

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

Complaint no.: 805 of 2023
Order pronounced on: 11.12.2024

1. Sheela Srivastava.
2. Shakuntala Singh Sivakumar.
3. Usha Shankar Singh.
4. Vimla Shankar Singh.

All R/o: - House no.-167, Mandakini Enclave,
New Delhi-110019.

Complainants

Versus

M/s Ansal Housing & Construction Ltd. जयते
Now Known as: New Look Builders And Developers Pvt.
Ltd.
Regd. office: 115, Ansal Bhawan, 16. K.G. Marg,
New Delhi-110001..

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Kuldeep Kumar Kohli (Advocate)

Sh. Dhruv Gupta (Advocate)

Complainants
Respondent

ORDER

1. This 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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project details

2. The particulars of unit, 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:

Sr. No.	Particulars	
1.	Name of the project	Sovereign Floors, Esencia", Sector-67, Gurugram.
2.	Nature of project	Residential
3.	Hrera registered	Registered 313 of 2017 Dated-17.10.2017
4.	Unit no.	D-1571, Floor-1 st , Block-D (As on page no. 148 of complaint)
5.	Unit area	2198 sq.ft. (As on page no. 148 of complaint)

6.	Buyer's Agreement executed	21.01.2021 (As on page no. 153 of complaint)
7.	Possession clause	Clause 5 POSSESSION OF FLOOR 5.1 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 endeavor to complete the development of Residential Colony and the Floor as far as possible within 12 months with an extended period of (6) six months from the date of execution of this Floor buyer agreement\
8.	Due date of possession	21.07.2022
9.	Memorandum of understanding	09.05.2019 (As on page no. 146 of complaint)
10.	Total Sale consideration	Rs.1,55,00,000/- (As on page no. 158 of complaint)
11.	Total amount paid by the complainant	Rs.1,07,47,778.6/- (As on page no. 161 of complaint)

11.	Occupation certificate	Not obtained
12.	Offer of possession	Not offered

B. Fact of the complaint

3. The complainants have made the following submissions: -

- I. That the respondent, M/s. Ansal Phalak Infrastructure Pvt. Ltd. is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- II. That the respondent announced the launch of the project "Avante/Woodwind Floors, Versalia" situated at Sector-67, Gurugram. The respondent managed to impress the complainants, who then decided to invest their hard-earned money in purchasing the unit in the project .
- III. Relying on various representations and assurances given by the respondent and on belief of such assurances, the booked a unit by paying an amount of Rs.12,05,629/-. That the complainants received the Provisional Allotment letter towards the said unit bearing no. 3016 located on First Floor admeasuring area of 1685sq.ft.
- IV. That as per the demands raised by the respondent, based on the payment plan, the complainants paid a total sum of Rs.95,42,172.94/- towards the said unit against sale consideration of Rs.1,16,25,000/-.
- V. That a Floor Buyer's Agreement was executed between the complainant and the respondent on 06.05.2014. It is pertinent to mention here that the respondent changed the unit allotted to the complainants in provisional allotment letter dated 18.11.2013 from unit bearing no.

3016 located at first floor to unit no. FF-3173 in the Agreement dated 06.05.2014.

- VI. That the complainants visited the site and was utterly shocked that even basic construction had not commenced at the site, even after a period of almost 3 years which was contrary to the claim of the respondent.
- VII. That the complainants after being aggrieved informed the respondent that they do not wish to continue with the project due to the inordinate delay in the construction of the unit but the respondent managed to convince the complainants and urged them to buy a unit in one of the another projects of the respondent.
- VIII. That the complainants accepted the proposal to transfer their unit to another project of the respondent. Thereafter, the respondent cancelled the booking of complainants for the above mentioned unit and transferred the same to one of their project "Sovereign Floors, Esencia" located in Sector-67, Gurugram and issued a fresh allotment letter to the complainants on 27.09.2017 allotting a unit vide unit bearing no. "E2144-GF" on Ground Floor having super area admeasuring 2542 sq.ft. for a total sale consideration of Rs.1,07,47,779/-.
- IX. That a Memorandum of Understanding has been executed between the complainants and the respondent on 16.10.2017. It is pertinent to mention that as per the MOU, the paid up amount of Rs.1,07,47,778/- shall be adjusted against the basic cost of adjusted unit and nothing shall be payable against the basic thereafter.

