

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

Complaint no. :	296 of 2018
Date of filing complaint:	18.07.2018
First date of hearing:	01.05.2018
Date of decision :	10.08.2022

Anuradha Shukla (Through its authorised representative) R/o: CO-402, Ourania, Tower Coral, 4 th floor, Sec 53, Golf Course Road, Gurugram, Haryana	Complainant
Versus	
M/s Ansal Phalak Infrastructure Private Limited [Now known as New look Builders Private Limited] R/o: First floor, The Great Eastern centre 70, Nehru place behind IFCI Tower, New Delhi- 110019	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Manish Yadav (Advocate)	Complainant
Sh. Deeptanshu Jain (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real

Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Avante Floors", Versalia, Sec 67A, Gurugram
2.	Project area	38.262 acres
3.	Nature of the project	Residential colony
4.	DTCP License	81 of 2013 dated 19.09.2013 and valid up to 19.09.2019
5.	Name of the licensee	Lord Krishna Infra Projects Ltd. and others
6.	RERA Registered/ not registered	Registered vide no. 154 of 2017 dated 28.08.2017 and valid up to 31.08.2020
7.	Unit no.	FF 3145 [Page 26 of the complaint]
8.	Unit measuring (super area)	1685 sq. ft. [Page 26 of the complaint]
9.	Date of allotment	05.01.2015

		[Page 19 of the complaint]
10.	Date of execution of builder buyer agreement	21.01.2015 [Page 24 of the complaint]
11.	Possession clause	<p>Subject to Clause 5.2 infra and further subject to all the buyers of the Floors in the Residential Colony making timely payment, the Company shall endeavour to complete the development of Residential Colony and the Floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this Floor buyer agreement subject to the receipt of requisite building /revised building plans/ other approvals & permissions from the concerned authorities, as well as Force Majeure Conditions as defined in the agreement and subject to fulfilment of the Terms and Conditions of the Allotment, Certificate & Agreement including but not limited to timely payments by the Buyer(s), in terms hereof. The Company shall be entitled to extension of time for completion of construction of the Unit equivalent to the period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over possession of the Unit on account of the aforesaid reasons. However, if the Buyer(s) opts to pay in advance of schedule, a suitable discount may be allowed but the completion schedule shall</p>

		remain unaffected. The Buyer(s) agrees and understands that the construction will commence only after all necessary approvals are received from the concerned authorities and competent authorities including but not limited to Environment & Forest.
12.	Due date of possession	21.01.2018 Calculated from the date of execution of the buyer's agreement i.e. 21.01.2015 Grace period is not allowed
13.	Total sale consideration	Rs.1,25,73,000/- [Page 26 of the complaint] Rs.1,30,78,500/- [As per payment plan at page 39 of the complaint]
14.	Total amount paid by the complainant	Rs.40,00,000/- [As per the receipt annexed at page no. 18 of the complaint]
15.	Payment plan	Construction linked payment plan [Page 21 of the complaint]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant was approached in the beginning of December 2014 by one of the representatives of the respondent namely M/s Ansal Phalak Infrastructure Private Limited and represented that the respondent has purchased and thus acquired right, title, and interest in a sizeable parcel of land in Urban Estate, Sector 67A, situated in revenue estate of Village Badshahpur, Tehsil and District-Gurugram, Haryana. It was further represented by the

respondent that the Director Town & Country Planning (DTCP) has granted to the respondent the requisite license for the purpose of construction and development of an integrated residential colony namely "Versalia" in which the respondent was developing and building plots and flats for its prospective allottees against payment of a certain amount as booking advance.

4. It was further represented by the respondent that it has been lawfully entitled and has already been developing independent floors with 3 (three)/ 4 (four) BHK on each floor, over a piece and parcel of the said land within "Versalia" which as per the representations of the respondent, was popularly named as Avante/Woodwinds, Versalia.
5. Based on the above representations made on behalf of the respondent, the complainant expressed her interest in booking an independent residential dwelling unit subsequent to which an application dated 30.12.2014 for allotment of a residential dwelling unit along-with a payment of Rs. 40,00,000/- was made by the complainant via cheque bearing no. 000020 dated 24.12.2014 drawn on HDFC Bank, as part payment towards the sale consideration of an independent residential dwelling unit. It is stated that against the aforesaid payment, a receipt dated 30.12.2014 was provided by the respondent thereby acknowledging the payment and confirming the booking made by the complainant.

