

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

Complaint no.: 5491 of 2022

Date of decision: 27.02.2025

Rajender Kumar Jalali

R/o: -Falt No. C-262, Florence Marvel, Shushant Lik Phae-3,
Sector-57, Gurugram-122001

Complainant

Versus

M/s. Ansal Buildwell Ltd.

Regd. office:118, UFF, Prakash Deep Building, 7, Tolstoy
Marg, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Satvir Singh Hooda (Advocate)

Complainant

None

Respondent

ORDER

1. The present complaint dated 10.11.2023 has been filed by the complainant/allottee 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 as provided under the provision 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 the project, the details of sale consideration, the amount



paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	Boulevard Centre, Sushant Lok-III, Gurugram.
2.	Nature of Project	Commercial Project
3.	Allotment letter	29.11.2007 [Page no. 35 of complaint]
4.	Date of execution of flat buyer's agreement	29.11.2007 [Page no. 35 of complaint]
5.	Unit no.	LG-04, Lower ground floor
6.	Unit measuring	495 sq. ft. (Super area)
7.	Total consideration	Rs.51,97,500/- [Page 35 of the complaint]
8.	Total amount paid by complainant-allottee	Rs.15,59,250/- [As per receipt at page 30-33 of complaint]
9.	Amount refunded by the respondent on 11.10.2017	15,59,270/- (As complainant accepted in its brief facts at page 11 of complaint)
10.	Possession clause	<i>6. The promoter shall complete the commercial complex and offer possession of the flat to the flat buyer as early as possible, subject always to various buyers making timely payments, force majeure causes, and availability of material items for construction, change of policy by the government agency and local authorities and any causes beyond the control of the promoter. However, the expected time for the completion is</i>

		<p><i>about three years from the date of commencement of construction of the Commercial Complex.</i></p> <p><i>[Page 38 of complaint]</i></p>
11.	Due date of delivery of possession	N/A
12.	Commencement of construction of project	Construction couldn't start due to non-approval from competent authorities.
13.	Letter by respondent stating that construction could not be started due to non-receipt of certain approvals from concerned authority and processing of refund.	<p>31.05.2013</p> <p><i>[Page 47 of complaint]</i></p>
14.	Letter by the respondent refunding the entire amount vide cheque dated 11.10.2017 towards full and final refund of payment	<p>12.10.2017</p> <p><i>[Page 60 of complaint]</i></p>
15.	Letter by complainant returning the aforesaid cheque dated 11.10.2017	<ul style="list-style-type: none"> • 26.10.2017 <i>[Page 62 of complaint]</i> • 11.01.2018 Page 72 of complaint]
16.	Letter by complainant enquiring about status of construction	<p>28.08.2020</p> <p><i>[Page 75 of complaint]</i></p>
17.	Letter by the respondent stating surrendering of original documents so that fresh cheque could be issued for refund	<p>06.10.2020</p> <p><i>[Page 78 of complaint]</i></p>



18.	Letter by complainant stating that the respondent has only refunded the principal amount and enquiring about the interest upon that	<ul style="list-style-type: none">• 07.11.2020 [Page 80 of complaint]• 22.02.2021 [Page 85 of complaint]
19.	Letter by the complainant stating that it has come to his knowledge that commercial plot is being sold to someone else and with a plea either to retain the space or refund with 24% interest	29.09.2021 [Page 87 of complaint]
20.	Letter by the respondent offering alternative shops in commercial complex Boom Plaza, Sushant Lok III. Further, with offer to either give consent to the alternative shop or refund of the principal amount	07.10.2021 [Page 90 of complaint]
21.	Email by the complainant stating that refund of the amount along with interest	21.10.2021 [Page 91 of complaint]
22.	Letter by the respondent issuing cheques refunding the principal amount	29.04.2022 [page 97 of complaint]
23.	Email by the complainant stating that the refund of the principal amount is not acceptable	05.07.2022 [Page 103 of complaint]
24.	Date of offer of possession	N.A.

