

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

Complaint no. : 1798 of 2019  
Complaint filed on : 26.04.2019  
Date of decision : 13.08.2024

1. Charu Verma
2. Ambika Charan Verma
3. Deepak Verma

All R/o: F-80, Second Floor, Sun City, Sector- 54

**Complainants**

Versus

1. **Ansal Phalak Infrastructure Pvt. Ltd.**  
Regd. office: 1202 Antriksh Bhawan 16, Kasturba  
Gandhi Marg, New Delhi-110001
2. **M/s Ansal Properties and Infrastructure Pvt. Ltd.**
3. **M/s Ansal Township Infrastructure**  
Both having Regd. Office at: registered office at 115,  
Anal Bhawan 16 KG Marg, New Delhi- 110001

**Respondents**

**CORAM**

Shri Arun Kumar  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri K.K. Kohli and Shri Kanish Bangia, (Advocates)  
None

**Complainants**  
**Respondents**

**HARERA**  
**GURUGRAM**  
**EX-PARTE ORDER**

1. The present complaint dated 26.04.2019 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 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:

Sr. No.	Particulars	Details
1.	Name of the project	Sovereign Floors, Esencia, Sector 67, Gurugram
2.	Total area of the project	28.556 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	37 of 2011 dated 26.04.2011
	Validity of license	25.04.2019
5.	Registered/not registered	Registered vide registration no. 336 of 2017 dated 27.10.2017 [As per data available at HA-RERA website]
	Validity of registration	31.12.2019
7.	Payment Plan	Construction linked plan
8.	Unit no.	F-2508, 2 <sup>nd</sup> floor [Page 34 of complaint]
9.	Area of the unit (super area)	1572 sq. ft. [Page 34 of complaint]
	Date of booking	22.10.2012-
10.	Buyer's agreement	26.10.2012 [Page 31 of complaint]
11.	Possession clause	<b>5 POSSESSION OF FLOOR</b> <i>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 36 months</i>



		<p><i>with an extended period of (6) six months from the other claim against the company in respect of the said Dwelling Unit and under this Agreement during the said period.</i></p> <p>(Emphasis applied)</p> <p>[Page 43 of complaint]</p>
12.	Due date of possession	26.04.2016
14.	Basic Total consideration	Rs.1,19,79,000/- [buyer's agreement at page 36 of complaint]
15.	Amount paid	Rs.37,95,907/- [Alleged by complainant in complaint,] [Neither agreed nor denied by respondent no. 1 in its reply]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Booking Cancellation vide duly signed affidavit by complainant	07.11.2016 (on the ground that respondent stated that booked unit is on disputed land and construction is not possible)
19.	Amount refunded by respondent	Rs.10,00,000/- [Page 18 of complaint]

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:

- i. That respondent no.2 is a company incorporated under the Companies Act, 1956, having its registered office at 115, Ansal Bhawan, 16 K.G. Marg, New Delhi 110001, dealing in the business of property development and constructing a group housing colony. Respondent no.1 is a company incorporated under the Companies Act, 1956, having its registered office at 1202, Antriksh Bhawan, 16, K.G. Marg, New Delhi - 110001, being registered with this Hon'ble authority for the present project i.e., Esencia. That

respondent no.3 in a company expected to the Companies Act 1956, having registered office at 115, Anal Bhawan 16 KG Marg. New Delhi - 110001 being the Company on whose letter head the application to the present project was printed and executed by the respondent no.2 and the complaint. (Respondent No. 1 and 3 are hereinafter collectively referred to "Respondents")

- ii. The respondents received, planned and decided to develop a group housing colony known as "Sovereign Floors, Esencia" hereinafter referred to the project which inter alia claimed to comprise of residential floor space, car parking space, recreational facilities, landscaped gardens etc on a piece and parcel of land within the boundaries of Sector 67, District-Gurugram, Haryana.
- iii. That the respondents attracted the public by offering the project for sale and by inviting them through various means like publishing various brochures posters, advertisements etc. The complainants lured try these fancy offer(s) and advertisements decided to purchase one of the units in the Project as described in the following paragraphs, for their personal use.
- iv. That based on the representations made by the respondents, the complainants made an application for booking a unit in the said project That the said unit as booked by the complainants was offered to them at a total consideration of Rs.1,19,79,000/- of which the complainant had already deposited an amount of Rs.12,47,389/- (comprising of first instalment as per the construction linked plan) towards booking amount to the respondents and thereafter paid all the instalments to the respondents as and when demanded by the respondents.
- v. Thereafter, a floor buyer agreement was executed between the complainants and the respondents on 26.10.2012 and the allotment letter was issued to the complainant after the execution of the floor buyer agreement and as per

the class of the floor buyer agreement, respondents red and represented the possession of the said unit after its contraction shall be handed over by 26.04.2016. The aid clause states the under:

