



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Order pronounced on : 19.01.2023

Name of Builder	M/s Flex Pack Technologies Pvt. Ltd.
Project Name	Avenue 18

Sr. No.	Complaint No.	Complainant
1.	225 of 2021	Sher Singh R/o -H.NO. 2123, H.B.C., SECTOR 3, KURUKSHETRA, HARYANA
2.	226 of 2021	Sher Singh R/o -H.NO. 2123, H.B.C., SECTOR 3, KURUKSHETRA, HARYANA
3.	545 of 2021	Suresh Kumar R/o- LANCER BOOK DEPOT, MAIN HISAR CANTT. MARKET, HISAR (HRY)
4.	546 of 2021	SANJIV KUMAR PHOUGHAT - R/o H.NO. 4, VILLAGE SAMASPUR, TEHSIL DADRI, BHIWANI (HRY)

Versus

1. M/s Flex Pack Technologies Private Limited, through its Director, having its registered office PLOT NO. 18 IN GROUP HOUSING SECTOR 02 AT PLOT NO. 18, BAWAL, HARYANA

.....Respondent 1

2. M/s Asian Developer Limited, through its Director, having its registered office B-88, 2nd Floor, Sector-2, Noida, Uttar Pradesh

.....Respondent 2

Handwritten signature

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Present through: - Mr. Akshat Mittal, Counsel for the complainants
Video conferencing None for the respondents (Respondents already ex- parte)

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of all the 4 complaints titled as above filed before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

2. Captioned complaints are taken up together as facts and grievances in all these complaints are identical and relate to the same project of the respondent, i.e., "Avenue 18", situated in PLOT NO. 18 IN GROUP HOUSING SECTOR 02 at PLOT NO. 18, BAWAL, HARYANA. The terms and conditions of the builder buyer's agreements that had been executed between the parties are also similar. The fulcrum of the issue involved in all these cases pertains to failure on part of respondent promoter to deliver



timely possession of units in question. Therefore, complaint no. 546 of 2021 titled "Sanjiv Kumar Phouhat vs M/s Flex Pack Technologies Private Limited and Anr", has been taken as lead case for disposal of all these matters.

A. UNIT AND PROJECT RELATED DETAILS:

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, if any, in lead complaint case no. 546 of 2021, have been detailed in following table:

Sr. No.	Particulars	Details
1.	Name of project	Avenue 18 located at Bawal, Haryana.
2.	Nature of the Project	Group Housing
3.	RERA registered/not registered	Un-Registered
4.	Allotment letter cum Buyer Agreement	02.11.2016
5.	Unit No.	F-209, 9 th Floor
6.	Carpet Area	605 sq. fts.
7.	Total Sale Consideration	₹16,22,375/-
8.	Paid by the complainant	₹08,27,000/-
9.	Deemed date of possession	Within 27 months from the date booking/sanction or plans, whichever is later.

Lead

10.	Offer of possession	Not Made
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B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

4. The respondents floated a scheme for the development of residential township to be constructed and developed on the land situated in the revenue estates of Bawal, Haryana under the project of "Avenue-18". The unit in question was offered on 27.12.2012, for a total sale consideration of Rs. 16,22,375/-, comprising basic sale price to the tune of Rs. 14,52,000/- and Rs. 1,70,375/-qua 'other charges'.

5. The complainant was approached by the respondents for booking of the flat and in pursuance of the same, the booking was made on 27.12.2012 by paying a booking amount of Rs. 1,51,000/-against unit bearing No. F-209, 9th Floor, having an area of 605 sq. ft., in Project "Avenue-18" of the respondents at Bawal, Haryana.

6. In compliance with the various payment demands raised by the respondents, apart from the booking amount of Rs. 1,51,000/- and total payment of Rs. 08,27,000/- was duly made to the respondent.

7. The allotment letter-cum-buyer agreement inter-se the parties qua the unit in question was duly executed on 02.11.2016. As per the agreement for sale, the possession of the unit in question was to be handed over to the complainant allottee within a period of 27 months from the booking however.



date no offer of possession is made. Complainant is further aggrieved of the fact that the construction is incomplete of unit/floor of the complainant and the same has not even started. Since there is no construction on the site and delay of more than 9 years, the complainant has approached the Authority seeking relief of refund.