25.	Date of occupation certificate	N.A.
-----	--------------------------------	------

B. Facts of the complaint:

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

- I. After visiting various places in Gurugram in search of a good commercial shop for opening a private clinic, the complainant came into contact with the respondent's company officials by the sales/marketing agent of the respondent, where it was informed to the complainant that the respondent's company is developing a project in the name of "Boulevard Centre" proposed to be built on a large chunk of land situated at a prime location in the residential colony known as Sushant Lok Phase-III, Gurugram, wherein the respondent company offered various sizes of commercial shops/office spaces by raising castles into thin air and painting a very rosy picture through advertising campaigns over print and electronic media. It was intimated that project is in pre-launching stage and it would be huge benefits to the complainant as after launching of the project, the rates of the properties would soar to the great high's and by the reputation of the respondent's company, the complainant decided to have a shop in the respondent's company project.
- II. Believing upon the words, representations and assurances to be true being one of the most reputed builder in Delhi & NCR, the complainant booked a Shop/Office Space having super area measuring 495 SFT on Lower Ground Floor in the proposed commercial complex @ Rs. 10,500 per SFT of Super Area, for a total valuable sale consideration of Rs. 51,97,500 and the compliant made the payment of Rs. 5,00,000 on 19.11.2007 as booking amount in favor of the respondent company according to the payment plan-ii vide application dated 15.11.2007.

III. The respondent company allocated the customer code bearing no. 15/R0002 to the complainant, and issued an Allotment Letter dated 29.11.2017 and have executed a flat buyer's agreement dated 29.11.2007. The respondent company allotted shop/office space bearing no. LG-04 having approximate super area measuring 495 SFT on lower ground floor in the said commercial complex proposed to be developed and constructed in the residential colony known as Sushant Lok Phase-III, Gurugram in construction linked plan. The terms & conditions of the said allotment letter/flat buyer's agreement dated 29.11.2007 relevant to the instant legal demand are that:

- a. As per clause 5 under head "Time of Payment shall be treated as the essence of the contract", it was mutually agreed that, "In exceptional circumstances, the promoter may, in its sole discretion condone the delay in payment, by charging interest at a minimum rate of 24% per annum. In the event of the promoter waiving the right of forfeiture and accepting interest/other compensation on that that account, no right whatsoever would accrue to any other defaulting flat buyer.
- b. As per Clause 6, it was mutually agreed that, "The Promoter shall complete the commercial complex and offer possession of the flat to the flat buyer as early as possible, subject always to various buyers making time payments, force majeure cause, availability of material items for construction, change of policy by the Government Agency and Local Authorities and any causes beyond the control of the Promoter. However, the expected time for completion is about three years from the date of commencement of construction of the commercial complex." and as such upto 24.03.2008, the complainant had paid an amount of Rs. 15,59,250

duly received & acknowledged by the respondent company as per the following details:

S.No	Receipt No.	Date	Amount (Rupees)
1.	00023602	19.11.2007	5,00,000/-
2.	00023705	10.12.2007	19750/-
3.	00023843	19.01.2008	5,19,750/-
4.	00024057	24.03.2008	5,19,750/-
	TOTAL		15,59,250/-

- IV. After receiving the amount of Rs. 19,750/- vide receipt bearing No. 00023705 dated 10.12.2007, vide letter bearing No. BOULE/ R0002/7/2008 dated 03.01.2008, the respondent company further allotted shop/office space bearing No. LG-04 having approximate super area measuring 495 SFT on lower ground floor in the said commercial complex proposed to be developed and constructed in the residential colony known as Sushant Lok Phase-III, Gurugram and after allotment of the said shop/office space, the respondent company demanded an amount of Rs. 5,19,750 on or before 19.01.2008 from the complainant vide letter bearing No. BOULE/R0002/7/2008 dated 03.01.2008 in terms with the aforesaid Flat Buyer's Agreement dated 29.11.2007 and accordingly the complainant paid the aforesaid amount duly received & acknowledged by the respondent company vide receipt bearing No. 00023843 dated 10.01.2008. Similarly, vide letter bearing No. BOULE/R0002/7/2008 dated 03.01.2008, The respondent company further demanded an amount of Rs. 5,19,750/-on or before 19.01.2008, which was also paid by the complainant duly received & acknowledged by the respondent company vide Receipt bearing No. 00024057 dated 24.03.2008.
- V. It was very shocking to the complainant that after releasing such a huge amount of Rs. 15,59,270/- in terms with the aforesaid booking application

dated 15.11.2007 and flat buyer's agreement dated 29.11.2007 and in sheer breach the terms & conditions of the same in place of developing or constructing the aforesaid project within the stipulated period of 03 years from the date of the aforesaid flat buyer's agreement, the respondent company almost forgot the very existence of the complainant and even his hard-earned money. The complainant tried to contacted the respondent to know the progress/status of development & construction of the said project vide his email dated 29.03.2013 but to the utter shock & surprise, the respondent officials informed the complainant vide email dated 01.06.2013 that the construction of the said commercial complex i.e. Boulevard Centre could not be started due to non-receipt of certain approval/sanction from the concerned authority. After illegally, unlawfully and unauthorizedly using such a huge of amount of Rs. 15,59,270 of the hard-earned income of the complainant, the respondent very shamelessly offered to refund the said amount without any interest upon surrender of all the documents in original including allotment/agreement letter and payment receipts.

