



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2086 of 2023
Date of filing:	18.09.2023
Date of first hearing:	18.10.2023
Date of decision:	21.10.2024

Galaxy Court Market Society

Regd. Office UGA 129, Galaxy Court Market, Gate no.2,
Ansal Sushant City, Panipat
through its President Sh. Raj Kumar Kalra,
Resident of C-1033, Ansal Sushant City, Panipat.

....COMPLAINANT

VERSUS

- 1. Ansal Properties and Infrastructure Ltd.**
115, Ansal Bhawan, Kasturba Gandhi Marg,
New Delhi.
- 2. Director, Town and Country Planning Department, Haryana**
Nagar Yojana Bhawan, Plot no.3, Block A,
Sector-18A, Madhya Marg, Chandigarh.
- 3. District Town Planner (E), Panipat,**
Department of Town and Country Planning, Haryana,
2nd floor, HUDA Office Complex, Near Toll Plaza,
Sector-18, Panipat.

....RESPONDENTS

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Mr. Puneet Kakkar, Counsel for the complainant through VC.
Mr. Sunny Tyagi, Counsel for respondent no.1, through VC.
None present on behalf of respondent no.2 and 3.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 18.09.2023 by the complainant 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. FACTS OF THE COMPLAINT

2. That the commercial complex namely, "Galaxy Court" over an area measuring area 2.99 acres falling in residential plotted colony, Sushant City bearing Licence No.17- 28 of 2005 dated 25/07/2005 in Sector-19, Panipat being developed by Ansal Properties and Infrastructure. The approved site plan is attached as Annexure C-1.
3. That all the owners of commercial complex constituted a society, i.e., Galaxy Court Market Society for the welfare of all the complex which



has been registered under the Haryana Registration & Regulations of Societies Act 2012 by the department of Industries & Commerce Haryana and Sh. Raj Kalra is the president of that society who is well conversant with the facts of the present case. Copy of the certificate of registration of society is attached as Annexure C-3.

4. That more than 150 commercial shops are in running condition in three storey building and most of the shops are doing the business of daily needs goods which are the life line of all inhabitants of the residential colony and even the adjoining HUDA Sectors. Some of the agreements executed between the unit holders and respondent no.1 are attached as Annexure C-2.
5. That respondent no.1 handed over the possession of the commercial space booked by the unit holders and as per the terms and conditions and payment schedule, the unit holders have paid the entire money, for the site in question. In this regard, No dues certificates were also issued. Copies of No Objection Certificates/ No Dues Letters issued by respondent no.1 are attached as Annexure C-4.
6. That the complainant and other unit holders as per the terms and conditions and payment schedule, paid the whole amount for the said purchased shops/sites in question. The complainant and other unit holders who are more than 150 in numbers are running their shops and earning their livelihood. Some of the photographs showing the shops



which are being run by the unit holders are attached herewith for the kind perusal of this Hon'ble Court as Annexure C-5.

7. That after the allotment of the site in question, every unit holder who are in possession of their shops allotted to them, are also paying their electricity bill and other maintenance charges regularly. Some of the electricity bills showing the possession of the unit holders are attached herewith as Annexure C-6.
8. That as stated above, the above said commercial complex, i.e., Galaxy Court at Sushant City, Panipat already stands constructed and fully completed by the respondent no.1 but for issuance of occupation certificate. All of the formalities like requisite BR-Forms/ Lift/ Fire NOCs etc. are already submitted by the respondent no.1 to the respondent no.2 for grant of occupation certificate to the respondent no.1 but the respondent no.2 has wrongly and illegally not issued the occupation certificate due to outstanding statutory charges/ EDC and expired license. Since the unit owners have fully paid the huge consideration amount of their hard earned money to the respondent no.1 and many times requested respondent no.1 to issue occupation certificate and to handover the same to the unit holders. Due to non issuance of occupation certificate, the complainant and others are suffering a lot and are facing extreme anxiety and insecurity.



