

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

**Complaint No. : 46 of 2018**  
**First date of hearing : 11.04.2018**  
**Date of Decision : 31.10.2018**

Mr. Sushil Kumar Batra R/o Flat No. 303,  
Tower E-12, 3<sup>rd</sup> Floor, GH 79, Sandeep Vihar,  
Sector 20, Panchkula - 134116

**...Complainant**

Versus

1. Ansal Housing and Construction Limited, Regd. Office at 2<sup>nd</sup> Floor, Ansal Plaza, Sector-1, Near Vaishali Metro Station, Vaishali, Ghaziabad, Uttar Pradesh - 201010 through its Chairman
2. Oriane Developers Pvt. Ltd., Regd. Office at 110, Indra Prakash Building, 21 Barakhamba Road, New Delhi - 110001 through its Managing Director.
3. Vaibhav Warehousing Pvt. Ltd., c/o Vatika Ltd., 7<sup>th</sup> Floor, Vatika Triangle, Block - A, Sushant Lok - I, Gurgaon - 122002 through its Managing Director.

**....Respondents**



**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

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

**APPEARANCE:**

Shri Vineet Sehgal  
Shri Anuj Singh

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 05.03.2018 under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Sushil Kumar Batra against the promoter Ansal Housing and Construction Ltd. and others on account of violation of clause 31 of the apartment-buyer agreement executed on 23.12.2014 for unit no. T7-602, Sector 88-A, Gurugram, Haryana in the project "Ansal Amantre" with a super area of 1830 sq.ft. as they are not authorised to book/sell any flats as under Section 3 (1) of the Act *ibid*.
2. In Lieu of Section 12 of the Real Estate (Regulation & Development) Act, the complainant contends that the respondents have breached the statutory mandatory provisions and the complainant had only invested by such misrepresentation made on their part.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Ansal Amantre" in Village Harsaon, Sector 88- A, Gurugram -
----	----------------------------------	--



		Manesar- Urban Complex.
2.	Unit No.	T7-602
3.	Nature of real estate project	Group Housing Colony
4.	Project area	10.10 Acres
5.	Registered/un Registered	Un registered
6.	DTCP license	42 of 2013. License dated 06.06.2013. License expired on 05.06.2017. Not renewed.
7.	Date of booking	04.05.2013
8.	Date of builder buyer agreement	23.12.2014
9.	Total consideration	Rs. 1,27,19,979.40/- (BSP)
10.	Total amount paid by the complainant	Rs. 38,67,280.80/-
11.	Payment plan	Possession Linked Plan which was changed for payment terms on the request of the complainant on 27.04.2016
12.	Date of delivery of possession.	Clause 31:- 48 months from date of commencement of construction + 6 months grace period i.e - 23.06.2018
13.	Delay of number of months/ years	No Delay
14.	Penalty clause as per apartment buyer agreement dated 23.12.2014	Clause 35 of the agreement i.e - Rs 7/- per sqft per month on Super Area  However , no such amount would be paid for the units under



	possession linked plans.
--	--------------------------

4. As per the details provided above, which have been checked as per record of the case file. An apartment buyer agreement dated 23.12.2014 is available on record for Unit No. T7- 602, Sector 88-A, Gurugram, according to which the possession of the aforesaid unit is to be delivered by the promoter on 23.06.2018 who does not hold any right to deliver the possession of the said unit to the complainant.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 11.04.2018, 03.05.2018 , 23.05.2018, 05.07.2018 , 26.07.2018 , 11.09.2018 , 03.10.2018 and 31.10.2018 . The reply has been filed on behalf of the respondent on 08.05.2018.

#### FACTS OF THE CASE

6. On 04.05.2013, the complainant booked a unit in the project named "Ansal Amantre" in Village Harsaon, Sector 88-A, Gurugram by paying an advance amount of Rs 7,50,000/- to the respondent no. 1. Accordingly, the complainant was allotted a unit bearing T7-602, Sector 88-A, Gurugram. The total payable amount for the said residential apartment as per the payment plan was 1,20,90,916.90/-.



7. On 23.12.2014, apartment buyer's agreement was executed between the complainant and the respondents no. 1 and 2 after 19 months of booking wherein as per clause 31, the possession shall be given within 48 months + 6 months grace period from the date of commencement of construction. However, the delay of 19 months after the booking was made itself amounts to unfair trade practice i.e. not executing the buyers agreement within the reasonable period of time. The act of the respondents to collect money before getting all the necessary approvals for the project doesn't stand the scrutiny of law.
8. The complainant submitted that the license obtained by the respondents expired and has not been renewed. Moreover, the respondent 1 collected money from the complainant in May 2013, whereas the license for the said project was obtained on 06.06.2018 that to in the name of respondent no. 3. The building plan for the said project was approved by the Director General, Town and Country Planning, Haryana and the said project was approved in the name of the respondent no. 3. The complainant however, was not aware of the same at the time of booking.



9. The application for the transfer of the said license in the name of respondent no 3 was not transferred to Oriane Developers Pvt. Ltd. till 15.09.2017, as per the information obtained by the complainant under RTI Act, whereas, there was a specific mention in the apartment buyers agreement that the necessary permission from DGTCP for the transfer of license has been obtained and the project land has been transferred in the name respondent no. 2, this information is false and amounts to fraud with the complainant.
10. As per Section 7 and Section 10 of the haryana development and regulation of urban areas Act, 1975, a builder cannot collect money before receiving license for the said project and the respondents have violated the above mentioned provisions by collecting money from the complainant before obtaining necessary approvals/sanctions from the competent authority. The complainant also made a detailed complaint to DGP, Haryana dated on 29.12.2016, but till date no action has been initiated.



### ISSUES RAISED BY THE COMPLAINANT

- I. Whether the respondents are liable for violating the provisions of the haryana development and regulation of urban areas Act, 1975?

- II. Whether the respondents are liable to pay refund of the payment and costs to the complainant in lieu of the loss suffered by complainant due to incorrect/false statements made in the advertisement?

### RELIEF SOUGHT

- I. To direct the respondent to refund the entire amount of Rs. 38,67,280.80/- to the complainant with requisite interest from the date of deposit till the date of refund and also to refund all the legal costs incurred by the complainant.

### REPLY

11. The respondent stated that the present complaint is highly misplaced, misconceived and is not at all maintainable and that the complainant has not made timely payments and has filed present complaint in order to avoid facing consequences for the breach of the apartment and buyers agreement such cancellation of the allotment and payment of the interest.
12. The respondent no. 1 and 2 have submitted that consequent to the enactment of The Real Estate (Regulation and Development) Act, 2016 have applied for the registration of the project "Ansal Amantre" in phase wise manner and have filed an application before the authority for registration of "



Ansal Amantre Phase- 1” and the same is pending before the authority.

13. The respondents submitted that they have made application dated 06.06.2013 for transfer of license to which DGTCP granted permission with imposition of certain conditions, thereafter the project land was transferred to respondent no 2 dated 04.10.2013. That the complainant was well aware of the fact that initially the project land was in the name of the respondent no. 3.
14. Respondent further submits that the complainant has not made any payment since December 2016 and in order to waive interest and penalties have filed the present complaint. That there is no cause of action against the respondents as the apartment buyer’s agreement was executed between respondent no 1, 2 and the complainant as dated on 23.12.2014.
15. The respondent submitted that as per the clause 34 of the said apartment buyer’s agreement the possession was to be offered by the respondents within 48 months from the execution of the agreement or obtainment of all sanctions/approvals, with a grace period of 6 months. The agreement was executed on 23.12.2014 and 48 months since





the execution have not passed hence, on this ground alone the complaint is liable to be dismissed (being premature).

16. It is also submitted by the respondents that the Hon'ble RERA has no pecuniary jurisdiction to entertain the present complaint as it falls under the ambit of Consumer Protection Act alone. Therefore, the complaint is not maintainable.

**Determination of issues:**

- i. Regarding the **first issue**, the respondents violating the trust of the complainant and also for misrepresenting about the project to complainant is liable under various sections of the RERA Act, 2016.
- ii. Regarding the **second issue**, the respondents are liable to refund the full amount paid by the complainant in lieu of the project and also for the harassment caused to the complainant by the respondents.

**Finding of the authority**

17. The respondent admits as the concerned project is situated in Sector -88-A ,Gurugram and as the nature of the project relates to real estate it has complete territorial as well as subject matter jurisdiction.



18. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in **Simmi Sikka V/s M/s EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
19. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondents have failed to register its project under the RERA Act 2016 and hence has violated section 3 of the Act ibid attracting penalty under section 59 of the said Act and penalty which may extend to 10 % of the total cost of project.

### **Decisions and Directions of the Authority**

20. During last hearing held on 11.9.2018, the respondent was directed to refund the amount received by them along with interest to the complainant, in view of action already initiated by DTCP Haryana against the licence issued to them.
21. After taking into consideration all the material facts as adduced and produced by both the parties, the authority



exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following order in the interest of justice :

22. The counsel of the respondent could not submit any satisfactory reply to the said directions. Hence, the respondent is directed to comply with order dated 11.9.2018 for refund of amount along with prescribed rate of interest i.e. 10.45% within a period of 90 days. The interest shall be calculated from the date of payments made by the complainant.
23. The order is pronounced.
24. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

HARERA  
GURUGRAM



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Date:31.10.2018