



**HARERA**  
**GURUGRAM**

Complaint No. 1536 of 2023

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

Complaint no. :	1536 of 2023
First date of hearing:	07.09.2023
Order reserved on:	07.03.2024
Order pronounced on:	04.04.2024

1. Sh. Parijat Parimal
2. Smt. Nicky Sinha

**R/o:** Q-803, Emaar Enclave, Palm Drive,  
Sector-66, Badshahpur, Gurgaon, Haryana-  
122101

**Complainants**

Versus

M/s New Look Builders and Developers  
Private Limited (Earlier known as M/s  
Ansal Phalak Infrastructure Pvt. Ltd.)

**Regd. Office at:** First Floor, The Great  
Eastern Centre 70, Nehru Place behind IFCI  
Tower, New Delhi, South Delhi-110019

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Sajjal Dhawan(Advocate)

Sh. Dhruv Gupta (Advocate)

Complainants

Respondent

**ORDER**

1. The present complaint 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 that the promoter shall be responsible for all obligations, responsibilities and functions under the

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provision of the Act or the rules and regulations made there under or to the allottee as per the apartment buyer's agreement 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.	Particulars	Details
1.	Name of the project	AVANTE FLOORS, VERSALIA
2.	Location of the project	Village- Badshahpur, Gurgaon, Haryana
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	81 of 2019 dated 19.09.2013 valid up to 19.09.2019
5.	Name of licensee	Lord Krishna Infra Projects Ltd. and 13 others
6.	RERA Registered/ not registered	154 of 2017 dated 28.08.2017 valid up to 31.08.2020
7.	Unit no.	GF3069 (As per page no. 23 of the complaint)
8.	Unit area admeasuring	2793 sq. ft. (super area) (As per page no. 23 of the complaint)
9.	Allotment Letter	17.03.2015 (As per page no. 15 of the complaint)
10.	Date of execution of flat buyer's agreement	17.03.2015 (As per page no. 19 of the complaint)
11.	Possession clause (As per flat buyer's agreement)	<b>5. "POSSESSION OF FLOOR"</b> 5.1 Subject to clause 5.2 infra and further subject to all the buyers of the floors in Residential Colony making timely payment, the company shall endeavor 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 and permissions from the concerned authorities, as well as Force

		<i>Majeure conditions as defined in the agreement and subject to fulfillment of the terms and conditions of the allotment, certificate and agreement including but not limited to timely payments by the buyer(s), in terms hereof.</i> <i>(As per page no. 30 of the complaint)</i>
12.	Total sale consideration	Rs.1,64,64,000/- excluding all applicable tax (As per page no. 24 of the complaint)
13.	Amount paid by the complainants	Rs.25,00,000/- (As per page no. 52 of the complaint)
14.	Payment Plan	Subvention Payment Scheme
15.	Email for request of cancellation and refund	26.07.2017 (As per page no. 54 of the complaint)
16.	Reminder email for request of cancellation of unit	09.08.2017 (As per page no. 53 of the complaint)
17.	Due date of possession	17.09.2018 (36 months from execution of FBA, plus 6 months grace period) (As per page no. 4 of the reply)
18.	Occupation certificate /Completion certificate	Not Obtained
19.	Offer of possession	Not available

**B. Facts of the complaint:**

3. That the complainants have made following submissions:
  - I. That the complainants Parijat Parimal & Nicky Sinha both are residents of H.No.-Q 803, Emaar Enclave, Palm Drive, Sector-66, Badshahpur, Gurgaon, Haryana.
  - II. That the project in question is known as "Avante Floors- Versalia", located in village-Badshahpur, Sector-67A, tehsil and district Gurgaon, Haryana promoted by a reputed builder Ansal Phalak Infrastructure Private Limited now known as New Look Builders & Developers Private Limited.