9. That due to non issuance of occupation certificate to the unit holders, the unit holders are even not able to obtain loans or other approvals required for efficient running of their business for the said commercial unit.
10. That the complainant being President of the Galaxy Court Market Society, approached to the respondent no.1 and also visited the office of respondent no.1 for the redressal of their grievances and in this regard the complainant society also wrote a letter to the respondent no.1 for grant of occupation certificate for the said complex as developed by the respondent no.1 vide their letter dated 10.7.2023. The copy of letter dated 10.7.2023 issued to respondent no.1 by the complainant society is attached as Annexure C-7.
11. It is further pertinent to mention here that unit holders approached and requested the authorities for getting occupation certificate vide letters dated 11.3.2022, 25.4.2022, 11.8.2022, 20.1.2023 and also averred in their request that their complex can be sealed by the respondent no.2 because of lack of occupation certificate and thus, requested for issuance of occupation certificate to the complainant society to run their business smoothly. The copy of the representation dated 11.3.2022 is attached as Annexure C-8.
12. That thereafter, the respondent no.1 wrote a letter dated 13.7.2023 to the respondent no.2 for grant of occupation certificate for commercial complex namely Galaxy Court and the respondent no.1 in its letter have



clarified the fact that respondent no.1 company was having severe financial crunch and is not in position to pay to pay entire State level dues of the respondent No.2 at this stage.

13. It is pertinent to mention here that in their letter, the respondent no.1 has requested to the respondent no.2 to grant occupation certificate for the said project namely Galaxy Court falling in residential plotted colony Sushant City, bearing License No.17-28 of 2005 dated 25.7.2005 in Sector 19, Panipat on the condition that respondent no.1 will pay the dues of commercial complex of the complainant society, i.e., Galaxy Court and requested to inform the dues against Commercial Complex namely Galaxy Court so that respondent no.1 can pay the same against this project so that occupation certificate may be issued to the complainant society. The copy of letter dated 13.7.2023 has been duly received by the respondent no.2 but no action was taken on the said letter by the respondent no.2 till date. The copy of the letter dated 13.7.2023 written by respondent no.1 to respondent no.2 is attached herewith as Annexure C-9.

14. That from the above letter dated 13.7.2023, it is very much clear that respondent no.1 is ready to pay the dues pending for issuance of occupation certificate to the complainant society. Thus in view of the above, the respondent no.1 is ready to pay the dues if any to the respondent no.2 and thus, the respondent no.2 is duty bound to issue



occupation certificate to the complainant society as the complainant society is being harassed at the hands of respondents no.1 and 2 due to non- issuance of occupation certificates.

15. That inaction on the part of respondents no.1 and 2, the complainant society also filed a suit for permanent injunction restraining the defendants forever from interfering in the peaceful possession and further restraining the defendants forever from sealing the three storey commercial complex namely; Galaxy Court which is constructed over an area measuring 2.99 acres falling in residential plotted colony- Ansal Sushant City. The complainant society also filed an application under 39 Rule 1 and 2 read with section 151 CPC for stay. That upon filing the civil suit by the complainant society, the Id. Civil Judge (Jr. Divn.), Panipat vide its order dated 30.4.2021 passed the status quo order in the interest of both the parties. The copy of the order dated 30.4.2021 passed by Id. Civil Judge (Jr. Divn.), Panipat is attached herewith as Annexure C-10.

B. RELIEFS SOUGHT

16. Complainant in his complaint has sought following reliefs:

- (i) For issuance of directions to issue occupation certificate as the respondent no.1 is ready and willing to pay the remaining dues to respondent no.2 for the Galaxy Court Market Society registered



office UGA 129, Galaxy Court Market, Gate No.2, Ansal Sushant City, Panipat.