C. RELIEF SOUGHT:

8. To direct the respondents to refund the entire deposited amount of Rs. 8,27,000/- (Rupees Eight Lakh Twenty Seven Thousand only) which has been deposited against the property in question so booked by the complainant along with interest @ 18% per annum compounded annually, on the amounts from the respective dates of deposit till its actual realization within 90 days according to Section 18(1) Real Estate (Regulation And Development) Act 2016 read with Rule 15 & 16 of Haryana Real Estate (Regulation & Development) Rules 2017.

9. To direct the respondents to pay an adequate compensatory interest on the entire deposited amount of Rs. 8,27,000/- for delayed offer of possession, as deemed fit by the authority.

10. To direct the respondents to pay a sum of Rs. 2,00,000/- on account of grievance and frustration caused to the complainant by the miserable attitude of the respondents and deficiency in service and for causing mental agony cause to complainant along with interest from the date of filing the present complaints till its realization.



11. The registration, if any, granted to the Respondent for the project namely, "Avenue-18", situated in the revenue estate of Bawal, District Rewari, Haryana, under RERA read with relevant Rules may kindly be revoked under Section 7 of the RERA for violating the provisions of The Act.

12. The complainant may be allowed with costs and litigation expenses of Rs. 1,50,000/-;

13. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

D. REPLY:

14. Sufficient opportunities have been given to the respondent to appear and defend their case, however both respondent no. 1 and 2 have neither been represented nor any reply has been filed on their behalf, therefore, both respondents are proceeded ex parte.

E. JURISDICTION OF THE AUTHORITY:

15. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1: 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, Haryana, Panchkula shall be the



rest of Haryana except Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Rewari District. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E.2: Subject matter jurisdiction

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

(4) The promoter shall— (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:

34. Functions of Authority.—The functions of the Authority shall include—(f) 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;



In view of the Provisions of the Act of 2016 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 complainants at a later stage.

F. ISSUES FOR ADJUDICATION:

- I. Whether the complainant is entitled to refund of the deposited amount along with interest in terms of Section 18 of Act of 2016 ?
- II. What is the role and liability of respondent no.1 in regard to arrangement between both the respondents for development of the project ?

G. OBSERVATIONS OF THE AUTHORITY:

16. Authority has gone through all the documents submitted by counsel for complainant and observes as follow:

- i. Both the respondents are proceeded against ex parte as sufficient opportunities have been given to the respondent to appear and defend their case. Authority was established in the year 2018 with a vision to prosecute matters in summary proceedings. Several means have been employed by the Authority to approach the respondent including serving a notice, which was returned undelivered for want of correct address. Authority vide order dated



11.08.2021 ordered to make a publication in the newspaper and the same was complied with, whereby notice was published in the newspaper on 27.11.2021 in complaint no. 225 and 226 of 2021 and on 09.02.2022 in complaint no. 545 and 546 of 2021. Therefore, Authority deems it fit to proceed against ex parte.

ii. Further perusal of records show that agreement was entered into between respondent 2 and complainants only. However, it is mentioned in the BBA that M/s Flex Pack Technologies Pvt. Ltd. has purchased the plot from HSIIDC. Authority had observed vide order dated 20.07.2022 that on the site of Ministry of Corporate Affairs, Government of India, status of the respondent company has been shown as 'Strike off' with the last annual general meeting that was held in the year 2015. Receipts of payment made by the complainant were issued by M/s Asian Developers Ltd in the year 2016 whereas the company had already been struck off in 2015. In such circumstances claims of the complainant including payment of various amounts to M/s. Asian Developer Limited cannot be verified by this Authority. In such circumstances, in order to effectively ascertain the claim of the complainant ,it is necessary to first establish the role of each of the respondents in the project and their liability towards the complainant/ allottee of the project only. The



same was observed by the Authority in its order dated 29.07.2022. Relevant part of the order dated 29.07.2022 is reproduced herein below;

In captioned bunch of complaints, respondent could not be served for want of correct address. Direction was given to the complainant to file correct address. Learned counsel for the complainant submitted that the same address which was already furnished of the respondent, is available with complainant and therefore he had requested that respondent be served by way of publication in newspaper.

