

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

Complaint no.: 4758 of 2022
First Date of Hearing: 04.11.2022
Order reserved on: 29.08.2023
Order Pronounced on: 19.10.2023

1. Sh. Ayan Dutta
2. Smt. Archita Mahato
Both R/o: - Flat No. 1003, Tower-19, Orchid
Petals, Sector-49, Sohna Road, Gurugram-
122018

Complainants

Versus

M/s New Look Builders and Developers Pvt.
Ltd. (Earlier known as M/s Ansal Phalak
Infrastructure Pvt. Ltd.)
Regd. Office at: 115, Ansal Bhawan 16,
Kasturba Gandhi Marg, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Attar Singh (Advocate)
Sh. Dhruv Gupta (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 09.05.2022 has been filed by the complainants/allottees 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



		(At page no. 16 of the complaint)
12.	Possession clause	5.1 <i>Subject to Clause 5.2 and further subject to all the buyers of the Dwelling Units in the said Sovereign Floors, Esencia, making timely payment, the Company shall endeavor to complete the development of residential colony and the Dwelling Unit as far as possible within 30 (Thirty) months with an extended period of 6 (six) months from the date of execution of this Agreement or the date of sanction of the building plan whichever falls later.</i> (At page no. 27 of the complaint)
13.	Due date of possession	22.02.2016 (Calculated as 30 months plus 6 months from date of execution of buyer agreement i.e., 30.09.2011 or sanction of building plans i.e., 22.02.2013 whichever is later.) Note: Grace period is allowed as the same is unqualified
14.	Total sale consideration as per SOA dated 0603.2023 at page 46 of reply	₹ 79,00,800/-
15.	Amount paid by the complainants	₹ 74,15,591/- (As alleged by the complainants)
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants has made the following submissions: -

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that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"Esencia", Sector 67, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	DTCP license no. and validity status	21 of 2011 dated 24.03.2011 valid upto 23.03.2019
4.	Name of licensee	Bisram S/o Shera and 20 others
5.	RERA Registered/ not registered	336 of 2017 dated 27.10.2017
6.	RERA registration valid up to	31.12.2019
7.	Unit no.	D1561FF, First Floor, sector/block D (At page no. 26 of the complaint)
8.	Unit area admeasuring	1572 sq. ft. (At page no. 21 of the complaint)
9.	Allotment letter	02.08.2011 (At page no. 14 of the complaint)
10.	Date of approval of building plan	22.02.2013 (As per page no. 3 of the reply)
11.	Date of Execution of FBA	30.09.2011



- I. That the complainants vide their application dated 02.08.2011, requested for allotment of a residential floor/dwelling unit in project Sovereign Floors at Alba, Esencia in Sector -67, Gurugram, Haryana, of Ansal Phalak Infrastructure Pvt. Ltd. 115, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi-110001. Accordingly allotment letter dated 02.08.2011, for unit area of approx. 1394.00 sq.ft bearing No. E2167SF located at ground floor (with basement, terrace) for a sale consideration of Rs.79,00,000/- was issued by the Ansal Phalak Infrastructure Pvt. Ltd.
- II. That after the allotment letter was issued, the floor buyer's agreement was signed on 30.09.2011.
- III. That as per floor buyer's agreement and terms & conditions of payment, the complainants went on to pay the due amounts on different dates as shown in payment sheets issued to the complainants by Ansal Phalak Infrastructure Pvt. Ltd.
- IV. That as per FBA the complainants had to pay Rs.79,00,800/- towards the total cost of the flat/apartment and they have already paid Rs.74,15,592/-. The receipt of this amount has also been confirmed as per the statement of accounts issued by the builder.
- V. That further, the complainants are mentioning/stating/recording in the column of relief sought that using the details of payments made to the builder from time to time arriving at interest accrued as per the judgement of the Authority in this case.
- VI. That the allottees have paid the entire amount of loan taken from Indiabulls and HDFC and confirmation to that effect is placed on file.

C. Relief sought by the complainants:

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

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- I. Direct the respondent to handover the legal and rightful possession of the apartment.
 - II. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
- i. That at the very outset, it is most respectfully submitted that the complaint filed by the complainants is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint due to lack of cause of action.
 - ii. It is humbly submitted that the complainants have arrayed "Ansal Phalak Infrastructure Pvt. Ltd." as the respondent in the present complaint. However, the name of "Ansal Phalak Infrastructure Pvt. Ltd." was changed to "New Look Builders and Developers Pvt. Ltd." on 23.10.2020. Therefore, prayer sought by the complainants cannot be allowed. Hence, the present complaint is not maintainable for misjoinder of parties and same is liable to be dismissed with exemplary cost upon the complainants for the aforesaid reason alone.
 - iii. That the delay in handing over the possession of the dwelling unit/ apartment has been caused due to the various reasons which were beyond the control of the respondent. Following important aspects are relevant which are submitted for the kind consideration of the Hon'ble Authority:

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- a. **Non-booking of all floors/ units seriously affected the construction:** -It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project of the respondent is dependent on the amount of monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. The reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent, henceforth, causing delay in the construction work of the project.
- b. **Other various challenges being faced by the respondent:** The following various problems which are beyond the control of the respondent seriously affected the construction;
- Lack of adequate sources of finance;
 - Shortage of labor;
 - Rising manpower and material costs;
 - Approvals and procedural difficulties.