- (ii) To compensate the complainant society for the harassment being meted out to the complainant society on account of issuance of show cause notices to evict the complainant and other unit holders.
- (iii) To compensate the complainant for a sum of Rs.10,00,000/- on account of mental agony, torture and harassment;
- (iv) To compensate the complainant for a sum of Rs.10,00,000/- as damages on account of deficiency in service on part of respondents;
- (v) To compensate the complainant for a sum of Rs.100,000/- as litigation expenses;
- (vi) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.1

Learned counsel for the respondent no.1 filed a detailed reply on 24.05.2024 pleading therein as under :

17. That the respondent no. 1 obtained license no 17-28 dated 25.7.2005 from the Director, Town and County Planning, Haryana for development of a residential colony namely- Sushant City, Panipat over an area measuring 108.572 acres in Sector 19, Panipat. The area measuring 2.99 acres was reserved for commercial complex and the



respondent no. 1 constructed the Commercial Complex namely Galaxy Court over the said land. The shops/units were allotted to various persons and about 230 units have already been handed over to the purchasers. There is a total outstanding of approx. ₹1.31 crores against the units and the respondent no. 1 has issued No Dues certificate to 145 unit holders out of the total 276 unit.

18. The license no 17-28 dated 25.7.2005 was renewed from time to time and the same was valid up to 24.7.2019. Thereafter the respondent no. 1 applied for renewal of license on 14.6.2021 for the period- 25.7.2019 till 24.7.2023 along with the license fee. Copy of the letter dated 24.7.2019 is Annexure R1.

19. The respondent no. 1 also applied for grant of Occupation Certificate for the commercial complex namely Galaxy Court over an area measuring 2.99 acres to the Director General, Town & Country Planning, Haryana vide letter dated 29.12.2023 and paid the fee of Rs. 40,66,500/- along with the relevant documents. Since the total licensed area is 108.572 acres approx. and the commercial complex-Galaxy Court is 2.99 acres, so the respondent no. 1 requested the authorities to issue demand of EDC/SIDC for the said area of 2.99 acres and assured that the respondent no. 1 is ready to pay the said amount for the area of 2.99 acres and also requested to convey the pending renewal fee in



respect of the license for the period up to 24.7.2025. Copy of the letter dated 29.12.2023 is Annexure R2.

20.The respondent no 1 is still ready and willing to pay the applicable EDC/dues for the said area of 2.99 acres and to submit any other document required for grant of Occupation Certificate to the Commercial Complex.

E. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.2 & 3

Respondent no.2 and 3 filed a detailed reply on 18.10.2023 mentioning therein as under :

21.That the complainant is aggrieved on account of non-issuance of occupation certificate by respondent no. 2 in regard of commercial complex over an area measuring 2.99 acres forming part of Residential Plotted Colony measuring 346.0225 acres bearing license no. 17-28 of 2005 dated 25.07.2005, 1178-1184 of 2006 dated 25.09.2006, 106-117 of 2007 dated 12.02.2007, 20 of 2009 dated 30.05.2009, 82 of 2011 dated 17.09.2011, 466-473 of 2006 dated 27.02.2006, 119-124 of 2007 dated 19.02.2007, 118 of 2008 dated 04.06.2008, 118 of 2012 dated 23.11.2012 and 80 of 2017 dated 06.10.2017 in Sector-19, District Panipat being developed by Ansal Properties & Infrastructure Limited i.e. respondent no. 1. Further, the said commercial complex falls particularly in licence no. 17-28 of 2005 dated 25.07.2005.