2. Pursuant to the same, a notice was published in Indian Express on 27.11.2021(in complaint no. 225 & 226 of 2021) and on 09.02.2022(in complaint no. 545 & 546 of 2021) against both respondents namely Flex Pack Technologies Pvt. Ltd and Asian Developers Ltd for appearing before Authority to prosecute present complaints.

3. However, no one has appeared on behalf of respondent, nor any reply has been filed till date. Vide order dated 09.03.2022, Authority had granted last opportunity to the respondent to appear and prosecute his case, failing which Authority will be proceed ex-parte against them. Since, today, none present on behalf of the respondents namely Flex Pack Technologies and Asian Developers Ltd, Authority deems fit to proceed ex parte against them.

4. Captioned complaints have been taken up together as grievances and facts involved are identical and against the same project of the respondent. Taking Complaint no. 545 of 2021 titled Suresh Kumar Vs Flex Pack Technologies Pvt, as the lead case, facts averred are that complainant agreed to purchase an apartment in respondent's project namely 'Avenue 18, situated at Bawal, Rewari for which booking was made on 27.12.2012 after paying a booking amount of ₹ 1,51,000/- . Complainant already paid an amount of ₹

8,27,000/- for said plot against total sale consideration of ₹ 16,37,500/- . A builder buyer agreement was executed between both parties on 02.11.2016 . As per clause 10 of agreement possession of completed apartment was to be handed over within 27 months from date of booking/ sanctioning of building plans which ever is later. Deemed date of possession in respect of date of booking works out to 27.03.2015. It has been alleged by the complainant that respondent has failed to develop said project and deliver possession of booked unit. No construction work has been carried out at site and respondents have completely abandoned the project. Therefore, complainant has filed present complaint seeking refund of paid amount along with interest.

5. Shri Akshat Mittal, learned counsel for the complainant submitted that by 2014 complainant had deposited an amount of ₹ 8,27,000/- with the respondent towards booking of a flat possession of which was to be delivered by March 2015. However, more than seven years have passed but respondents have failed to develop said project and deliver possession. Therefore, he prayed the Authority to issue directions to respondent to refund the paid amount along with interest in terms of Rule 15 of HRERA Rules 2017. He further submitted that details of payment made by complainant alongwith receipts is annexed as Ax-C-2

6. After hearing submissions of learned counsel for complainant, Authority observes that despite repeated efforts, both the respondents have failed to appear before Authority or file reply. In the absence of appearance of any of the respondents, Authority cannot ascertain rightly and authenticate the case of the complainant as well as the payments claimed to be made by him.

In a separate bunch of complaints in which respondent no. 2 i.e Asian Developers Ltd is a necessary party, Authority had observed that on the site of Ministry of Corporate Affairs, status of the respondent company has been shown as 'Strike off' with last annual general meeting that was held in the year 2015. Now, on

pursuing the receipts of payment made by complainant, one of the receipts which was issued by Asian Developers Ltd in the year 2016 whereas company had already been struck off in 2015. In such circumstances claims of the complainant including payment of various amounts cannot be verified by this Authority. Further, role of respondent no. 1 i.e Flex Pack Technologies Pvt Ltd is also uncertain with regard to arrangement between both the respondents for development of the project. In such circumstances, it is necessary to first establish the role of each of the respondents in the project and their liability towards the complainant/allottee of the project only. Thereafter, Authority can adjudicate upon the relief sought by complainant.

7. *Shri Akshat Mittal, learned counsel for the complainants sought time to produce relevant documents and necessary facts to prove genuine rights of the allottees and to establish relation between both parties.*

iii. Further, Authority vide order dated 14.10.2022 had directed the complainant to submit written submissions supported with documentary evidences to establish relationship between respondent no. 1 and respondent 2. In pursuance of same, ld. Counsel for the complainant submitted his written submissions in the Authority today during proceedings, wherein he has relied upon three documents to establish the relationship between respondent no.1 and respondent no.2 with respect to development of the project. Each of the three documents have been taken into consideration as below:-

iii. (a) Memorandum of Understanding (MOU) dated 11.11.2012:- An MOU was signed between the



respondent no.1 and respondent no.2 on which clause 13
i.e PAYMENT PLAN BETWEEN FIRST AND
SECOND PARTY reads as follow;