- X. That a Floor Buyer's Agreement was again executed between the complainant and the respondent on 09.01.2018. As per Clause 5.1 of the Flat Buyer's Agreement, the respondent undertook to handover possession of the unit to the complainants within a period of 20 months with an extended period of six months from the date of execution of the Flat Buyer's Agreement. Therefore, the due date of possession comes out to be 09.09.2019.
- XI. That a Memorandum of Understanding has been again executed between the complainants and the respondent on 09.05.2019. According to the Memorandum of Understanding, the complainants were allotted unit no. 1571 at D. Block, Esencia (First Floor) admeasuring 2198 sq. ft. at First Floor, against the total consideration of Rs.1,55,00,000.00 in lieu of unit no. E-2144 GF.
- XII. As per "Para D" of the MOU dated 09.05.2019, the respondent accepted the fact that there had been inordinate delay in handing over of possession of previously allotted units by the respondent to the complainants. It is pertinent to mention here that as per the MOU, the paid-up payment of Rs.1,07,47,778.60 by the complainants shall be adjusted against the basic cost of adjusted unit no D - 1571 and the remaining amount of Rs.47,52,214.40 was payable by the allottees at the time of offer of possession of the adjusted unit no. D-1571, First Floor at Esencia.
- XIII. That a Floor Buyer's Agreement was again executed between the complainants and the respondent on 21.01.2021. As per Clause 5.1 of

the Flat Buyer Agreement, the respondent undertook to handover the unit within a period of 12 months with an extended period of 6 months from the date of execution of the Agreement. Therefore, the due date of possession of the unit comes out to be 21.01.2022.

XIV. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent, but the respondent was never able to give any satisfactory response regarding the status of the construction.

XV. That the complainants have lost hope of getting physical possession of the unit and thus have filed the present complaint.

C. Relief sought by the complainants:

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

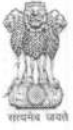
- i. Direct the respondent to refund the payment made in lieu of unit alongwith interest.
- ii. Restrain the respondent from raising any fresh demand w.r.t the unit allotted.
- iii. Restrain the respondent from creating third party rights in the said property till the entire amount is refunded.
- iv. Restrain the respondent from cancelling the allotment till the time the entire amount paid by the complainant is refunded.

D. Reply filed by the respondent

5. The respondent has submitted the following by way of written reply:

- I. That the respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction.

- II. That the respondent i.e. M/s. New Look Builders and Developers Pvt. Ltd. is engaged in the business of construction and development of real estate projects.
- III. That the complainants through the present complaint is seeking refund of Rs.1,07,47,778/-along with interest, which were paid by the complainants towards the allotment of the unit in the project of respondent.
- IV. That the respondent had allotted unit no. 3016 on First Floor, in the project "The Avante Floor, Versalia" vide its allotment letter dated 18.11.2023 to the complainants. Thereafter, the Floor Buyer Agreement dated 06.05.2014 was also executed between the parties.
- V. Thereafter, the complainants approached the respondent in January, 2017 and requested to cancel the allotment of the above mentioned unit and allot a new unit in another project of the respondent. Accordingly, a Memorandum of Understanding was executed between the respondent and the complainant on 16.10.2017, wherein unit no. 3173 situated on First Floor in the project Versalia was cancelled and unit no. E 2144, on Ground Floor in the project Esencia was allotted to the complainants. It is pertinent to mention that at the time of allotment of Unit No. E 2144, Ground Floor in the project Esencia, the complainants was well aware that said unit is still under construction.
- VI. Subsequently, another Memorandum of Understanding dated 09.05.2019 was executed between the complainant and the respondent, wherein the allotment of unit no. E 2144, ground floor in the project Esencia was cancelled and unit No. 1571, Ground Floor in the project Esencia was allotted to the complainants. It was clarified in



the clause 3 of the MOU that at the time of handing over the possession of unit, the complainants are liable to pay Rs.47,52,214/- to the respondent.

- VII. That the respondent intended to handover the possession of the unit to the complainants as per MOU dated 09.05.2019. However, due to COVID 19 pandemic, the handing over of possession of the unit was delayed. It is submitted that said unit is in final stages of construction and respondent will soon be in the position to handover its possession to the complainants.
- VIII. That the complainants have made a total payment of Rs.1,07,47,778/- till date out of the total sale consideration of Rs.1,55,00,000/-. Furthermore, it is pertinent to state that the project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent.
- IX. That 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 present situation of pandemic 'Covid-19' gets over and situation normalizes. That due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f. 25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused a serious impact on the economy posing difficult challenges for everyone.
6. Copies of all the relevant documents have been filed and placed on the record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents as well as written submissions made by the complainants.

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E. Jurisdiction of the authority

7. 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

8. 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

9. 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) 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.

10. 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 the objections raised by the complainant:

F.I. Objection regarding Force majeure circumstances:

11. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as Covid-19 which lead to a nationwide lockdown. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

15. The complainant and the respondent executed several Buyer's Agreement's and Memorandum of Understanding's in respect to various units in several different projects of the respondent. At last the complainants and the respondent executed Buyer's Agreement on 21.01.2021 in respect of unit bearing no. D-1571 FF, admeasuring an

area of 2198 sq.ft. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 much prior to the execution of agreement. Therefore, the Authority is of the view that outbreak of a pandemic does not fall under the force majeure circumstances in the present matter and thus the benefit of Covid-19 cannot be granted to the respondent.