22. The above cited licences stand granted to Ansal Properties & Infrastructure Limited, i.e., respondent no. 1 for development of a Residential Plotted Colony over an area measuring 346.0225 acres in Sector-19, District Panipat under the provisions of section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (Act no. of 1975). The said licences are not valid as on date.
23. The building plans of said commercial complex measuring 2.99 acres in above cited residential plotted colony were approved vide DTCP, Haryana memo no. 4. 18502 dated 24.07.2007 under the provisions of Rule 44 of The Haryana Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965
24. Further, it is pertinent to mention that the building plans were approved subject to condition that, *"no person shall occupy or allow any other person to occupy any new building or part of the same for any purpose whatsoever until such building part thereof has been certified by the Director or any person authorized by him in this behalf as having been completed in accordance with the permission granted and an occupation certificate in prescribed form has duly been issued in the favour of applicant."*
25. That respondent no. 1 applied for grant of occupation certificate in regard of commercial complex measuring 2.99 acres, in view of which deficiencies in the application for grant of occupation certificate were



conveyed to respondent no. 1 vide DTCP Haryana memo no. 16460 dated 11.07.2019 (Copy enclosed). It is pertinent to mention that the building of the above said commercial complex was found not fit for occupation. It was also found that a number of shops/ part of shopping complex were already occupied. Therefore, the occupation of the building by the unit owners of said commercial complex is in the contravention of the conditions of approved building plans and provisions of Code 4.10(2) of Haryana Building Code-2017.

26. The said application for grant of occupation certificate was rejected by answering respondent vide DTCP memo no. ZP-126-II/JD(RD)/2021/9502 dated 13.04.2021 (Copy enclosed) on the grounds of non-completion of public health and the sanitary fixtures, non-validity of license no. 17-28 of 2005 dated 25.07.2005 which expired on 24.07.2019 and non-compliance of observation conveyed vide memo no. 16460 dated 11.07.2019.

27. Also, directions were issued to DTP Panipat to take action under Section 10 of Act of 1975 by sealing the building till Occupation Certificate is granted. Accordingly, Show Cause Notice vide Respondent No. 3 memo no. 2432-2513 dated 01.06.2021 was issued by Respondent No. 3 to the owners/possessors of the shop in Galaxy Court Complex. Through this notice, owners of the commercial units were required to stop further occupation/ use of building and to appear on



14.06.2021 at 11:00 AM in the office of District Town Planner, Panipat office at 2nd floor, HUDA Complex, Near Toll Plaza, Sector-18, Panipat and to show cause within a period of 7 days, why they should not be prosecuted for the aforesaid contravention and ordered to vacate the building in respect of which the aforesaid contravention has been committed or to bring it in conformity with the provisions of the Act or rules framed thereunder.

28. Further, vide endst no. 3126 dated 12.07.2021, Respondent No. 3 informed the department that in reply to the said Show Cause Notice dated 01.06.2021, Galaxy Court Market Society submitted reply dated 14.06.2021 stating that they have been granted stay by Hon'ble Court of CJ (JD) Panipat vide order dated 30.04.2021. Respondent No. 3 informed that no summoning has been served to their office regarding above said Court case. M/s Ansal Properties and Infrastructure Pvt. Ltd. also submitted reply of show cause notice vide their letter dated 15.06.2021 stating that they are preparing the documents to re-instate their application of Occupation Certificate, and the delay is due to Covid. They further stated that they are ready to pay the composition charges of building occupied without Occupation Certificate and they will re-submit the application for Occupation Certificate for above said commercial complex mainly Galaxy Court. Respondent No. 3 also informed vide Endorsement dated 12.07.2021 that as per orders of



Hon'ble High Court dated 28.04.2021 and 30.06.2021 in CWP PIL 77-2021 titled namely Court its own motion Vs Union of India & Others, the restoration order will be passed after 31.08.2021.

29. The execution of any transfer/ conveyance deed was stopped in respect of the properties situated in the said building of commercial complex till the grant of occupation certificate or issuance of further orders in this regard by the department vide DTCP memo no. ZP-126/ATP(RB)/2021/26684 dated 19.10.2021 (Copy enclosed).