- III. That the complainants along with their family members visited the site. The location was excellent and they consulted the local representative of the respondent/promoter. The local representative of the respondent/promoter allures the complainants with specification of the project.
- IV. That on 17.03.2015, the complainants paid an amount of Rs.5,00,000/- as the booking amount for booking the unit no.-GF3069 admeasuring- 2793 sq. ft. carpet area for a total sale consideration of Rs.1,64,64,000/-, along with the application to the respondent and the allotment letter was also issued by the respondent to the complainants on the same day itself.
- V. That subsequently the flat buyer's agreement was also executed between the complainants and the respondent/ promoter on 17.03.2015 itself.
- VI. That as per the flat buyer's agreement, clause no. 5.1 states that the possession of the flat will be delivered within 3 years. As per FBA the due date of possession comes to 17.03.2018.
- VII. That the unit was booked under the subvention scheme and on first two demands of the respondent, till date the complainants have already paid an amount of Rs.25,00,000/- which is 15% of the total sale consideration. The respondent has not made any further demand from the complaint.
- VIII. That the complainants on various occasions had verbal communication as well as enquired about the status of project through e-mails but no information was provided regarding the same. On 15.06.2017, an email was sent to the respondent asking about the status of construction and as well as loan and on 26.07.2017 the complainants sent an email stating that they want to cancel the unit and seek refund of the unit and on 09.08.2017 a reminder for cancellation of the unit was sent to respondent through email but till date no reply has been given.
- IX. That the first cause of action for the present complaint arose on 17.03.2015, when the booking amount was paid by the complainants.

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Further the cause of action again arose on 17.03.2015 when flat buyer's agreement was executed and on 26.07.2017 when the cancellation of the unit was requested by the complainants by email and further on 17.03.2018 when the respondent failed to provide possession of the unit and on various occasions, when the payment were made and protests were lodged with the respondent about its failure to provide possession of the unit. The cause of action is alive and continuing and will continue to subsist till such time as the Hon'ble Authority restrains the respondent by an order of injunction and / or passes the necessary orders.

- X. The complainants finds the respondent/promoter unprofessional and does not want to continue further and wishes to cancel the unit and wants a full refund of the payment with interest.

**C. Relief sought by the complainant:**

4. The complainants have sought following relief(s):
- I. Direct the respondent to cancel the unit and refund the entire amount of Rs.25,00,000/- by the complainants along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.

**D. Reply by the respondent:**

5. The respondent contested the complaint on the following grounds:
- a. That the complainants were allotted the unit no. 3069, ground floor in the project at the basic sale price of Rs.1,64,64,000/- in terms of the flat buyer's agreement dated 17.03.2015. That in terms of the FBA, the taxes, External Development Charges and Internal Development Charges were to be levied upon the complainant separately i.e., over and above the basic sale price.
  - b. That as a matter of record, the complainants have made a total payment of Rs.25,00,000/- till date towards the allotment of the unit out of basic sale consideration of Rs.1,64,64,000/- excluding EDC, IDC charges plus

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club members fee plus interest-free maintenance charges plus service charges. Therefore, the complainants are liable to pay Rs.1,39,64,000/- to the respondent towards the unit.

- c. That as per the FBA which is binding between the complainants and the respondent, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. It is submitted that the liability of the respondent on account of delay is specified in clause 5.1 of the flat buyer's agreement and as such the complainants cannot claim reliefs which are beyond the compensation agreed upon by him.
- d. That the flat buyer's agreement delineates the respective liabilities of the complainants as well as the 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.
- e. That the construction of project of the respondent is dependent upon the amount of money being received from the booking made and money received henceforth, in form of instalments 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. That 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 a delay in the construction work of the project.
- f. That the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent vide clause 5.1 of the FBA, the complainant has agreed and duly acknowledged that in case the development of the said dwelling unit is delayed for any reasons beyond the control of the company, then no



claim whatsoever by way of any compensation shall lie against the respondent. Therefore, the complainants in terms of the FBA has agreed and undertook to waive all their rights and claims in such a situation.

- g. That the new management of respondent is a customer-oriented organization that is committed to delivering high-quality and reliable residential and non-residential projects in the greater metropolitan area. It aims to work towards the development of self-owned real estate including low-rise apartments and dwellings, plotted development, and non-residential developments.
- h. That the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent. However, despite all odds, still, the respondent is making all efforts to complete the construction work at the project site at full pace and is expecting to hand over the possession very soon, once the situation of pandemic 'Covid-19' gets over and situation normalizes. That owing to the present situation, the real estate sector is severely affected due to the implementation of nationwide 'lockdown' w.e.f. 22.03.2020 and amid the prevailing situation of the pandemic the slowing economy is also posing difficult challenges for the respondent.
- i. That apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in *Writ Petition (Civil) No. 13029 of 1985* titled as "*M.C. Mehta-Versus-Union of India & Ors*" ("*Writ Petition*") which was ultimately completely lifted by the Hon'ble Supreme Court only on 14.02.2020. In past also the construction was banned by Hon'ble Courts and Tribunals. All the above problems are beyond the control of the developer i.e. the respondent It may be noted that the respondent had on many occasions orally communicated to the complainants that the construction activity at the said project site had to

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be halted for some time due to certain unforeseen circumstances which are completely beyond the control of the developer.