- vi. ".....Subject to the clause 5.2 infra and further subject to all the buyers of the floor in the residential colony making timely payment, the company shall endeavour to complete the development of the residential colony and the floor as far 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 & permissions from the concerned authorities, an well at force majeure conditions as defined in the agreement and subject to the fulfilment of the terms and conditions of the allotment certificate & agreement including but not limited to timely payments by the Buyer(s), in terms hereof...."
- vii. That after the said agreement, the complainant with bona fide intention continued making payments basis the demands raised by the respondents: That after the execution of the floor buyer agreement the complaints started paying the respondents as timely instalments. Thus, showing complete sincerity and interest in the project and the unit at that time the complainants had paid a total sum of Rs 37,95,907/-
- viii. That after paying as per the demand of the Respondents and the floor buyer agreement dated 26.10.2012 the possession of unit was still not given on the promised date in. 26.04.2016. In this entire period complainants regularly enquired about the construction status but every time respondents gave false hopes that the construction would start soon. Finally, after 4 years of booking the unit, in November 2016, respondent confirmed that the booked unit in disputed land and construction is not all possible for the booked unit. On 7<sup>th</sup> November 2016, the booking for the unit

got cancelled after duly signing the required documents provided by the respondents to the complainants.

- ix. Respondents assured complainants the entire paid in the booked unit Rs. 37,95,907 would get refunded along with the interest within the period of 2 month i.e., by the end of December 2016 However, till this state respondents has only mould Rs.10,00,000 in spite of regular follow ups through personal visits, emails and phone calls.
- x. This clearly represented that the entire consideration amount along with miscellaneous and additional charges and expenses were paid by the complainants were subjected to unfair and clever dilatory tricks and tactics, false promises and assurances, biased agreements, ill trade practices and highly deficient services causing immense loss to the complainants.
- xi. The complainants have paid more than Rs.37,95,907/- for the said unit worth of Rs.1,19,79,000/-. Complainants after paying huge amount still received nothing in return but only loss of the time and money invested by the complainant.
- xii. Further, it is important to emphasize herein that the complainant despite mailing them and following them continuously they did not bother to refund the money back and not willing to pay back. The respondents have lost sight of reality. The complainants had fairly booked the said unit in the year 2012 and dill 2016, the complainants have no idea about the fate and future of the project while losing a major chunk of their lifelong savings.
- xiii. In this entire duration of follow ups for the refund, complainants received a mail from the respondents with the intimation of the refund of amount with interest invested by the complainants in their project. The complainants only received Rs.10,00,000.00 out of the to mount vested by the complaints. That the respondents have not replies to the letters and the mails of the

complainants and did not bother to refund the money invested by the complainants.

xiv. The complainant have suffered a loss and damage in an much w they had deposited the money in the hope of getting the said unit for residential purposes. They have not only been deprived of the said unit but also the benefit of escalation of price of the said unit and the prospective return they could have you had they not invested in the project of the respondents.

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

4. The complainant has sought following relief(s).
  - a. Direct the respondents to refund the amount paid by the complainant, along with the interest at the prescribed rate, from the date of payment till the realization.
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. Respondent no.2 i.e., M/s Ansal Properties and Infrastructure Pvt. Ltd. & Respondent no. 3 i.e., M/s Ansal Township Infrastructure have been proceeded ex-parte vide proceedings dated 30.07.2024.
7. That vide proceedings dated 30.07.2024, counsel for the complainant confirms that he has no relief to be sought against respondent no.1 i.e., Ansal Phalak Infrastructure Pvt. Ltd. That complainant filed amended CRA for refund dated 06.07.2022 and removed respondent no.1 i.e., Ansal Phalak Infrastructure Pvt. Ltd. from arrears of parties.
8. Respondent no.1 i.e., Ansal Phalak Infrastructure Pvt. Ltd. stands deleted from the arrears of parties vide order of this Authority dated 10.08.2022.
9. Copies of all the relevant documents have been filed and placed on 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.