30. The complainant, i.e., Galaxy Court Market Society, on 13.07.2022, submitted request to issue occupation certificate w.r.t. respective commercial complex directly in favour of association of unit owners, i.e., Galaxy Court Market Society instead of the colonizer. Pertinently, complainant is in violation of clause 4.10(2) of Haryana Building Code-2017 and condition no. 8 of Building Plan approval. Moreover, there is no legal provision under applicable law through which association of allottees can be recognized to deal with the issues which are to be addressed by colonizer in compliance of terms & conditions of license.

31. That M/s Ansal Properties and Infrastructure Private Limited again requested for grant of occupation certificate on 25.07.2023. However, occupation certificate could not be granted due to following deficiencies which were conveyed to applicant company vide DTCP



Haryana memo no. ZP-126 Vol-II/JD(NK)/2023/32983 dated 04.10.2023 (Copy enclosed):

- i. Application has not been submitted in prescribed forms as per Code 4.10(1) of Haryana Building Code-2017.
- ii. Three sets of the approved building plans duly showing the deviation made in the buildings from the approved building plans has not been submitted.
- iii. Three sets of As-built drawings signed by Owner/ Licensee & Architect have not been submitted.
- iv. CD Containing Videography of the site for which OC has been applied has not been submitted.
- v. Valid NOC from fire safety point of view from the competent authority has not been submitted.
- vi. Certificate regarding registration of lift has not been submitted.
- vii. Proof of drinking water has not been submitted.
- viii. Proof of labour cess deposited has not been submitted.
- ix. Outstanding dues need to be cleared before issuance of occupation certificate. Payment of Rs. 2348.61 lacs on account of EDC has been due against license no. 17-28 of 2005 as on 17.08.2022.
- x. Compliance of Rule-24, 26(2), 27 & 28 has not been made.
- xi. License no. 17-28 of 2005 dated 25.07.2005 is not valid.



32. Therefore, the allegation of the complainant that respondent no. 2 is illegally not issuing the occupation certificate is factually incorrect as the occupation certificate can only be issued to the colonizer under the provisions of Act of 1975 upon fulfillment of all the applicable requisites for issuance of occupation certificate. Also, the deficiencies in the application for grant of Occupation Certificate submitted on 13.07.2022 by the complainant and 25.07.2023 by the respondent No. 1 stand conveyed to the developer company, i.e., respondent no. 1 on 04.10.2023 as mentioned at para no. 14 above. Further, the applicants are violators and law breaking citizens who have already occupied the building in unauthorized manner and therefore, not liable to be heard due to violations committed by them. Therefore, the complaint is liable to be dismissed on this ground itself.

33. There is no merit in the present complaint and thus the present complaint is liable to be dismissed.

F. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

34. Ld counsel for the complainant reiterated the facts of the complaint and requested the Authority to issue directions to the respondent no.2 and 3 to grant occupation certificate as respondent no.1 in its reply has



admitted that respondent no.2 is ready to pay the dues if any to the respondent no.2 and 3.

F. ISSUES FOR ADJUDICATION

35. Whether complaint is maintainable under Section 31 of RERA Act of 2016 before the Authority or not?

G.OBSERVATIONS AND DECISION OF THE AUTHORITY

36. The first issue to be adjudicated by the Authority is whether present complaint is maintainable before the Authority or not?

- (i) Facts of the case are that present complaint has been filed by the Galaxy Court Market Society through its president Mr. Raj Kumar being the occupant and owner of the shop in the commercial complex Sushant City, Panipat for the issuance of directions to respondent no.2, i.e. Director, Town and Country Planning Department, Haryana to issue occupation certificate to respondent no.1, i.e., Ansal Properties and Infrastructure Limited as respondent no.1 is ready and willing to pay the dues to respondent no.2. In this regard, Authority observes that it is important to consider that who is the competent Authority for issuance of occupation certificate and whether RERA has jurisdiction to direct competent Authority in process of issuing occupation certificate or not? Reference can be made to Section 4.10 and 4.12 of The Haryana Building Code, 2017, which is reproduced for reference:



Section 4.10. Occupation Certificate :

(1) Every person who intends to occupy such a building or part thereof shall apply for the occupation certificate in Form BRIV(A) or BR-IV(B), which shall be accompanied by certificates in relevant Form BR-V(1) or BR-V(2) duly signed by the Architect and/ or the Engineer and along with following documents:

(i) Detail of sanctionable violations from the approved building plans, if any in the building, jointly signed by the owner, Architect and Engineer.