- j. 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 allottee shall not raise any objections. The respondent could not complete the said project due to certain unforeseen circumstances which were beyond the control of the developer.
6. That in view the facts, circumstances and law relating thereto. It is further submitted that the complainants failed to produce any evidence or specific averments worth its salt to prove its claims. Moreover, there is no quantification of claims as sought for by the complainants under prayer clause, therefore, the instant complaint is liable to be dismissed at the threshold.
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 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

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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 allottees 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

9. 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.
10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022 wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory*



authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the above-mentioned matter, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by the complainants.

**F. Findings on objections raised by the respondent:**

**F.I Objection regarding force majeure conditions:**

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as COVID-19 outbreak, certain environment restrictions, weather conditions in NCR region, shortage of labour, increase in cost of construction material 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 relief sought by the complainants:**



**G.I Direct the respondent to cancel the unit and refund of paid-up amount of Rs.25,00,000/- along with compound interest at the prescribed rate from date of payments till its actual payment.**

13. The complainants were allotted a unit in the project of respondent "Avante Floors, Versalia" in village-Badshahpur, Gurgaon vide allotment letter dated 17.03.2015 for a total sum of Rs.1,64,64,000/-. The buyer's agreement was executed on 17.03.2015 itself and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.25,00,000/-. It was pleaded by complainants that on 26.07.2017 vide an email they requested the respondent to cancel the allotted unit and refund the paid-up amount but no reply was given by the respondent to the said email.
14. It is evident from the documents placed on record that the complainants have opted for subvention scheme payment plan and they have paid a sum of Rs.25,00,000/- against sale consideration of Rs.1,64,64,000/- of the unit allotted to them. As per the payment plan opted by the complainants, they were required to make payment 30% of the total sale consideration before the start of construction but till date only 15% of the amount has been paid by them which has been duly clarified by the respondent during proceedings of the day dated 07.03.2024.
15. Now when the complainants approached the Authority to seek refund, it is observed that under clause 4.3 of FBA, the respondent-builder is entitled to forfeit the 20% of the total sale consideration. The relevant portion of the clause is reproduced herein below:
- "The parties agree a sum equivalent to 20% of the total sale consideration shall constitute "earnest money" and in case of cancellation of allotment/agreement for any default of any terms and conditions of this agreement by the buyer, the company shall be entitled to forfeit the said earnest money alongwith the interest of the period of delay and other amount of non-refundable nature."*
16. That the above mentioned clause provides that the promoter is entitled to forfeit the booking amount/earnest money paid for the allotment and interest component on delayed payment (payable by the allottee for breach of this agreement and non-payment). The Authority is of the view that the drafting of

the aforesaid clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee. As per the aforesaid clause the builder is entitled to forfeit 20% of the total sale consideration and empowers to promoter to recover interest on delayed payments along with other amount of non-refundable nature. It is unjust condition that exploits the allottee and can be termed as one sided. The clause on the face of it does not give equal bargaining power to the allottee. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines

17. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 *Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)* and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in CC/2766/2017 in case titled as *Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

**"5. AMOUNT OF EARNEST MONEY**



*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the 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/plot 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."*

18. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants i.e., Rs.25,00,000/- after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.85% (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 surrender i.e., 26.07.2017 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**H. Directions of the Authority:**

19. 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.25,00,000/-** received by him from the complainant after deduction of 10% of sale consideration of Rs.1,64,64,000/- as earnest money along with interest at the rate of 10.85% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and

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Development) Rules, 2017 from the date of surrender i.e., 26.07.2017 till the actual date of refund of the amount.

- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

20. Complaint stands disposed of.

21. File be consigned to the registry.

*V.1-3*  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 04.04.2024



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