*In consideration of the FIRST PARTY providing the land
and the SECOND PARTY developing it under this MOU,
the FIRST PARTY shall make Payment to the SECOND
PARTY as per schedule attached as PAYMENT PLAN
(Annexure III) attached to this MOU.*

*In case FIRST PARTY fails to make payment to the
SECOND PARTY as per Payment plan, the proceeds of
the receipts in the shape of advances/full Payment or
whatsoever nature from the prospective buyers the
proceeds Shall be deposited in an Escrow Account
opened in the name of FIRST PARTY & SECOND
PARTY and will be distributed in the name of FIRST
PARTY & SECOND PARTY and will be distributed in
the ratio of 12% to FIRST PARTY and 88% to
SECOND PARTY.*

Said clause of the MOU clearly entails the payment
arrangement inter-se the respondents. Counsel for the
complainant has acclaimed that in view of the
arrangement vide the MOU both the parties should be
held jointly and severally responsible and liable for
fulfilling their obligations as promoter towards the
allottees of the said project i.e. Avenue-18.

It is observed by the Authority that the "first party" in the
MOU refers to M/s Flex Pack Technologies Private



Limited and second party refers to Asian Developer Limited. The scheduled payment referred, specifically defines the revenue sharing as per the payment plan between the respondent no. 1 and respondent 2. Further it is not disputed by the parties that they have agreed that in case the first party fails to make payment to the second party as per the payment plan the proceeds of the receipts in the shape of advances/full Payment or whatsoever, will be deposited in the escrow account in the name of respondent no. 1 and respondent 2 and will be distributed between them in the ratio of 12% (M/s Flex Pack Technologies Private Limited) and 88% (Asian Developers Ltd). Such arrangements in the agreements itself creates liability upon the parties and determines the share of each party. Therefore, Authority is of the considered view that both the parties should be held jointly and severally liable towards the allottees of the said project on account of MOU.

iii. (b) Ld. Counsel for the complainant has relied upon the Statement of Accounts of respondent no. 2 i.e. M/s Asian Developers Ltd. which reflects financial



transactions inter se both the respondents. Ld. Counsel for the complainant has relied upon the transactions between respondent no.1 and respondent no.2 from the year 2012 to the year 2013 accounting to a total amount of Rs. 84,00,000/-. These transactions were made between two entities i.e. M/s Asian Developers Ltd. and M/s Flex Pack Technologies Private Limited and not two individuals. Thus, it would be unjust to say that respondent 1 and respondent 2 have no transactions and there is no relation in terms of transactions amongst them. Therefore on account of these transactions, Authority is of the view that both the parties are accountable, be held jointly and severally liable towards the allottees of the said project.

iii. (c) Communication exchange between respondent no.1 and State Department (HSI IDC) dated 28.02.2014. Herein, counsel for complainant had attached a notice for non-compliance of terms and conditions of allotment issued by HSI IDC dated 28.02.2014 to Flex Pack Technologies Pvt. Ltd. whereby, HSI IDC has categorically mentioned that "*Sh. Nawal Singh Janghu advocate, District Court Rewari vide letter dated*



5.12.2013 has stated that some M/s Asian developers Limited is booking flats for the Group housing site no. GH-18 allotted to you". Relevant part of the said notice is reproduced below;

This is in reference to our earlier letter dated: 13.12.2013 regarding the captioned subject. In this regard you are once again informed that we are in receipt of a letter dated: 5.12.2013 from Sh. Nawal Singh Janghu advocate, District Court Rewari vide which it has been stated that some M/s Asian developers Limited is booking flats for the Group housing site no. GH-18 allotted to you. Vide our earlier letter dated: 16.04.2013. The same issues was raised and you were also advised to explain your position in the matter. As per terms and conditions of allotment you have no right to transfer the plot allotted to you by way of sale, gift, mortgage or otherwise the plot/building or any right, title or interest except with the prior permission of the MD/HSIIDC. Further you are also in default towards payment of enhanced cost (Rs. 65326/- as on 8.1.2014) and maintenance charges (Rs. 132774/- as on 17.12.2013). Such booking of flats or sale of land in parts and default in payment of enhanced cost dues and maintenance charges are clear cut violation of the terms and conditions of allotment and thus the plot is liable for resumption.

