

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

Complaint no. : 327 of 2023
Date of filing: 27.01.2023
Date of decision : 08.07.2025

KT Fabs Private Limited

Regd. Address: F-12, Ground Floor Sham Nagar,
New Delhi - 110018

Complainant

Versus

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

Regd. office: First Floor, The Great Easter Centre
70, Nehru Place behind IFCI Tower, New Delhi

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)
Sh. Nitish Harsh Gupta (Advocate)

**Counsel for Complainant
Counsel for Respondent**

ORDER

1. The present complaint 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 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:

S. No.	Particulars	Details
1.	Project name and location	Esencia, Sector 67, Golf Course Ext. Road
2.	Project area	2.156 Acres
3.	Nature of project	Residential Colony
4.	RERA registered/not registered	Registered 313 of 2017 dated 17.10.2017 to 31.10.2018
5.	DTPC license no. & validity status	26 of 2012 dated 27.03.2012 and valid up to 26/03/2018
6.	Date of PBA issued by respondent	26.04.2013 [pg. 19 of complaint]
7.	Unit No.	0711-B-0558 [pg. 20 of complaint]
8.	Unit area admeasuring	442.83 sq. mtr. [pg. 20 of complaint]
9.	Possession clause	Clause No. 5.1 <i>Subject to Clause 5.2 and subject further to all the buyers of the plot in residential colony making timely payment, the company shall endeavor to complete the development of residential colony</i>

		<i>and the plot as far as possible within 24 (Twenty-four) months with an extended period of (6) months from the date of execution of this plot buyer agreement.</i>
10.	Due date of Possession	26.10.2015
11.	Basic Sale consideration	NIL As per collaboration agreement [pg. 23 of complaint]
12.	Total amount paid by the complainant	NIL (As per Annexure A in PBA on page no. of Complaint)
13.	Offer of Possession	NA
14.	Occupation Certificate	NA

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - a. That complainant m/s KT fabs pvt. ltd. (through managing director/ director/authorized person is a company incorporated under the Companies Act, 1956 having a Registered office on F-12, Ground Floor Sham Nagar, New Delhi - 110018).
 - b. That the respondent is a company incorporated under the companies act, 1956 having a registered office on first floor, the great easter centre 70, nehru place behind ifci tower, new delhi- 110019, corporate office at marketing centre, b-block esencia, sec- 67, gurgaon 122102 (hereinafter called the developer/ builder / respondent) and the project in question is known as esencia in sector-67, Gurugram, Haryana.

- c. That the respondent approached the complainant for collaboration for their upcoming plotted project namely Esencia in sector-67, gurugram, and offered a residential plot in lieu of his rights/charge and ownership in the pieces of land situated in the project area.
- d. That after a detailed negotiation, the respondent represented that due to financial constraints, it could not pay the sale consideration of the land and offered several developed plots. therefore, the respondent allotted several plots in the project in lieu of the rights/ownership/charge on the several pieces of land. it is pertinent to mention here that the respondent along with other companies acquired the project land and with collaborations with other land owners and/or stakeholders, and they acquired the licenses in the project.
- e. That the respondent issued an allotment letter dated 26.04.2013 for a plot having no. 0711-B-0558 admeasuring area of 448.83 sq. mtr. in the said residential colony (hereafter referred to as the "plot") in favour of the complainant.
- f. Thereafter, a one-sided, arbitrary, and ex-facio plot buyer agreement (hereafter referred to as "PBA/BBA") was executed on 26.04.2013 inter-se the parties with regards to plot no. 0711-B-0558 in the said residential colony having area of 442.83 sq. mtr. (530 sq. yards). It is pertinent to mention here that as per clause 3.1 of the said plot buyer agreement, the sale consideration of the plot is "NIL", because it was in lieu of the collaboration. Furthermore, it is pertinent to mention here that as per clause 5.1 of the plot buyer agreement (PBA), the respondent has to



handover the plot within 24 months with an extended period of 6 months from the date of execution of PBA, therefore, the due date of possession was 26.10.2015 (including the grace period).