G. Findings on the relief sought by the complainant:

G.I. Direct the respondent to refund the payment made in lieu of flat till date alongwith interest till the date of realization of the amount.

11. In the present case, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"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, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act."

(Emphasis supplied)

12. **Date of possession:** In the present case, the complainant applied for a unit in the project "The Avante Floor, Versalia" in Gurugram, and

pursuant to the allotment letter dated 18.11.2013, a unit was allocated to the complainants following the execution of the Buyer's Agreement on 06.05.2014. Subsequently, the unit was cancelled, and the booking was transferred to another project of the respondent, "Esencia," where unit no. E-2144 was allotted. An MOU was executed in this regard, and the amount paid by the complainants was adjusted towards the new unit. Later, another MOU was executed on 09.05.2019, wherein unit E-2144 was cancelled, and unit no. 1571 was allotted in the "Esencia" project. Following this, a Floor Buyer's Agreement was signed between the complainants and the respondent on 21.01.2021 for unit no. D-1571 FF, with an approximate area of 2198 sq. ft. As per Clause 5.1 of the Agreement, the unit was to be delivered to the complainants within 12 months, with an additional 6-month grace period. Therefore, the due date for the handover of possession was 21.07.2022.

- 13. Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund of the amount paid by them at the prescribed rate of interest. However, the allottees intends to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided 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.

14. 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.

15. 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., 11.12.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

16. 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;"

17. In the present complaint, the complainant booked a unit in the project "The Avante Floor, Versalia" and a unit bearing no. 3016 was allotted to the complainants vide allotment letter dated 18.11.2013. Subsequently a Floor Buyer's Agreement was executed between the complainants and the respondent on 06.05.2014 and the complainants paid an amount of Rs.95,42,172/- against the total sale consideration of Rs.1,16,25,000/-. In 2017, the unit was cancelled and transferred the same to another project of the respondent namely, "Sovereign Floors, Esencia" in Sector-67. A unit bearing no. E-2144-Gf was allotted to the complainants followed by execution of a Floor's Buyer Agreement on 09.01.2018. As per the Statement of Accounts, the complainants have paid an amount of Rs.1,07,47,779/-. A Memorandum of Understanding was executed in respect of the unit bearing no. 1571- D block in "Sovereign Floors, Esencia" . As per para d of the M.O.U, the respondent accepted the fact that there has been inordinate delay in handing over of possession of the previously allotted unit to the complainants and thus another unit is being allotted to the complainants. As per the MOU, the paid up amount of Rs.1,07,47,778/- was adjusted to Unit no. D-1571 against the total sale consideration of Rs. 1,55,00,000/-. The remaining amount of Rs.47,52,214/- was payable by the complainants at the time of offer of possession of the unit no. D-1571. A Floor Buyer Agreement was executed between the complainants and the respondent on 21.01.2021.

According to Clause 5.1 of the Flat Buyer's Agreement dated 21.01.2021, the possession of the unit was to be handed over to the complainants within a period of 12 months with an extended period of six months. Thus, the due date comes out to be 21.07.2022.

18. There is a delay in handing over the possession as due date of possession was 21.07.2022 whereas, the respondent has failed to obtain the occupation certificate from the concerned authorities till date.
19. Thus, keeping in view the aforesaid factual and legal provisions, the failure of the respondent is established under the Act, 2016 as the respondent failed to obtain the occupation certificate from the concerned authorities and also offer possession of the unit to the complainants within the agreed time period. The respondent has been holding the amount paid by the complainant from 2013 and kept on changing the units of the complainants from one project to the other project on account of non-completion of the projects. The amount paid by the complainants has also been shifted and adjusted from one project to the another. Even after a delay of more than 10 years, no unit has been delivered by the respondent to the complainants till date. The respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the same in view of the agreement to sell for allotment along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana



Real Estate (Regulation and Development) Rules, 2017, from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

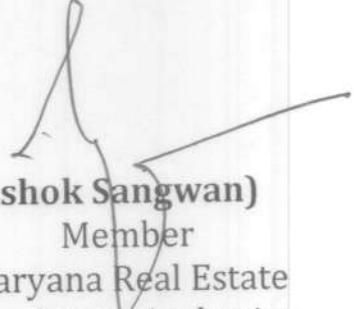
22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the full paid-up amount of Rs.1,07,47,778 /- alongwith interest at the prescribed rate i.e., 11.10% on the amount paid by the complainants, from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- ii. A period of 90 days is given to the respondent to comply with the directions given in the order and failing which legal consequences would follow.

23. Complaint stands disposed of.

24. File be consigned to registry

Dated: 11.12.2024


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram