

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

Complaint no.	:	3473 of 2019
Date of filing complaint:		03.09.2019
First date of hearing:		17.12.2019
Date of decision	:	12.09.2022

Sonia Kapoor Rajnish Kapoor R/o: Flat no. 002, Tower 3, Vipul Belmonte, Sec 53, Gurugram	Complainants
Versus	
M/s Ansal Phalak Infrastructure Private Limited R/o: 115, Ansal Bhawan, 16 KG Marg, New Delhi Also, at: Ansal Essencia, B block, Near Badshahpur Village, Sec 67, Gurugram	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Hemant Phogat (Advocate)	Complainants
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 29 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 complainants, 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	"Versalia", Sec 67 A, 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
	RERA Registration valid up to	31.08.2020
7.	Unit no.	3378, 1 st floor [Page 18 of the complaint]
8.	Unit measuring (carpet area)	1190 sq. ft. [Page 18 of the complaint]
9.	Date of allotment	22.07.2016



		[Page 18 of the complaint]
10.	Date of execution of builder buyer agreement	BBA has not been executed
11.	Possession clause	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. Taken from similar complaint of same project
12.	Due date of possession	22.07.2019 In absence of execution of agreement due date has been calculated from the date of allotment letter i.e. 22.07.2016
13.	Total sale consideration	Rs.89,52,112/- [Page 18 of the complaint]
14.	Total amount paid by the complainants	Rs.14,29,871/- [Page 35 of the complaint]
15.	Occupation Certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. That after going through the advertisement published by the respondents in the newspapers and as per the prospectus provided by them, complainant had booked a residential floor/unit bearing no. 3378, first floor, having its super area 1190 sq. ft. in your upcoming project named "Ansal's Versalia" situated in Sector-67-A, Gurugram for a total sale consideration of Rs. 89,52,112/-, and the complainants had paid a sum of Rs. 5,00,000/- vide cheque no. 000086 dated 11.11.2014 as booking amount in respect of the above said flat/unit to be developed by the respondent.
4. That the allotment letter was issued in favour of the complainants on 22-07-2016 and a total sum of Rs. 14,29,871/- was paid duly to the respondents by the complainants. That as per the commitment by the respondent, the project was supposed to be completed within three years from the date of booking. It is pertinent to mention here that the respondent has completely failed to deliver the project and the possession of the flat/floor.
5. That it is also pertinent to mention here that the respondent did not executed the agreement to sell/builder buyer agreement with the complainant, even after receiving nearly 20% of total amount of the flat/floor, in regard to which the complainant made several request but the respondents kept on ignoring and delaying the matter on one pretext to another.

6. That it is also pertinent to mention that even after receiving nearly 20% of the total amount, the respondent had not started construction at the project site since all the relevant permissions were neither not taken by him or the same were not granted by the authorities concerned.
7. That afterwards, the complainants in person visited the project several times but there was no construction on the site and the project were lying abandoned with not even a single brick of construction in place.
8. That when the complainants confronted the respondent regarding the status of the project, they assured that the construction work will soon resume but even after their assurances and promises, construction work never started on the site.
9. That after lot of pursuance, efforts and follow-ups, the officials of the respondents called the complainants for meeting, where they showed their incapability to complete the project and in return agreed to refund the invested amount of Rs. 14,29,871/- and refunded Rs. 5 lacs to the complainants as part payment and assured the complainants that the remaining amount of Rs. 9,29,871/- alongwith interest of total invested amount shall be refunded by end of February, 2019. The communication for the refund of the amount by the officials of the developer/respondent was also confirmed via email communication dated 06.10.2018.

C. Relief sought by the complainants:

10. The complainants have sought following relief(s):

- i. Direct the respondent to refund the remaining amount of Rs.9,29,871/- which was paid by the complainants to the respondents in respect of the above said floor/unit bearing No. 3378, first floor, having its super area 1190 sq. ft. in your upcoming project named "Ansal's Versalia" situated in Sector-67-A, Gurugram to the complainant with interest as shown above as per section 18 of HRERA, along with litigation charges Rs. 50,000/-.
11. The respondent put in appearance through its counsel nor filed 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

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.

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 complainants for refund:

E.1 Direct the respondent to refund the remaining amount of Rs. 9,29,871/- which was paid by the complainants to the respondents in respect of the above said floor/unit bearing No. 3378, first floor, having its super area 1190 sq. ft. in your upcoming project named "Ansal's Versalia" situated in Sector-67-A, Gurugram to the complainant with interest as shown above as per section 18 of HRERA.

12. Vide letter dated 22.07.2016, the complainants were allotted the unit no. 3378, 1st floor admeasuring 1190 sq. ft. by the respondent for a total sale consideration of Rs.89,52,112/-. No

BBA has been executed between the parties. For calculating the due date of possession, the possession clause has been taken from the similar complaint of the same project. The due date of possession of the subject unit was fixed to be **within 36 months with an extended period of (6) six months from the date of execution of this Floor buyer agreement**. In absence of execution of builder buyer agreement, the due date is to be calculated from the date of allotment letter. So, in this case due date for possession of the allotted unit comes out to be 22.07.2019.

13. The complainants started depositing various amounts against the allotted unit and paid a sum of Rs.14,29,871/- as is evident from statement annexed at page 35 of the complaint. During the course of argument, the counsel for the complainants draws attention towards an email communication dated 06.10.2019 (at page 32 of the complaint) wherein it has been intimated that the company has initiated the process of refund alongwith interest at the rate of 8% per annum and same was agreed to by the counsel for the respondent. The respondent has partly refunded the amount and the balance amount to be paid to the complainants are Rs.9,29,871/- at the rate of interest i.e. 8% per annum which has been agreed between the promoter and the allottee under section 19(8) of the Act, 2016 and the same is reproduced here as under:

19(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

The authority hereby directs the promoter to refund the balance amount payable by him i.e., Rs. **9,29,871/-** with interest at the rate of 8% from the date of each payment till the actual date of refund of the deposited amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

E.2 Litigation charges:

14. The complainants are claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

F. Directions of the Authority:

15. 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.9,29,871/- received by it from the complainants along with interest at the rate of 8 % p.a. 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.

16. Complaint stands disposed of.
17. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:12.09.2022