

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

Complaint no. : 5026 of 2023
Date of complaint : 27.10.2023
Date of order : 01.10.2025

1. Sidharth Kaushik,
R/o: Flat No. 5033, ACE Golfshire,
Sector-150, Noida, U.P-201310.
2. Olena Chumachenko,
R/o: 11793, Moscow, Street Academician,
Pilyugina, d 40, Korp 2760, Russia.

Complainants

Versus

New Look Builders and Developers Pvt. Ltd.
(Formally known as Ansal Phalak Infrastructure
Pvt. Ltd.)
Regd. Office at: First Floor, The Great Eastern
Centre 70, Nehru Place, Behind IFCI Tower,
New Delhi- 110019.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Ankit Mishra (Advocate)
Aishwarya Jain (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/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

provision of the Act or the rules and regulations made thereunder 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. N.	Particulars	Details
1.	Name of the project	"Sovereign Floors, Esencia"
2.	Project location	Sector-67, Gurugram.
3.	Nature of project	Independent Floor
4.	Project area	2.156 acres
5.	HRERA registered/ not registered	Registered Vide registration no. 313 of 2017 Dated-17.10.2017 Lapsed project
6.	DTCP License	License no. 26 of 2012 Dated-27.03.2012
7.	Apartment Agreement	Buyer's 10.02.2012 (As on page no. 22 of complaint)
8.	Unit no.	E-2151GF, Tower-E (As on page no. 26 of complaint)
9.	Unit area admeasuring	2542 sq.ft. (As on page no. 26 of complaint)
10.	Possession clause	CLAUSE-5 POSSESSION OF FLOOR <i>5.1 Subject to Clause 5.2 and further subject to all the buyers of the Dwelling units in the said Sovereign Floors, Esencia, making timely payment, the Company shall endeavor to complete the development of residential colony and the Dwelling Unit as far as possible within 30 (Thirty) months with an extended period of 6 (six) months from the date of execution of this Agreement or the date of sanction of the building plan whichever falls later.</i> (As on page no. 33 of complaint)

11.	Date of approval of building plans	Not on record
11.	Due date of possession	10.02.2015 [Calculated 36 months from date of execution of agreement] (Grace period of 6 months is allowed being unqualified)
12.	Total sale consideration	Rs.1,30,52,400/- (As on page no. 52 of complaint)
13.	Amount paid by the complainant	Rs.54,46,100/- (As on page no. 54 of reply)
14.	Call notice	02.09.2013 (page 72 of complaint)
15.	Pre-cancellation notice	11.12.2013 (As on page no. 74 of complaint)
16.	Final Cancellation notice	15.04.2014 (as on page no. 52 of reply)
17.	Cancellation letter	21.05.2014 (page 54 of reply)
17.	Legal notice seeking refund	18.12.2019 (As on page no. 75 of complaint)
18.	Occupation certificate	Not on record
19.	Offer of possession	Not on record

B. Facts of the complaint

3. The complainants have made the following submission: -
 - I. That the respondent is a private limited company formerly known as Ansal Phalak Infrastructure (API) Private Limited.
 - II. That in 2012, the respondent launched its independent floors project named "Sovereign Floors, Esencia," situated in its plotted colony namely Ansal Esencia, Sector 67, Gurugram.
 - III. That the complainant booked an independent floor unit bearing "E-2151 GF" situated on the Ground Floor of plot No. 2151, Block E, Ansal Esencia, Sector 67, Gurugram, Haryana having an area admeasuring 2541 square feet under the "Construction linked" payment plan. The total sale

consideration for the unit was settled between the parties is Rs.1,30,52,400/-.

- IV. That floor buyer's agreement dated 10.02.2012 was executed between complainant and respondent detailing the terms of sale. According to the terms outlined in the FBA, the possession of the unit was committed to be delivered within 30 months from the date of the agreement execution
- V. That the respondent continuously issued payment demands to the complainant without constructing the said unit. The complainant visited the site several times to assess the construction status and justification of demands raised by the respondent and he found that without achieving the particular construction milestone, the respondent irrationally raised demands in an arbitrary manner. nevertheless, to the complainant's surprise and dismay, the respondent failed to provide proper justification, explanation, and construction progress status.
- VI. That despite the delay in construction, which was caused by the respondent, the respondent issued another communication in the form of a letter dated 13.03.2012. This letter served as a demand-cum-termination notice with the intent of compelling the complainant to pay the raised demands. In furtherance to the aforesaid agreement, respondent raised further demands from time to time and the complainant has paid a sum of Rs.54,46,100/- till September 2013, which was duly acknowledged by the respondent.
- VII. That the respondent issued a pre-cancellation notice dated 11.12.2013. In this notice, the respondent conveyed that in case complainant fails to pay the unjustified demand on or before 23.12.2013, the respondent will proceed with the cancellation of the allotment of unit. In the letter dated 11.12.2013, the respondent formally communicated to the complainant that in case of payment default, the amounts paid by him will be arbitrarily