Ld. Counsel for complainant has submitted that the said communication exchange between respondent no.1 and HSIIDC establishes that respondent no.1 i.e., M/s

Flex Pack Technologies Pvt. Ltd. had appointed respondent no. 2 i.e., M/s Asian Developers Ltd. as its contractor /developer / collaborator for construction /sale of the plot/project site. Authority observes that the said communication also establishes that respondent no. 2 was booking flats on the site allotted to respondent no. 1. Therefore, Authority again confirms that both the parties should be held jointly and severally liable towards the allottees of the said project.

(iv) Further, in builder buyer agreement signed with the allottees it is stated that M/s Flex Pack Technologies Pvt. Ltd. has purchased the plot from HSIIDC. Authority observes that M/s Flex Pack Technologies Private Limited is the owner of the project land and therefore falls in the definition of Promoter under section 2(z)(k). Same is reproduced below:

“(zk) “promoter” means,— (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in

the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

(v) Considering the three documents submitted by the complainants, it is observed that M/s Flex Pack Technologies Private

Limited, i.e. respondent no.1, is the land owner of the project site. However, M/s Flex Pack Technologies Private Limited entered into arrangement with respondent no. 2, i.e. Asian Developer Limited whereby Asian Developers Pvt. Ltd. was to develop/construct and sell the project. Based on this inter se arrangement between respondent no.1 and 2, Asian Developer Limited entered into BBA with the allottees. It is pertinent to mention here that though M/s Flex Pack Technologies Private Limited was not a signatory party to the BBA(s), nevertheless one of the clauses of the BBA mentioned that M/s Flex Pack Technologies Private Limited has purchased the land from the HSIIDC and therefore is the landowner. Therefore both respondent no.1 and 2 fall within the ambit of the definition of promoter as provided under section 2(z)(k) of the RERA, Act, 2016 and are jointly and severally liable to fulfill their obligations as promoter towards the complainants. The complainants have paid their hard earned money to M/s Asian Developers Ltd. The landowner is primarily responsible towards the allottees in case of any default in discharge of obligations on part of his collaborator/ developers and cannot be absolved of his responsibility just by entering into an inter se arrangement. In the light of the foregoing discussions and findings, this authority is of the view that the owner in possession of the plot M/s Flex Pack Technologies Private



Limited shall be liable jointly and severally with the collaborator /developer /promoter of the project who was authorised by it to sell and develop the apartments. For active participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent no.2 are jointly and severally answerable and liable towards the complainants.

H. DIRECTIONS OF THE AUTHORITY:

17. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016;

(i) Respondents are directed to refund the entire amount along with interest of @ 10.60 % to the complainant.

(ii) Both the respondents No.1 and No.2 are held jointly and severally liable towards the complainant(s) allottees. Authority has observed above that M/s Flex Pack Technologies Pvt. Ltd. is the landowner and has assigned the work of development/construction of the project to M/s Asian Developers Ltd. M/s Asian Developers Ltd. was merely acting on behalf of M/s Flex Pack Technologies Pvt. Ltd. who is the landowner. However, M/s Asian Developers



Ltd. is now shown as "strike off" on the website of MCA. Therefore, M/s Flex Pack Technologies Pvt. Ltd. who is the landowner and who has allowed/permited/ delegated power to M/s Asian Developers Ltd. to enter into BBA with the allottees shall be liable to refund the amount along with interest to complainants.

Nevertheless, M/s Flex Pack Technologies Pvt. Ltd. is at liberty to recover the amount from respondent no.2, if due, on account of any default on part of M/s Asian Developers Ltd. by approaching appropriate forum/civil court.

(iii) All complainants shall calculate the interest payable as per Rule 15 of Haryana Real Estate (Regulation & Development) Rules, 2017, on each installment paid from the date of payment upto the date of passing this order. A table of those calculation shall be sent to the respondent within 15 days alongwith a copy of the same to this Authority. These calculations attached with receipts/statement of accounts will be verified by the accounts branch of the Authority within one week from receiving from calculations.

(ii) A period of 90 days from the date of verification of amount by the accounts branch of the Authority is given to the respondent to make the refund of amount along with interest as provided in

Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

18. These complaints are, accordingly, disposed of. Files be consigned to the record room and order be uploaded on the website of the Authority.



.....
DR. GEETA RATHEE SINGH
(MEMBER)



.....
NADIM AKHTAR
(MEMBER)