10. The Authority observes that complainant filed amended CRA for refund dated 06.07.2022 and removed respondent no.1 i.e., Ansal Phalak Infrastructure Pvt. Ltd. from the array of parties. Subsequently vide order of this Authority dated 10.08.2022 respondent no.1 i.e., Ansal Phalak Infrastructure Pvt. Ltd. stands deleted from the array of parties. Further, vide proceedings dated 30.07.2024, it is to be recorded that counsel for the complainant confirms that he has no relief to be sought against respondent no.1 i.e., Ansal Phalak Infrastructure Pvt. Ltd.

**E. Jurisdiction of the authority**

11. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

12. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

13. 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.*

14. 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.

**G. Findings on the relief sought by the complainant:**

**G.I Direct the respondent to refund the amount paid by the complainant, along with the interest at the prescribed rate, from the date of payment till the realization.**

15. In the present complaint, the complainants intend to withdraw from the project and are seeking refund of the amount paid by them in respect of subject unit along with interest. 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:**

**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)*

16. Admissibility of refund along with prescribed rate of interest: The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest 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.*

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., 13.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
19. An allotment letter has been issued by the respondents but no builder buyer's agreement has been executed. So, the document/receipt/provisional allotment letter so issued in favour of a person can be termed as an agreement for sale to drag the developer before RERA Authority and compelling him to fulfil his obligations against the holder of that document.
20. In the present case, the complainants booked a unit with the respondents in its project "Esencia" situated in Sector-67, Gurugram, Haryana. The complainants were allotted a unit bearing no. F-2508, 2<sup>nd</sup> floor,

admeasuring 1572 sq. Ft. of super-area vide buyer's agreement dated 26.10.2012. The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although, the delivery period stipulated in the agreement as per clause 5 is reproduced below:

**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 36 months with an extended period of (6) six months from the other claim against the company in respect of the said Dwelling Unit and under this Agreement during the said period.*

21. The due date of possession is calculated 36 months from the date of agreement i.e. 26.10.2012, which comes to be 26.10.2015 without grace period. Grace period of 6 months is added in 36 months time period which comes out to be 26.04.2016. Therefore, the due date of handing over possession is 26.04.2016.
22. It is pertinent to mention over here that even after a passage of more than 8 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The Authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In

view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016

23. That the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022. observed as under:

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

24. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete and is unable to give possession of the unit in accordance with the terms of agreement for sale by the date specified therein. Accordingly, the promoter is liable to return the amount received in respect of the unit with interest at such rate as may be prescribed to the allottees as they wish to withdraw from the project.
25. Accordingly, the non-compliance of the mandate contained in section 11 (4)(a) read with section 18(1) of the Act on the part of the respondent no. 2

& 3 are established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11% p.a. (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 date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**G.II Direct the respondent to pay compensation of Rs.15,00,000/- on account for harassment/injury both mental and physical and holding the respondent guilty of indulging into unfair practices.**

**G.III Direct the respondent to pay compensation of Rs.35,00,000/- on account for the loss as he has been deprived of the benefit of escalation of the price of the flat.**

**G.IV Direct the respondent to pay Rs.2,00,000/- as litigation charges.**

26. The above mentioned reliefs no. G.II, G.III and G.IV as sought by the complainants are being taken together as the findings in one relief will affect the result of the other reliefs and these reliefs are interconnected.

27. The complainants are also seeking relief w.r.t compensation and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

#### **H. Directions of the authority**

28. 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 no. 2 & 3 are directed to refund the amount deposited with interest at the prescribed rate i.e. 11% per annum from the date of each deposit till the date of realization. The amount of Rs.10,00,000/- already paid by the respondent shall deducted from the amount so calculated.

29. Complaint stands disposed of.

30. File be consigned to registry.

*(Demitted Office)*  
**(Sanjeev Kumar Arora)**  
**Member**



**(Ashok Sangwan)**  
**Member**

**(Arun Kumar)**  
**Chairman**

**Haryana Real Estate Regulatory Authority, Gurugram**

Dated: 13.08.2024

**HARERA**  
**GURUGRAM**