- VI. In reply to the aforesaid email dated 01.06.2013 of the respondent, the complainant informed the respondent through email dated 05.06.2013 that he had already sent the email dated 29.03.2013 to know the status of development/construction of the said project and not for refund money and that he had invested his hard earned money in the said commercial project with two things in his mind that the proposed commercial project was very near to the residence of complainant at Florence Marvel, Sushant Lok-III, Gurugram and secondly, being a physician, the complainant needed the commercial space to start his clinic to earn his livelihood, but vide letter bearing Ref. No. ABL/LG-04/BC/SL-III dated 12.10.2017, the respondent refunded the aforesaid amount of Rs. 15,59,270 vide cheque bearing no. 000089 dated 11.10.2017 drawn on Punjab and Sind Bank, New Delhi. The

complainant filled with the resentment returned the said cheque vide letter dated 26.10.2017 addressed to Mr. Gopal Ansal, Chairman & Managing Director of respondent company.

- VII. After long series of correspondence between the complainant and the respondent, in the month of October 2021 the respondent offered alternative shops in their other commercial complex, but as the same were unsuitable to the bonafide needs of the complainant, he rejected the same and finally the respondent again refunded the aforesaid amount of Rs. 15,59,270/- vide cheque bearing No. 006797 dated 20.04.2022 for Rs. 5,00,000; Cheque bearing No. 006798 dated 20.04.2022 for Rs. 5,00,000; Cheque bearing No. 006799 dated 20.04.2022 for Rs. 5,00,000 and Cheque bearing No. 006800 dated 20.04.2022 for Rs. 59,250/- all cheques drawn on Punjab and Sind Bank, New Delhi, after which, the complainant had no other alternative but to encash the said instruments into his bank account.
- VIII. From the above facts & circumstances, it is clear and establish that illegally, unlawfully and unauthorizedly, the respondent launched the proposed commercial project without obtaining the requisite license, approvals, sanctions from the competent authority knowing fully well that the respondent never had any intention of developing or constructing the proposed commercial project, just to lure the bonafide and innocent buyers including the complainant to raise huge funds by causing wrongful losses to them for the wrongful gains of respondent and ultimately succeeded in receiving billions of rupees to use the same for their personal gains and the respondent cannot be allowed to do so and roam around scot-free, despite committing a clear cut white colour crime under the garb of the project commercial project.
- IX. Due to illegal acts and conducts of the respondent, the complainant had been suffered to great mental agony, physical harassment, financial loss,

humiliation, hence the Complainant is entitled to get the delay possession charges along with 24% interest. It is also pertinent to mention here that when the complainant booked this shop for his clinic at that time the complainant was in the age of 51 years but when the respondent did not handover the said property to the complainant and cancelled it without the knowledge of complainant. Now the complainant attained the age of 66 years and he becomes a senior citizen of India and the respondent had deceived a reputed doctor and senior citizen of the country in this way.

- X. There is gross deficiency in service and unfair trade practices on the part of the respondent as the respondent company with malafide intent served all the demand notice whereby a huge amount was demanded in order to put pressure on the complainant, just to give in to the illegal tactics of retaining the unit in guise of cancellation of allotment and to forfeit the amount paid by the complainant.
- XI. It is also relevant to mention here that the complainant has also served a legal demand notice dated 23.05.2021 for the interest amount. Despite the receipt of the said notice, the respondent intentionally did not pay any amount to the complainant.
- XII. The respondent being such a type of reputed company firstly trapped the innocent customers like the complainant by showing attractive brochures boosting about the reputation of the respondent company and once the customers like the complainants are trapped in their net, they with having no fear of law of land demands the amount without having any norms leaving the customers like the complainant to run from pillar to post without their being any fault on their part.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

A

- i. Direct the respondent to pay respondent to pay the delay possession charges along with interest @ 24% per annum which comes to amount of Rs. 58,00,000/- approx.. to the complainant.