(ii) Complete Completion drawings or as-built drawings along with completion certificate from Architect as per Form BR-VI.

(iii) Photographs of front, side, rear setbacks, front and rear elevation of the building shall be submitted along with photographs of essential areas like cut outs and shafts from the roof top. An un-editable compact disc/ DVD/ any other electronic media containing all photographs shall also be submitted.

(iv) Completion certificate from Bureau of Energy Efficiency (BEE) Certified Energy Auditor for installation of Rooftop Solar Photo Voltaic Power Plant in accordance to orders/ policies issued by the Renewable Energy Department from time to time.

(v) Completion Certificate from HAREDA or Bureau of Energy Efficiency (BEE) Certified Energy Auditor for constructing building in accordance to the provision of ECBC, wherever applicable.



(vi) No Objection Certificate (NOC) of fire safety of building from concerned Chief Fire Officer or an officer authorized for the purpose.

4.12. Revocation of Occupation certificate:

In case, after the issuance of occupation certificate, if found at any stage that the building is used for some other purpose against the permission or make any addition/ alteration in the building then, after affording personal hearing to the owner, the Competent Authority may pass orders for revocation of occupation permission and the same shall be restored only after removal of violations.

On conjoint reading of both the provisions of the Haryana Building Code, 2017, it is clear that authority for issuance and revocation of occupation certificate is with the "Competent Authority" elucidated in referred Act. The said "Competent Authority" in the State of Haryana is the Director, Town and Country Planning Department.

- (ii) Moreover, present complaint is filed under section 31 of RERA Act of 2016 and therefore, it is essential to go through the said section:

Section 31: Filing of complaints with the Authority or the adjudicating officer.

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.



Explanation.—For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].

Clearly, what is envisaged in section 31 is that complaint may be filed by “any aggrieved person” for violation or contravention of provisions of RERA Act of 2016 or the rules and regulations made thereunder. But the said complaint can be filed only against promoter, allottee or real estate agents as the case may be to the Authority. In present case, the issue involves is issuance of occupation certificate to respondent no.1 (Ansal Properties and Infrastructure Limited) by the respondent no.2 (Town And Country Planning Department) and it is clear that respondent no.2 is neither a promoter, allottee or real estate agent rather it is a statutory body and a Department of Govt. of Haryana. Further, DTCP works and govern licensing under the provisions of The Haryana Development and Regulation of Urban Area Act, 1975 and rules and regulations framed thereunder and is itself the monitoring Authority. If any violation is committed by respondent no.1, then respondent no.1 will itself get penalised under the said Act for not performing act/obligations cast upon it. Further, the orders of DTCP Haryana



are appealable before Secretary to Government, Haryana, Town and Country Planning Department under rule-30 of Haryana Development and Regulations of Urban Areas Rules, 1976.

- (iii) Also, as per **Section 37 of RERA Act of 2016**, Authority for the purpose of discharging its functions under the provisions of said Act or rules or regulations made thereunder, **issue directions to the promoters or allottees or real estate agents**, as the case may be, as it may consider necessary and such directions shall be binding on all concerned. Meaning thereby, under RERA Act, 2016, directions can be issued to **promoters or allottees or real estate agents** and not to the Government.
- (iv) To conclude, complainant should approach the appropriate forum for redressal of its grievances.

37. In view of above-mentioned terms, Authority concludes that present complaint filed by the complainant is hereby dismissed for the reasons stated in the aforesaid paragraphs.

38. **Disposed of.** File be consigned to the record room after uploading of the order on the website of the Authority


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]