forfeited, constituting 20% of the total sale consideration. Thereafter without issuance of any formal termination letter and without refunding the amounts to the complainant, respondent sold the said unit to a third-party buyer at higher price, given possession to such buyer and executed the conveyance deed in the favour of such third-party buyer. The respondent in an unauthorized manner, forfeited the entire amount paid by the complainant on the pretext of earnest money, which is bad in law.

- VIII. That on 20.08.2019, Mr. Tushar Varma (Complainant's authorised representative) visited respondent's site office in Gurugram and post discussion with respondent's officials, it was revealed that the allotment of said unit was cancelled by the respondent in January 2016 and the said unit allotted to some other buyer/ third party to whom the possession of said unit has already been given and conveyance deed of the said unit has also been registered by the respondent in favour of such third party buyer.
- IX. That neither respondent has refunded the amounts paid by the complainant nor respondent has offered any alternate unit to the complainant prior to selling the said unit to the third-party buyer.
- X. That upon discovering the creation of a third-party right on his unit, the complainant promptly approached the respondent officials to address this unsettling development and upon getting no resolution complainant issued the legal notice dated 18.12.2019. The respondent has never reverted to the complainant's legal notice.
- XI. That the respondent's failure to refund the amounts to the complainant has resulted in the creation of a judgment lien in favour of the complainant.
- XII. That by retaining the entire amount instead of forfeiting the stipulated 10% of the sale price, the respondent has acted in direct contravention of the established rules and regulations governing such transactions.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to refund the paid-up amount along with prescribed rate of interest.
 - ii. Direct the respondent to pay cost of litigation.
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. The respondent has contested the complaint on the following grounds: -
 - i. That the respondent had allotted a unit bearing no. E2151, Ground Floor in the project "Esencia" at Sector 67, Gurugram to the complainants vide allotment letter dated 06.01.2012. Subsequently, the floor buyer agreement dated 10.02.2012 was also executed between the parties recording the terms of transaction in writing.
 - ii. That in terms of FBA, the allottees were liable to pay basic sale consideration of Rs.1,30,52,400/- to the respondent as per the payment plan.
 - iii. That despite repeated reminders being issued by the answering respondent, the complainant time and again failed to make the payment towards the unit as per the payment plan. Due to the regular defaults by the allottees, the answering respondent issued pre-cancellation letter dated 31.01.2013 demanding Rs.14,24,189/- along with delay payment interest as the allottees had delayed in making the payment towards the unit.
 - iv. That when the allottees did not make the payment in term of letter dated 31.01.2013, the answering respondent issued a final reminder of pre-cancellation notice vide letter dated 14.03.2013, again demanding Rs.14,24,189/-. The allottees again chose not to make the payment in term

of letter dated 14.03.2013, however the answering respondent being a customer-oriented organization did not cancel the allotment of unit of the complainant and instead issued another reminder of pre-cancellation notice vide letter dated 05.04.2013, again demanding Rs.14,24,189/- along with delay penalty. The answering respondent issued another pre-cancellation notice vide letter dated 21.05.2013 demanding the amount due towards the unit along with delay penalty. Further in the said letter it was clarified that in case of non-compliance of said letter, the allotment of unit of the allottees will be cancelled. Since the allottees did not comply with the genuine request of the answering respondent, the answering respondent issued another pre-cancellation notice vide letter dated 13.11.2013 demanding the amount due towards the unit along with delay penalty.

- v. That the answering respondent being constrained by continues default on part of the allottees, issued a cancellation notice dated 15.04.2014 directing the complainant to make the payment of Rs.54,54,758/- along with delay payment interest by 30.04.2014. It was further, clarified in the said letter that in case of non-payment of amount, the allotment of the unit will be cancelled. The allottees despite receipt of letter dated 30.04.2014, did not make the payment towards the unit as per FBA. Accordingly, the answering respondent cancelled the allotment of the unit vide letter dated 21.05.2014 and requested the allottees to collect refund of Rs.16,14,265/- after deduction of earnest money, interest of delayed payment and brokerage subject to returning all the original documents of the unit.
- vi. That despite receipt of letter dated 21.05.2014, the allottees did not come forward to return the original documents of the unit and collect the refund. Accordingly, the answering respondent had issued letter dated 15.01.2016 to the allottees requesting the allottees to return the original documents of

the unit and collect the refund of Rs.16,14,265/-. It was further clarified that in case of non-return of aforesaid original documents, the interest of allottees towards the refund shall deemed to be cancelled. Moreover, it is submitted that allotment of the complainant was cancelled before the enactment of the Act. Therefore, the present complaint is not maintainable before this Authority.

vii. That the captioned complaint is hopelessly barred by limitation as the complainant has approached this Authority after a lapse of 9 years and as such no averment has been made by the complainant as to why there was a delay in approaching the Court for seeking refund of the amount. Even otherwise, if the Complainant would had approached the civil court for seeking the refund of the amount, the captioned case would have been dismissed solely on the ground of jurisdiction.

7. Copies of all the relevant documents have been filed and placed on the 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

8. The respondent has raised a preliminary submission/objection that the Authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

9. 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

10. 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 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.

11. 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.

F. Findings on the objections raised by the respondent.

F.I Objections regarding complaint being barred by limitation.

12. The respondent contended that the present complaint is not maintainable and barred by the law of limitation. The Authority observes that the cause of action arose in May 2014, when the cancellation letter was issued to the complainants. However, post cancellation of the unit, the respondent has failed to refund the refundable amount to the complainants so far, which clearly shows a subsisting liability. Moreover, the deductions made from the paid up amount by the respondent are not as per the law of the land as laid down by the Hon'ble apex court of the land in cases of *Maula Bux vs Union of India 1969(2) SCC 554* and where in it was held that a reasonable amount

by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of Section 74 of the Indian Contract Act, 1972. Further, the law of limitation is, as such, not applicable to the proceedings under the Act and has to be seen case to case. The Authority observes that respondent should not be allowed to get unfair advantage of its own wrong, as it should have refunded the amount after cancelling the unit in question, but it failed to do so till filing of this complaint. Allowing the respondent for such practices may set a wrong precedence in the real estate industry. Therefore, in view of the above, the objection of the respondent w.r.t. the complaint being barred by limitation stands rejected.. Thus, the objection of the respondent w.r.t. the complaint being barred by limitation stands rejected.

G. Findings regarding relief sought by the complainants

G.1 Direct the respondent to refund the paid-up amount along with prescribed rate of interest.

13. The complainants were allotted an independent floor unit bearing "E-2151 GF" situated on the Ground Floor of plot No. 2151, Block E, Ansal Esencia, Sector 67, Gurugram, Haryana having an area admeasuring 2541 square feet under the "Construction linked" payment plan vide buyer's agreement dated 10.02.2012 for a total sale consideration of Rs.1,30,52,400/- against which the complainants have paid a sum of Rs.54,46,100/- in all. As per clause 5.1 of the buyer's agreement, the due date of possession was 10.02.2015. The complainants have submitted that the respondent vide pre-cancellation notice dated 11.12.2013 conveyed that in case complainant fails to pay the unjustified demand on or before 23.12.2013, the respondent will proceed with the cancellation of the allotment of unit. In the letter dated 11.12.2013, the respondent formally communicated to the complainant that in case of payment default, the amounts paid by him will be arbitrarily forfeited,

constituting 20% of the total sale consideration. Thereafter, without issuance of any formal termination letter and without refunding the amounts to the complainant, respondent sold the said unit to a third-party buyer at higher price, given possession to such buyer and executed the conveyance deed in the favour of such third-party buyer. The respondent in an unauthorized manner, forfeited the entire amount paid by the complainant on the pretext of earnest money, which is bad in law. On 20.08.2019, Mr. Tushar Varma (Complainant's authorised representative) visited respondent's site office in Gurugram and post discussion with respondent's officials, it was revealed that the allotment of said unit was cancelled by the respondent in January 2016 and the said unit allotted to some other buyer/ third party to whom the possession of said unit has already been given and conveyance deed of the said unit has also been registered by the respondent in favour of such third party buyer. Upon discovering the creation of a third-party right on their unit, the complainants promptly approached the respondent officials to address this unsettling development and upon getting no resolution complainant issued the legal notice dated 18.12.2019, vide which they requested the respondent to refund the paid-up amount with interest, but the respondent neither replied nor refunded the amount till date. The respondent has submitted that despite repeated reminders being issued by the respondent, the complainant time and again failed to make the payment towards the unit as per the payment plan. Accordingly, vide cancellation letter dated 15.04.2014, it has directed the complainant to make the payment of Rs.54,54,758/- along with delay payment interest by 30.04.2014 and it was further clarified in the said letter that in case of non-payment of amount, the allotment of the unit will be cancelled. The allottees despite receipt of letter dated 15.04.2014, did not make the payment towards the unit as per FBA. Accordingly, the respondent cancelled the allotment of the unit vide

letter dated 21.05.2014 and requested the allottees to collect refund of Rs.16,14,265/- after deduction of earnest money, interest of delayed payment and brokerage subject to returning all the original documents of the unit. Despite receipt of letter dated 21.05.2014 the allottees did not come forward to return the original documents of the unit and collect the refund. Accordingly, the answering respondent had issued letter dated 15.01.2016 to the allottees requesting the allottees to return the original documents of the unit and collect the refund of Rs.16,14,265/-.

14. On consideration of documents available on record and submissions made by both the parties, it is determined that on the basis of provisions of allotment, the complainants have paid an amount of Rs.54,46,100/- against the total sale consideration of Rs.1,30,52,400/-. It is observed that the respondent has sent numerous reminders to the complainants for payment of outstanding dues in terms of the payment plan agreed between the parties vide buyer's agreement dated 10.02.2012, before issuing a final cancellation notice dated 15.04.2014, asking the allottees to make payment of the amount due, but the same having no positive results ultimately led to cancellation of unit vide cancellation letter dated 21.05.2014. The complainants have submitted that they have not received any formal cancellation letter from the respondent. However, the Authority observes that the complainants have themselves attached a pre-cancellation letter dated 11.12.2013, vide which they were called to pay the outstanding dues by 23.12.2013 and vide said letter, it was also intimated to the complainants that their failure to pay the outstanding dues by due date will result in cancellation of the allotment. It is an admitted fact that the said demand has not been paid by the complainants till date. Further, post cancellation of the unit on 21.05.2014, the respondent has sent a letter dated 15.01.2016, vide which it has duly intimated to the complainants that due to non-payment of outstanding dues, their allotment

has been cancelled vide cancellation notice dated 21.05.2014 and the complainants were requested to return all original documents for initiating the refund process. Copy of the same along with dispatch proof is available on record and is presumed to be delivered to the complainants. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 10.02.2012 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. Further, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

15. The Authority further observes that the intimation regarding cancellation of the unit was sent to the complainants back in January 2016 and has taken more than 7 years to file a complaint seeking refund. Although the complainants are entitled to refund of the balance amount after deduction as above, but it would be inequitable and unjust to direct the respondent to pay interest from the date of intimation of cancellation i.e. 15.01.2016, particularly in light of the fact that breach of the contract has been done on part of the complainants and they have remained dormant on their rights for a period of more than 7 years by not approaching any forum to avail their rights. Such inaction cannot result in the imposition of an undue financial burden on the respondent, especially when the allottees are themselves at fault. Accordingly, the Authority finds it appropriate to allow interest at prescribed rate on the balance refundable amount from the date of filing of complaint by the allottees i.e. 27.10.2023 till its actual realization.
16. Keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the paid-up amount of Rs.54,46,100/- after deducting 10% of the sale consideration of Rs.1,30,52,400/- being earnest money along with an interest @10.85% 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 on the refundable amount from the date of filing of complaint by the allottees i.e. 27.10.2023, till actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017 *ibid*.

G. II Cost of litigation.

17. The complainants are seeking above mentioned relief w.r.t. compensation. 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 and 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 and 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. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. Directions of the authority: -

18. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -
- The respondent is directed to refund the paid-up amount of Rs.54,46,100/- after deducting 10% of the sale consideration of Rs.1,30,52,400/- being earnest money along with an interest @10.85% 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 on the

refundable amount, from the date of filing of complaint by the allottees
i.e. 27.10.2023, till its realization.

ii. A period of 90 days is given to the respondent to comply with the
directions given in this order and failing which legal consequences
would follow.


19. Complaint stands disposed of.

20. File be consigned to the registry.

Dated: 01.10.2025



HARERA
GURUGRAM


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