possession till date	No Delay
11.	Date of cancellation of booking by the respondent	17.02.2015 <b>(Annx P/4)</b>

4. The details provided above have been checked as per records available in the case file which have been provided by the complainant and the respondent. A statement of account and cancellation letter dated 17.02.2015 shows that the respondent has cancelled the allotment of complainant for non-payment of outstanding amount by the complainant. However, on cancellation of booking the respondent has forfeited the entire paid up amount of the complainant which is in violation of settled preposition of law as explained below in the succeeding paragraphs of this order.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared through its counsel appeared on The case came up for hearing on 02.01.2019, 12.02.2019, 15.03.2019 and 30.04.2019. The reply has been filed by the respondent on 12.11.2018 which has been perused by the authority.

**Facts of the complaint-**

6. Briefly stated, facts relevant for the disposal of present complaint as per the complainant's version are that on 29.10.2017, based on the representation of the respondent inviting application for the allotment of office/unit in the project namely, 'Ansal Town Walk' located at Sector 104, Gurugram, complainant decided to book a unit in the said project and submitted the application form with the respondent. It was alleged by the complainant that at the time of booking agent of the respondent assured the BSP of the subject unit at Rs. 4,000/- per sq. ft. (approx.), however, in the account statement dated 27.01.2013 the respondent unilaterally changed the BSP to Rs. 5,500/- per sq. ft. (approx.).
7. The complainant later on decided to withdraw his booking and sought refund of the paid amount of Rs. 10,55,830/-.It was alleged by the complainant that the respondent did not pay any heed to the complainant's request and unilaterally cancelled the allotment vide letter dated 17.02.2015 but had not been refunded the paid amount of the complainant till date.

8. The complainant alleged that as per assurances of the booking dated 29.10.2012, respondent should have delivered the possession of the unit within 36 months including grace period i.e. by 29.10.2015. The project is also delayed at the end of the respondent/ developer.
9. It was further alleged by the complainant that the respondent did not refund the paid amount despite repeated reminders and service of legal notice by the complainant. Therefore, the complainant was constrained to file the present complaint.

**Issues to be decided:-**

- Whether the respondent should refund the entire paid amount of Rs. 10,55,830/- alongwith interest @ 24% p.a. to the complainant.
- Whether the respondent should not deduct any principal amount of the complainant on its own fault at the end of the respondent's channel partner and their employees?

**Reliefs sought-**

- Direct the respondent to refund the entire paid amount of the complainant alongwith interest @ 24% p.a. w.e.f. 29.10.2012 till its payment to the complainant.

**Respondent's reply:-**

10. The respondent submitted that they had entered into a joint development agreement with the land owners and the company with the joint efforts have since obtain license No. 103/2012 dated 01.10.2012 for setting a commercial Project on the project Land of DTCP, Haryana. The respondent has already applied for registration under HRERA.

11. The respondent contended that the complainant has paid a sum of only Rs. 10,55,830/- for the entire unit till date and the complainant has also taken a discount of Rs. 1,43,383/- i.e., 3.5% of the basic amount and as such the total cost of the project was calculated as Rs. 41,58,128.40/-. The project ansal town walk is a construction link plan (CLP) but the complainant was its habitual defaulter but even after several reminders dated 13.05.2013, 17.06.2013, 10.09.2013, 25.09.2013, 08.10.2013, 18.01.2014 and 31.01.2014 (**Pg. 15 to 22 of the reply**), but he did not pay the dues to the respondent and as such been defaulters he deserves no relief from the hon'ble authority. Vide letter dated 31.01.2014 the respondent informed the complainant to remit the outstanding amount, failing which the unit will be cancelled. Despite the receipt of the letter and repeated correspondence, complainant has failed to clear the

outstanding. As timely payment was essence of the contract between parties, the respondent after giving multiple reminders finally on 17.02.2015 cancelled the booking on the default of complainant.