- g. Furthermore, the complainant made payments EDC & IDC through adjustment and there is nothing due on the part of the allottee to be paid to the respondent.
- h. Since august 2016, the complainant kept on visiting the office of the respondent as well as the construction site and made several efforts to get possession of the allotted plot, but all in vain. It is pertinent to mention here that despite several visits made by the complainant and telephonic conversations; the complainant has never been able to understand/know the actual status of the development of the project. The respondent fails to provide the possession of the plot which was allotted to the complainant. The office-bearers of the respondent never gave a satisfactory reason for the delay in handing over the possession of the plot, it is pertinent to mention here that the office-bearers claimed that due to a change in layout plans, the location of the plot has been changed, and they will hand over the plot as per revised plan.
- i. That the complainant visited several times the office and project site of the respondent but was unable to get a satisfactory reply. It is pertinent to mention here that the complainant has paid 100% of the total sale consideration of the plot and have got nothing in return but suffered mentally and financially as well. It is further pertinent to mention here that it can be seen that the respondent has malafide intentions since the very initial stage to get the benefit from the hard-earned money of its innocent allottees.



- j. That the main grievance of the complainant in the present complaint is that the complainant has paid more than 100% of the sale consideration, but the respondent has failed to hand over the plot allotted to the complainant.
- k. That the complainants had purchased the plot with the intention that after purchase, his family will live in their own house.
- l. That it was promised by the respondent party at the time of collaboration that possession will be handed over within 24 months from the date of the agreement.
- m. That it has been more than 7 years from the due date of possession, and the possession of the plot is yet not handed over.
- n. That there is an apprehension in the mind of the complainant that the respondent party has been playing fraud and there is something fishy that which respondent party is not disclosing to the complainant just to embezzle the hard-earned money of the complainant and others. It is highly germane to mention here that nowadays many builders are being prosecuted by the court of law for siphoning off funds and scraping the project mischievously.
- o. That the facts and circumstances as enumerated above would lead to the only conclusion that service is deficient on the part of the respondent party and as such, they are liable to be punished and compensate the complainant.
- p. That due to the above acts of the respondent and the terms and conditions of the plot buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.

- q. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others.
- r. That for the first time cause of action for the present complaint arose in april 2013, when the unilateral, arbitrary, and one-sided terms and conditions were imposed on the complainant. The second time cause of action arose in October 2015, when the respondent party failed to hand over the possession of the unit as per the plot buyer agreement. further, the cause of action again arose on various occasions, including on a) may 2016; b) august 2017; c) february 2018, d) june 2019, e) jan. 2020, f) november 2022, and on many times till date, when the protests were lodged with the respondent party regarding the possession of the plot. The cause of action is alive and continuing and will continue to subsist till such time, as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- a. Direct to pass a decree in favour of the complainant by directing the respondent to give possession and pay delayed possession interest from the due date of possession till handing over the possession. justification: since, the complainant has not paid any hard money to the respondent, therefore, for computing the delayed possession interest the reference can be taken from the other plot buyer agreement for the year 2013 and as per the best of knowledge of the complainant the per sq. yard rate for the plot

was @ 50,000/- (fifty thousand), therefore total price deemed to be paid is Rs. 4,42,50,000/- (four crore forty-two lakh fifty thousand).

- b. Direct to pass an order by directing the respondent to provide zoning of the plot.
 - c. Direct to pass an order by directing the respondent to execute the conveyance deed in favour of the complainant.
 - d. Direct the respondent to execute the conveyance deed of the allotted unit in favor of the complainant.
 - e. Complainant is also entitled to any other relief to which he is found entitled by this Hon'ble Authority.
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. Jurisdiction of the authority

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

D.I Territorial jurisdiction

7. 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.

D.II Subject-matter jurisdiction



8. 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.

9. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the relief sought by the complainants.

E.I. Direct to pass a decree in favour of the complainant by directing the respondent to give possession and pay delayed possession interest from the due date of possession till handing over the possession.

10. In the complaint, it is to be noted that the Plot Buyer Agreement dated 26.04.2013, though unregistered, forms an integral part and is in continuation of the collaboration arrangement entered into with other landowners (including the present complainant) by the respondent. In view of the nature and purpose of the agreement, it is not mandatorily

required to be registered under Section 17 of the Indian Registration Act, 1908, as it primarily emanates from the terms of the existing collaboration arrangement. Furthermore, In the PBA dated 26.04.2013, the respondent has clearly and unequivocally detailed the basis and terms of allotment of Plot No. B-0558, measuring 442.83 sq. mtr. (530 sq. yd.), in the township project "Esencia, Sec-67, Golf Course Ext. Road, Badshahpur, Gurgaon, Haryana."

11. But, as per clause 3.1 of the plot buyer's agreement dated 26.04.2013, provides for sale consideration and the same is reproduced below:

Clause 3.1

.....

That the Buyer shall pay to the Company a sum of NIL (Allotted to Collaborator) (the "consideration") towards the Basic Sale Price for the purchase of said Plot@ Rs. NIL per sq. meter for total area of the Plot which includes Preferential Location Charges (Wherever applicable), excluding EDC, IDC etc. which shall be over and above the Basic Sale Price and shall be payable by the buyer to the company as and when demanded.

12. It is to be noted that the consideration given by the complainant to the respondent is NIL. The same has been mentioned in the Plot Buyer Agreement dated 26-04-2013.
13. It is pertinent to note that no consideration was paid by the complainant to the respondent in respect of the said allotment. This fact is expressly recorded in the Plot Buyer Agreement executed between the parties. But, according to definition of the word 'allottee' used in Section 2(d) and as per judgment of the Hon'ble Supreme Court

in Bunga Daniel Babu Versus Vasudeva Construction & Ors AIR 2016 SC 3488, the landowner is an "allottee". Since, landowner is an allottee, all the relevant remedies of the RERA Act shall be applicable to the allottee/land owner. The legislature has made its intention clear with the usage of word "consumer" in preamble of the RERA Act that the objective of the Act is to protect the interest of the consumers in the real estate sectors and to establish an adjudicating mechanism for speedy dispute redressal. Therefore, it is evident that the complainant has not paid any amount towards the said allotment which statedly as a part of Collaboration agreement. However, it is crucial to emphasize that while the complainant's allotment is valid in terms of the Plot Buyer Agreement, the absence of any monetary consideration paid by the complainant disentitles him from claiming compensation on account of delayed possession, as such compensation is typically linked to financial investment or payment made by the allottee.

14. In the absence of any consideration having paid by the complaint, No relief of Delayed possession charges can be granted.

E II Direct to pass an order to execute the conveyance deed in favour of the complainant.

15. Section 17(1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

17. Transfer of title -

The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees

or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

16. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of, the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of the above, the respondent shall execute the conveyance deed of the allotted unit within 3 months after the receipt of OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

H. Direction issued by the authority:


- I. In view of the above, the Authority directs the respondent to hand over possession of the stated unit to the complainant. The complainant will not have to pay anything to the respondent in this



respect at the time of possession, except any other charges which is apart from total sale consideration.

- II. The respondent is directed to execute the conveyance deed of the allotted unit within a period of 3 months from the date of this order.
 - III. As regards compensation prescribed under Section 18 of the Real Estate (Regulatory & Development) Act, 2016 and damages / on account of other remedy is related, the complainant may file if they wish so, a separate application under Section 31 read with Section 71 of the RERA Act before the Adjudicating Officer of the Authority.
 - IV. A period of 90 days is given to the respondent to comply with the direction given in this order and failing which legal consequences would follow.
17. Complaint stands disposed of.
18. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.07.2025