6. On 05.01.2015, the respondent issued an allotment letter in name of the complainant wherein in furtherance of the booking made by the complainant and further in lieu of the part payment made towards the aforesaid booking. the respondent allotted the residential floor/dwelling unit bearing No. FF-3145, admeasuring 1685 sq. ft., situated in Versalia, Sector-67A, Gurugram, to the complainant for a total Basic Sale Price of Rs. 1,25,73,000/-, calculated at Rs. 7461.72/- per sq. ft. inclusive of PLC charges amounting to Rs. 7,62,000/-
7. On 21.01.2015, the complainant and the respondent company entered into a floor buyer agreement. It is pertinent to mention here that in terms of clause 5.1 of the said agreement, the possession of the said unit was to be handed over to the complainant by the respondent company within a period of 36 months from the date of the execution of the said agreement with an extended period of six (6) months subject to receipt of requisite building/revised building plans/ other approvals and permissions from concerned authorities. Since the complainant had entered into the said agreement on 21.01.2015, it was represented by the respondent company that the possession of the said unit shall be handed to the complainant on or before 21.01.2018.
8. It is submitted by the complainant that he made a payment of Rs. 40,00,000/- as part payment towards the said unit even prior to entering into the said agreement. Further, the respondent

company vide its letter dated 06.01.2015 informed and offered to its allottees, including the complainant, to make advance payment of the instalments towards the sale consideration of the said unit, as doing so will entitled them for a rebate of 14% per annum on the total cost of the unit. It was represented by the respondent that making such early payments would reduce the overall total cost of the said unit, thus reducing other charges as well, related to the cost of the said unit. In fact, despite passage of almost 3 (three) years from execution of the said agreement the respondent company has not even started the construction work of the said project.

9. It is stated that despite making the advance payment towards the sale consideration of the said unit, till date i.e. even after a period of 36 months from the execution of the said agreement as stipulated in clause 5.1 of the said agreement the respondent company has failed to hand over the possession of the said unit to the complainant.
10. That since the construction of the said project was not even started and since there was no scope of the delivery of the said unit, the complainant issued a legal notice dated 01.02.2018 thereby calling upon the respondent to refund the amount of Rs. 40,00,000/- paid by the complainant towards the part payment of the said unit, along with interest calculated at 18% per annum from the date of entering into the said agreement.

C. Relief sought by the complainant:

11. The complainant has sought following relief(s):
- Direct the respondent to refund the complainant the sum of Rs. Rs.40,00,000/-, along with interest calculated @18% p.a. from the date of entering into said agreement i.e. 21.01.2015.
 - Direct the respondent to pay Rs.1,00,000/- as damages towards causing harassment and mental agony and Rs.50,000/- as litigation costs.
12. Though the respondent put in appearance through its counsel but failed to file any written reply despite giving several opportunities. So, the authority was left with no option but to proceed with the complaint based on averments given in the complaint and the documents placed on the file.

D. Jurisdiction of the authority:

D. I Territorial jurisdiction

13. 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 completed territorial jurisdiction to deal with the present complaint.

D. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Entitlement of the complainant for refund:

E.1 Direct the respondent to refund the complainant the sum of Rs. Rs.40,00,000/-, along with interest calculated @18% p.a. from the date of entering into said agreement i.e. 21.01.2015.

14. Vide letter dated 21.01.2015, the complainant was allotted the subject unit by the respondent for a total sale consideration of Rs. 1,30,78,500/- as per payment plan at page no. 39 of the complaint. A buyer's agreement dated 21.01.2015 was executed between the parties. The due date of possession of the subject

unit was calculated as per clause 5.2 where the possession has to be handover **within 36 months from the date of execution of this floor buyer agreement** and which comes out to be 21.01.2018. After signing of buyer's agreement, the complainant started depositing various amounts against the allotted unit and paid a sum of Rs. 40,00,000/- as is evident from the receipts annexed at page no.80 of the complaint. It is the case of complainant that since the construction of project was not as per schedule of payment, so they stopped making remaining amount due to the respondent and which ultimately led to their withdrawal from the project.

15. 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.
16. The due date of possession as per agreement for sale as mentioned in the table above is **21.01.2018** and there is delay of **approx. 4 months** on the date of filing of the complaint.
17. 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***

"" 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....."

18. 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

19. 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.

20. 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.
21. The authority hereby directs the promoter to return the amount received by him i.e., Rs. **40,00,000/-** with interest at the rate of 9.80% (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*.

F. Directions of the Authority:

22. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the

functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to refund the amount i.e. Rs. **40,00,000/-** received by it from the complainants along with interest at the rate of 9.80% p.a. 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 deposited amount.
- ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

23. Complaint stands disposed of.

24. File be consigned to the Registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)

Chairman

Dated: 10.08.2022