

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

Complaint No. : 99 of 2018  
First date of hearing: 19.04.2018  
Date of Decision : ~~05.09.2018~~  
26.07.2018

Mr. Dev Prakash,  
R/o. B-126, Regency Park-I, DLF Phase-4,  
Gurugram, Haryana-122002 **Complainant**

Versus

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

**CORAM:**

Dr. K.K. Khandelwal **Chairman**  
Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Shri Amarपाल CA with Shri Advocate for the complainant  
Sanchit Kumar  
Shri Satish Gola Legal representative on behalf of  
the respondent with

Shri Venkat Rao Advocate for the respondent

**ORDER**

1. A complaint dated 21.03.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Dev Prakash Yadav, against the promoter M/s Ansal Phalak



Under order of the Competent Authority date of  
Decision is changed from 05.09.2018 to 26.07.2018.

Infrastructure Pvt. Ltd., on account of violation of the clause 5.1 of the floor buyer's agreement executed on 03.11.2014 in Sector 67A, Urban Estate, Badshahpur, Gurgaon, in the project 'Versalia' for not handing over possession on the due date i.e. 02.05.2018 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Versalia", Sector 67 A, Gurugram
2.	Apartment/unit No.	FF3070, Sector 67A, Urban Estate, Badshahpur, Gurgaon
3.	Flat measuring	1685 sq. ft
4.	RERA registered/ not registered.	<b>Not registered</b>
5.	Date of execution of apartment buyer's agreement	03 <sup>rd</sup> November 2014
6.	Payment plan	Construction linked payment plan
7.	Basic sale price	Rs.1,25,00,000/-
8.	Total amount paid by the complainant till date	Rs.40,36,334/-
9.	Percentage of consideration amount	Approx. 30 Percent
10.	Date of delivery of possession as per clause 5.1 of floor buyer's agreement (36 Months + 6 months grace period from the date of execution of agreement with requisite approvals & permissions from the concerned authorities as well as force majeure conditions)	02.05.2018
11.	Penalty clause as per apartment buyer's agreement dated 03.11.2014	Clause 5.4 of the agreement i.e. Rs.10/- per sq. ft per month of the carpet area of the



		said flat.
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3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 02.05.2018. Neither the respondent has delivered the possession of the said unit till 05.09.2018 to the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 5.1 of floor buyer's agreement dated 03.11.2014. Therefore, the promoter has not fulfilled his committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 19.04.2018. The case came up for hearing on 08.05.2018, 06.06.2018, 05.07.2018 & 26.07.2018. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply. The complainant has filed a rejoinder dated 05.06.2018 wherein he has re-asserted the contentions raised in the complaint.

### Facts of the complaint



5. Briefly stated, the facts of the case are that the complainant on 3<sup>rd</sup> November 2014 , the floor buyer agreement was entered between the parties and as per clause 5.1 had to be handed over within 36 months from the date of agreement with a grace period of 6 months. The date of possession would be 02.11.2017 or before 02.05.2018(with 6 months extension).
6. Despite repeated calls, meetings and emails to the respondent no definite commitment was shown for the completion of the project.
7. The complainant had made timely payment amounting to a total of Rs. 40,36,334.
8. **Issues raised by the complainants are as follows:**
  - i. Whether the respondent is liable to refund with interest the total amount of Rs. 40,36,334/- paid by the complainant?
  - ii. Whether the respondent is liable to pay penalty as stipulated in the agreement for delay in possession?
  - iii. Whether the respondent is liable to pay compensation for the loss caused to ill use of complainants hard earned money?
9. **Relief sought:**



The complainant is seeking the following relief:

- i. To refund the full amount paid by the complainant till date i.e Rs. 40,36,334/-
- ii. To provide the interest under clause 4.5 as per the agreement on the total amount of Rs. 40,36,334/- from receipt of each instalment till the date of final settlement.
- iii. To provide compensation for the delay in possession and delivery as stipulated in clause 5.4 of the agreement @ Rs. 10/- per sq. per month amounting to Rs. 50,500/-.
- iv. To pay compensation for the loss and/or mental agony caused by ill use of hard earned money of complainant for the other purpose.
- v. To pass any order deemed fit and proper in the favour of the complainant and to take appropriate and legal cognizance against the respondent by exercising the judicial powers vested with the hon'ble authority under relevant provisions of the Real Estate (Regulation and Development) Act,2016.



**10. Issues raised by the respondent are as follows:**

- i. Whether the complainant has the locus standi individually to make the complaint or is the complaint liable to be dismissed due to non joinder?

- ii. Whether there has been failure to complete or inability to give possession in accordance with floor buyer agreement or in terms of section 18(1)(a) of RERA and/or, if so, is it so as on the date of complaint?
- iii. Whether the complainant is entitled to demand refund with interest and/or compensation in terms of floor buyer agreement as and/or construed post specific date of completion of project i.e 31.08.2020 declared by the respondent in RERA registration and other obligations thereof.

**Rejoinder:**

11. The complainant submitted that the possession date was started 36 months from the date of execution of the agreement i.e 03.11.2014. As per the agreement the possession was mandated to be given by 02.11.2017. So, the developer cannot ipse facto take advantage of the grace period clause without assigning any coherent reason for exhausting the grace period and without intimating the final date of possession. The cause of action arose every time when the developer failed to complete the construction as per the planned schedule. The developer cannot take shelter by stating that the construction is dependant on obtaining of



mandatory approvals. Also, the promoter cannot unilaterally alter the terms of the agreement specifically the date of possession under the RERA disclosures.

12. The joint allottee together are covered under the definition of 'allottee' for the purpose of the Real Estate (Regulation & Development) Act, 2016 and there is nothing in the provisions of the Act which prevents joint allottees to file the complaint individually.
13. The RERA authority is within the jurisdiction to adjudicate cases involving complex and intermixed issues of refund, interest and compensation. The authority is to make preliminary examination in order to determine whether there is any need to award any compensation or not in facts and circumstances of the complainant

**Determination of issues:**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

14. With respect to the first and second issue raised by the complainant, the complainant is entitled to refund of the deposited amount along with interest as there is no



development of construction at the project site. It is further submitted that in respect to the first issue raised by the complainant the authority decides that as per clause 5.1 of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of commencement of construction (with a grace period of 6 months) upon receipt of all project related approvals. The clause regarding the possession of the said unit is reproduced below:

*"5.1 possession of floor*

*...the company shall endeavour to complete the development of residential colony and floor as far as possible within 36 months with an extended period of 6 months from the date of execution of the floor buyer agreement. ...."*

15. Accordingly, the due date of possession was 02.05.2018, the delay compensation payable by the respondent (@ Rs.10/- per sq. ft. per month of the carpet area of the said flat as per clause 5.4 of floor buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkanal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.** (W.P 2737 of 2017), wherein the Bombay HC bench held that:





*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

16. As per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

*"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:  
Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."*

17. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

**34 (f) Function of Authority -**



*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.*

The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

18. As the promoter has failed to fulfil his obligation under section 11, the complainant wishes to withdraw from the project therefore, the promoter is liable under section 18(1) to refund the amount received by the promoter in respect of the said unit with interest at prescribed rate. Section 18(1) is reproduced below:

*“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from*



*the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

19. With respect to third issue raised by the complainant, the complainant during proceeding 05.07.2018 made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserve their right to seek compensation from the promoter for which they will make separate application to the adjudicating officer, if required. Therefore, the relief sought by the complainant regarding compensation becomes superfluous.

20. 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.

21. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered



opinion that the respondent has failed to deliver the possession of the FF3070, Sector 67A, Urban Estate, Badshahpur, Gurugram to the complainant by the committed date i.e. 02<sup>nd</sup> May 2018 as per the said agreement and the possession has been delayed by 4 months till the date of decision. Therefore, the respondent is directed to refund the deposited amount received by the promoter along with prescribed rate of interest i.e. 10.45% from the date the promoter received the deposited amount from the complainant.

### **Decision and directions of the authority**

22. As there is no development of construction at the project site where the said unit is situated, the authority is of the view that it will meet the ends of justice in case complainant is provided with the refund of the deposited amount along with interest.
23. 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 issue direction to the respondent to refund the deposited amount received by the promoter along with prescribed rate of

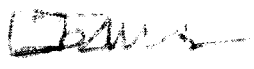


interest i.e. 10.45% from the date the promoter received the ~~deposited~~ amount from the complainant within 90 days from the date of this order.

24. The order is pronounced.
25. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.09.2018



**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 26.7.2018
Complaint No.	99/2018 case titled as Mr. Dev Prakash Yadav versus M/S Ansal Phalak Infrastructure Pvt. Ltd.
Complainant	Mr. Dev Prakash Yadav
Represented through	Shri Amarपाल CA with Shri Sanchit Kumar, Advocate for the complainant.
Respondent	M/S Ansal Phalak Infrastructure Pvt. Ltd.
Respondent Represented through	Shri Satish Gola, legal representative on behalf of the respondent with Shri Venkat Rao Advocate.

**Proceedings**

Arguments advanced by the learned counsels for the parties have been heard. The learned counsel for the complainant has submitted that there is no development of construction at the project site where the flat/unit has been allotted to him. The Floor Buyer Agreement was executed on 3.11.2014 and as per clause 5.1 of the agreement, the possession of the unit was to be handed over within 36 months + 6 months (grace period) i.e. before 2.5.2018. Thus the complainant is not interested to continue with the project and wants to withdraw the deposited amount alongwith interest. On the other hand, counsel of the respondent argued that they have spent huge amount on the project for seeking clearances etc. for the project but they will be able to give the possession of the unit of the complainant tentatively in the year 2020. Upon this the counsel of the complainant insisted that he is firm to withdraw the amount and not to continue with the project.

Upon hearing the arguments of the parties, the authority is of the view that it will meet the ends of justice in case the complainant is provided with the refund of the deposited amount alongwith interest. Therefore, the allottee shall be refunded the deposited amount received by the promoter alongwith the **prescribed interest i.e. 10.15%** from committed date of possession within **45** days from the date of this order. The complaint is disposed of accordingly. Detail order will follow. The file be consigned to the Registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
26.7.2018