12. The respondent submitted that the complainant was informed that the refund of the deposited amount will be made after forfeiting the earnest amount which is 20% of the basic sale priced as per clause 27 of the application form. The complainant was required to approach the respondent with the original documents pertaining to the unit so that the process of refund can be initiated. However, the complainant failed to approach the respondent.
13. The respondent contended that the present complaint has been filed after cancellation and inordinate delay of 3 years, this clearly show that the notice is an afterthought and concocted to conceal complainant default.
14. The respondent submitted that the complaint filed by the complainant is highly misplaced, misconceived and is not at all maintainable before this hon'ble authority under the facts and circumstances as aforesaid.

**Determination of issues:-**

15. With respect to the **issues raised** by the complainant, it is pertinent to note that as per the evidence produced by the respondent shows that the complainant has failed to pay the instalment amount as per the schedule despite repeated reminders from the respondent. So, his booking was cancelled on 17.02.2015 (**Annexure P/4**) in terms of clause 27 of the application form. Since, the complainant has failed to make payment of instalment despite repeated reminders dated 13.05.2013, 17.06.2013, 10.09.2013, 25.09.2013, 08.10.2013, 18.01.2014 and 31.01.2014 (**Annexure R-2**). So, the respondent has cancelled the booking on 17.02.2015 and forfeited 20% of the total consideration. However, forfeiture of more than 10% of the total consideration amount is not sustainable in the eyes of law. In this regard, as per regulation no. 11/RERA GGM Regulation 2018 dated 05.12.2018 which is reproduced below –

*“5. Amount of earnest money*

*.....In view of the facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission (**DLF Ltd. v. Bhagwanti Narula- RP no. 3860 of 2014 decided on 06.01.2015**) and the Hon'ble Supreme Court of India(**Maula Bux v. Union of India; Indian Oil Corporation Ltd. v. Niofer Siddiqui & Ors.; Shakti Singh v. M/s. Bestech India Pvt. Ltd. and Balmer Lawrie Co. Ltd. v. Partha Sartha**)*



***Sen Roy& Ors )** , the authority is of the view that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/pot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.”*

Hence, in view of the aforementioned regulations and case cited above, the respondent is not entitled to forfeit more than 10% of the total sales consideration in lieu of earnest money on cancellation of allotment and the complainant is entitled for the refund of the balance paid amount the detail of which is given in the preceding paragraphs.

**Findings of the authority: -**

16. 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 14.12.2017 issued by Town and 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.

17. Arguments heard. No buyer's agreement was executed inter-se the parties. Unit in question was cancelled by the respondent on 17.02.2015 and all the amount deposited by the complainant has been forfeited by the complainant. During the course of arguments, counsel for the respondent has raised objection with regard to limitation period which is set aside.
18. The complainant has booked a unit/office space no. 707 in the project "Ansal Town Walk", located at Sector 104, Gurugram and paid an amount of Rs. 10,55,830/- against total basic sale price of Rs. 40,96,730/- but no buyer's agreement to this effect was executed inter-se the parties, so the due date of delivery of possession cannot be ascertained.
19. The respondent has cancelled the allotment of unit vide letter dated 17.02.2015 (**Annexure P/4**) in question on the ground that the complainant was not forthcoming to pay the due instalments in time despite sending several reminders

and forfeited 20% of the total consideration as per clause 27 of the application form. The complainant was also informed to collect the remaining amount but he has failed to visit the office of the respondent.

**Decision and directions of the authority -**

20. 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 issue the following directions:

- i. Considering all the facts and circumstances of the matter, the respondent is directed to refund the balance deposited amount of the complainant without interest after deducting 10% of the total sales consideration plus taxes, if any, paid to the government within a period of 90 days from the date of issuance of this order.
- ii. Since the project is not registered, so notice under section 59 of the Act for the violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful. A copy of this order be endorsed to the registration branch for necessary action to be taken against the respondent.

21. The order is pronounced.
22. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated:- 30.04.2019.

**Judgement uploaded on 27.05.2019**



HARERA  
GURUGRAM