In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession;

- There was extreme shortage of water in the region which affected the construction works;

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- II. There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln;
 - III. Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction work of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labor;
 - IV. Recession in economy also resulted in availability of labour and raw materials becoming scarce;
 - V. There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
 - VI. Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.
- iv. That it is pertinent to mention here that the construction of the project was stopped several times during the year 2016, 2017, 2018 and 2019 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. It is most respectfully submitted that due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of "MC Mehta Vs Union of India & Others" imposed complete ban on construction and excavation work across the NCR region from 04.11.2019, which was ultimately lifted on 14.02.2020. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as the respondent was not able to undertake any construction work during



- the aforesaid period and the same was beyond the control of the respondent.
- v. That it is submitted that in order to curb down the air pollution the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide its notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of diesel generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.
- vi. That all the above stated problems are beyond the control of the respondent. It may be noted that the respondent had at many occasions orally communicated to the complainants that if the respondent is unable to construct the unit, the respondent shall offer another residential unit of a similar value for which the allottees shall not raise any objections. The respondent could not complete the said project due to certain unforeseen circumstances which are completely beyond the control of the developer.
- vii. That it is submitted that the complainants have prayed for reliefs which otherwise have to be claimed in a suit for possession, damages and recovery of money, after paying appropriate court fee. That in order to avoid the payment of court fee, the complainants have not raised a dispute of a civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of the Hon'ble Authority. In this view of the matter, the complaint is liable to be dismissed with costs.
- viii. That it is submitted that the floor buyer's agreement delineates the respective liabilities of the complainants as well as respondent in case



of breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.

- ix. That it is submitted that the dispute between the parties involves complicated questions of facts and law, which necessarily entails leading of copious evidence. The issues raised by the complainants cannot be addressed before the Hon'ble Authority, which follows a summary procedure. In this view of the matter, the complaint is liable to be dismissed.
- x. That it is further submitted that the complainants have filed the frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.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.

E.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) 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;

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 complainants at a later stage.

F. Findings on objections raised by the respondent:

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

9. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the floor buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the



Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

10. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the



terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

11. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the floor buyer's agreement has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding change of name of the company to "New Look Builders and Developers Pvt. Ltd." from "Ansal Phalak Infrastructure Pvt. Ltd.":

12. The respondent has raised a contention that the present complaint is not maintainable as the complainants have filed a complaint against "Ansal Phalak Infrastructure Pvt. Ltd." while the name of "Ansal Phalak Infrastructure Pvt. Ltd." was changed to "New Look Builders and Developers Pvt. Ltd." on 23.10.2020. The complainants have filed a revise proforma with the name of the respondent as New Look Builders and Developers Pvt. Ltd. on 01.09.2023 which is placed on file. Therefore, the said contention of the respondent stands rejected.

F.III Objection regarding delay due to force majeure circumstances

13. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetisation, certain environment restrictions, weather conditions in

NCR region, increase in cost of construction material, connecting roads to the project were not timely acquired by the government authorities and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016

14. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

15. The date of possession of the apartment as per clause 5.1 of the floor buyer's agreement, is to be calculated as 36 months from the execution of

buyer's agreement or sanction of building plans, whichever is later. Therefore, the due date is calculated 36 months from the date of approval of building plan being later i.e., 22.02.2013 which comes out to be 22.02.2016, as per the floor buyer's agreement.

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

17. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.



19. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.

21. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over possession is 22.02.2016. No document is placed on record to show that after completing the unit, OC has been obtained or even applied to the competent Authority. Therefore, the respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.



Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.02.2016 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

22. The complainants have mentioned in the hearing dated 29.08.2023 of the Authority that the name of the company has been changed from M/s Ansal Phalak Infrastructure Pvt. Ltd. to New Look Builders and Developers Pvt. Ltd. with all assets and liabilities of the earlier company and he was directed to file a revise proforma in the name of the respondent as New Look Builders and Developers Pvt. Ltd. within 15 days. The complainants in compliance of the said order dated 29.08.2023 of the Authority filed the revise proforma on 01.09.2023 which is placed on file.

H. Directions of the Authority:

23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to pay interest on the paid-up amount by the complainants at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 22.02.2016 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.



- ii. The complainants are directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondent shall handover the possession of the allotted unit on obtaining of occupation certificate.
 - iii. The arrears of such interest accrued from 22.02.2016 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
 - iv. The respondent shall not charge anything from the complainants which is not the part of the floor buyer's agreement.
 - v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
24. Complaint stands disposed of.
25. File be consigned to registry.

V.1-5
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.10.2023