D. Reply by respondent:

5. The respondent has made following submissions by way of reply:
 - I. That present complaint was filed on 19.09.2023 and registered as complaint no. 5491 of 2022. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. The counsel for the respondent filed memo of appearance on 27.07.2023. Subsequently, Vakalatnama on behalf of respondent was filed on 21.12.2023. The respondent was directed to file reply in the registry, subject to cost of Rs.5,000/-. The respondent neither filed reply not paid the cost imposed on it despite adequate opportunity given vide proceeding dated 06.02.2023, 27.07.2023. Thus, vide proceedings dated 28.09.2023, the defence of the respondent was struck off.
 6. 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.

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 allottee 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;

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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to delay possession charges along with interest @ 24% per annum which comes to amount of Rs.58,00,000/- approx. to the complainant.

12. The complainants were allotted a residential unit no.-LG-04 on lower ground floor admeasuring a carpet area of 495 sq. ft. Thereafter, the respondent and the complainants entered into buyer's agreement on 06.06.2012 and as per clause 6 of the said agreement the respondent undertook to deliver the possession of the unit to the complainants within 3 years from the date of commencement of construction of the commercial complex.

13. Upon review of the relevant documents, it is evident that due to the non-approval of the competent authorities, the construction of the project could not commence, which fact was duly intimated by the respondent-promoter to the complainant vide letter dated 31.05.2013. Subsequently, the respondent issued a cheque dated 11.10.2017, thereby refunding the entire principal amount paid by the complainant. However, the complainant returned the said cheque on the ground that the respondent had refunded only the principal amount, whereas the complainant is entitled to interest on the amount paid, in accordance with applicable legal provisions.
14. Thereafter, the complainant, vide letter dated 21.10.2021, requested the refund of the amount along with interest @ 24% per annum. Subsequently, during the proceedings dated 12.12.2024, the learned counsel for the complainant admitted before the authority that the principal amount had been refunded on 20.04.2022. In response, the learned counsel for the respondent submitted that the project was abandoned in the year 2013 due to non-clearance of the land title, which was duly communicated to the complainant vide email dated 31.05.2013. It was further submitted that the refund cheque was issued and to the complainant in the year 2017 itself.
15. Upon careful consideration of the facts and circumstances of the case, it is observed that, the project could not be commenced due to the absence of necessary approvals from the competent authorities. It is further observed that the respondent had, prima facie, issued a refund cheque to the complainant as early as in the year 2017, which the complainant, of their own volition, chose not to accept. Subsequently, the respondent refunded the entire amount paid by the complainant on 20.04.2022, which was duly accepted by the complainant prior to the filing of the present complaint.

16. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.
17. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the Authority to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
18. The Authority also notes that the cancellation of the unit took place way back in the year 2013. Hence, the cause of action, if any, arose in 2013 itself. The complainant has approached the Authority after an inordinate delay of 5 years, without any satisfactory explanation for such delay. Therefore, the complaint is clearly barred by limitation. The complainant, having remained inactive for a prolonged period, is deemed to have slept over his rights, and no justifiable cause survives for adjudication.



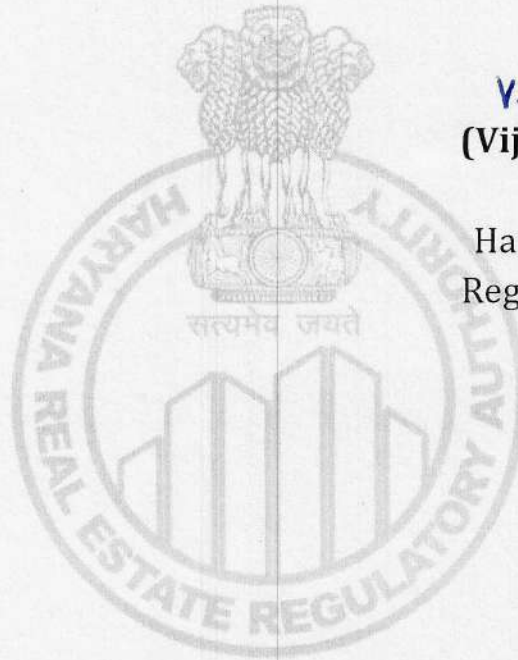
HARERA
GURUGRAM

Complaint No. 5491 of 2022

19. In light of the above-mentioned findings of the authority, the complainant is not entitled to the relief of delay possession charges being sought in the present complaint and hence the same stands dismissed on merits accordingly.
20. File be consigned to registry.

Dated: 27.02.2025

V.I. - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM