

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint No. : 1994 of 2018**

**Date of Decision : 04.10.2019**

Ms Monica Rustogi & Amit Rustogi  
R/o 1B/14B, Ashok Vihar, Phase -I, Delhi-110053

**Complainants**

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Versus

M/s Ansal Phalak Infrastructure Pvt Ltd.  
115, Ansal Bhawan, 16, K G Marg, New Delhi-110001

**Respondent**

**APPEARANCE:**  
Shri Manish Malik  
None

Advocate for the complainants  
for the respondent

**ORDER**

This is a complaint filed under section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017(hereinafter referred as the Rules of 2017) filed by Ms Monica Rustogi and Shri Amit Rustogi against the respondent for refund of amount deposited with the respondent for booking of a residential flat in its project known as "Versalia" in respect of Flat No.3263, First Floor, measuring 1855 sq. ft. situated in Sector 67-A, Gurugram on account of violation of obligations of the promoter under section11(4)(a) of Real Estate(Regulation and Development) Act, 2016. Before taking up the case of the complainants, reproduction of the following details is must and which are as under:

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Project related details		
1.	Name of the project	Versalia
2.	Location of the project	Sector-67A,Gurgaon,Haryana
3.	Nature of the project	Residential (construction link plan)

Unit related details		
1.	Unit No. / Plot No.	FF 3263
2.	Tower No. / Block No.	First Floor
3.	Size of the unit (super area)	1855 Sq.Ft
4.	Size of the unit (carpet area)	-DO-
5.	Ratio of carpet area and super area	-DO-
6.	Category of the unit/ plot	Residential
7.	Date of booking	26.10.203
8.	Date of execution of BBA (copy of BBA be enclosed as annexure 1)	04.11.2014
9.	Due date of possession as per BBA	26.10.2016
10.	Due date of possession as per allotment letter/ MoU if BBA not executed (copy of allotment letter be enclosed as annexure 2 )	NA
11.	Operating clause of BBA regarding possession	NA
12.	Likely date of handing over possession	Not confirmed as still the site is vacant
13.	Delay in handing over possession till date	More than 2 years
14.	Penalty to be paid by the respondent in	As per clause 5.4 of BBA

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case of delay of handing over possession as per the said BBA		
<b>Payment details</b>		
1.	Total sale consideration	Rs.1,42,82,500/-
2.	Total amount paid by the complainant till date	RS.29,75,017/-.
3.	Payments made by allottee	
	S.N.	Cheque no.& date
	1.	000023 DT-29.10.2013
	2.	000022 DT-29.10.2013
	3.	000083 DT-15.12.2014
	4.	000088 DT-16.01.2015
	5.	304538 DT-24.03.2015
	6.	465318 DT-23.03.2015
	7.	000098 DT-24.03.2015
	8.	000105 DT-21.07.2015
		TOTAL
		Rs.29,75,017/-

2. It is the case of the complainant that they were <sup>in</sup> need of the flat for their residence. So after reading publication in the newspapers and other advertisements made by the respondent, they booked a unit bearing No.3263 in Versalia, Sector 67-A, Gurugram for a sum of Rs.1,42,82,500/- on 26.10.2013. It is their case that as per demand of the respondent, they paid a total sum of Rs. 29,75,017/- out of total costs of Rs.1,42,82,500/- to the respondent on different occasions and the rest of the amount was to be paid in instalments as per construction linked plan. Despite payment of above mentioned amount, the respondent failed to perform its part of contract to start construction at the spot. A flat buyer agreement Annexure A was also executed between the parties on 14.11.2014 and the possession of the unit as per clause 5.1 was to be delivered within 36 months with a extended period of six months from the date of execution of that agreement. But despite lapse of more than two years, the respondent

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failed to start construction and offer possession. It is their case that they were harassed unnecessarily and mental tortured. Even there was unfair trade practice and breach of contract by the respondent. Despite oral reminders, the respondent failed to deliver possession of the allotted unit to the complainants and they were left with no other alternative but to file this complaint. So, they prayed for refund of the amount already deposited besides interest and other charges from the date of various payments made to the respondent.

3. Despite issuance of notice, the respondent failed to put in appearance and as such, it was proceeded against ex-parte on 27.09.2019.

4. I have heard the learned counsel for the complainants and also perused the case file.

5. Though before filing amended complaint, the case was pending before the learned Authority and various pleas with regard to change in the master plan as well as lay out plan of the project by the governmental agencies were taken by the respondent but no response to the amended complaint was filed. So, pleas taken by the respondent before the learned Authority cannot be taken into consideration. Now, the following issues arise for consideration:

I) Whether the respondent/developer violated the terms and conditions of the BBA/flat buyer agreement?

II) Whether there was any reasonable justification for delay to offer the possession of the allotted unit?

III) Whether the claimants are entitled for refund of paid amount?

6. It is evident from perusal of the case file that complainants booked a unit measuring 1855 sq ft. No.3263, Sector 67-A, Gurugram on 26.10.2013 and deposited different amounts with the respondent as evident from Annexures B to P w.e.f. 29.10.2013 to 24.03.2015. There is flat buyer agreement Annexure A executed between the parties on 14.11.2014 and as per the same, the possession of the allotted unit was to be delivered to the complainants within 36 months with an extended period of six months. That period admittedly expired on 13.05.2018. A further perusal of the documents placed on record by the complainants

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show that unit was booked by them with the respondent in a Construction Linked Plan. No doubt, the claimants did not deposit the entire amount but whether the respondent honoured its commitment and start development of the project at the spot within the stipulated period. The answer is in the negative. There is nothing on the record to show the progress of the project in which the claimants were allotted a unit. The claimants deposited their hard-earned money with the respondent with a hope to get the unit for their residence but despite waiting for more five years, they were unable to get the same. So, in such a situation, it is proved that there is delay in handing over the possession of the unit amounting to deficiency in service. In case **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors(2018) 5 SCC 442**, it was held by the hon'ble apex court of the land that a person cannot be made to wait indefinitely for possession of the plot allotted to him and is entitled to seek refund of the amount paid by him alongwith compensation. Though there is clause 5.1 in the flat buyer agreement Annexure A and which bars taking action by the complainants against the respondent, but the same is not attracted in the case in hand. A similar question arose for consideration before the Hon'ble apex court of the land in case **Central Inland Water Transport Corporation Limited and Ors Vs Brojo Nath Ganguly and Ors. and others (1986) 3SCC 156** and wherein it was observed that under:

*"..... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonsable contract, or an unfair and unreasonable clause in a contract, entered into between parties, who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can, visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form, or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction ....*

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.....These cases can neither be enumerated nor fully illustrated. This court must judge each case on its own facts and circumstances".

It was also observed in case *Pioneer Urban Land & Infrastructure Ltd*

*Vs Govindan Raghvan in Civil Appeal No.12238 of 2018* decided on 02.04.2019 by the Hon'ble apex court of the land that the terms of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted lines, on a contract framed by the builder. The contractual terms of agreement dated 04.11.2014 are ex- facie one-sided, unfair and unreasonable. The incorporation of such one-sided clause as mentioned above in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats/plots by the builder. So, in such a situation, the respondent/promoter can not seek to bind the complainants with such one-sided contractual terms. Hence issue No. I & II are answered accordingly.

7. Thus, in view of the material facts brought on record, the issue No.III is held in favour of the complainants. Consequently, the following directions are issued to the respondent:

- i) To refund the entire amount of Rs.29,75,017/- alongwith interest at the prescribed rate i.e. 10.35p.a. from the date of each payment till the date the amount is refunded to the complainants in terms of this order
- ii) Respondent shall also pay Rs.20,000/- as compensation including Rs.5,000/- as costs of litigation to the complainants for mental agony, harassment undergone by them.

8. The payments in terms of this order shall be made by the respondent to the complainants within a period of 90 days from the date of this order.

9. Hence, in view of the discussion detailed above, the complaint stands disposed of.

(S.C. Goyal)

Adjudicating Officer,

Haryana Real Estate Regulatory Authority, Gurugram

4-x-2018