

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

Complaint no. : 5552 of 2019  
First date of hearing: 17.12.2019  
Date of decision : 23.02.2021

Mr. Jaideep Mukhrjee  
R/O- F.No-0803,Tower -G  
BPTP Prime Park, Sector-66,  
Gurugram-122001

**Complainant**

**Versus**

M/s Ansal Phalak Infrastructure Pvt. Ltd.  
**Office at-** 115,Ansal Bhawan-16 Kasturba  
Gandhi Marg ,New Delhi

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Complainant in person with  
Shri.Rajan Kumar Hans  
Shri. Gagan Sharma

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 21.11.2019 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 to the allottee as per the flat buyer's agreement executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

1.	Name and location of the project	"Esencia", Sector-67A, Gurugram
2.	Project area	28.556 Acres
3.	RERA Registered/ not registered.	<b>Registered 336 of 2017</b>
4.	RERA registration valid up to	<b>31.12.2019</b>
5.	Nature of the project	Residential Plotted Colony
6.	DTCP license no.	21 of 2011 dated 24.03.2013
	DTCP license validity status	23.03.2019
	Name of licensee	Ansal Properties & Infrastructure Ltd
7.	Unit no.	E2161-SF [as clause 2.1 at page 24 of complaint]
8.	Apartment measuring	1394 sq. ft.
9.	Date of execution of apartment buyer's agreement	<b>07.11.2011</b> <b>[Page 20 of complaint]</b>
10.	Payment plan	Subvention Plan [Page 4 of complaint]
11.	Total consideration	Rs. 83,96,800/- as per customer ledger dated 23.08.2018 at page 63 of complaint
12.	Total amount paid by the complainant till date	Rs. 65,69,829/- as per customer ledger dated



		23.08.2018 at page 65 of complaint
13.	Due date of delivery of possession as per clause 5.1: within 30 months with an extended period of 6 months from date of execution of agreement or date of sanction of the building plan whichever falls later	07.11.2014  NOTE-: Due date is calculated from the date of agreement.
14.	Delay in handing over possession till order dated 23.02.2021	6 years 3 months 16 days

#### A. Facts of the complaint.

3. The complainant submitted that the unit was booked under subvention plan. Both the parties executed the agreement on 07.11.2011.
4. The complainant submitted that the respondent party had called 75% payment till date and the same was paid by the complainant. The complainant visited the project site and found the structure of the building is ready and finishing work is pending.
5. The complainant submitted that the facts and circumstances as enumerated would lead to the conclusion that there is deficiency of service on the part of the respondent party and they are liable to be punished and compensate to the complainant.



6. The complainant submitted that the terms of builder buyer agreement is unnecessarily harassing mentally as well as financially to the complainant.
7. The complainant submitted that there was clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more smell of playing fraud with the complainant and others is prima facie clear on the part of the respondent party .
8. The complainant submitted that there is an apprehension in the mind of complainant that the respondent party is playing fraud and there is something fishy which respondent party are not disclosing to the complainant just to embezzle the hard earned money of the complainant and others. Hence, this complaint inter-alia for the following reliefs:
  - i. Direct the respondent to hand over the actual physical possession of the flat to the complainant.
  - ii. Direct the respondent to pay interest at the prescribed rate on the amounts paid by the complainant for the delayed period of handing over possession till handing over of possession.
9. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to

have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty..

**B. Reply filed by the respondent.**

10. The respondent contests the complaint on the following grounds:

- i. That the Complainants approached the Respondent Company in the month of July, 2012 requesting for booking of a unit in the "Esencia Project" (hereinafter referred to as "project") of the Respondent Company proposed to be developed at Gurgaon, Haryana. The Complainants filed an Application Form dated 04.10.2011 in this regard making certain representations therein.
- ii. Based on the representation made by the Complainants in the aforesaid Application, a flat/unit no. E- 2161 (SF) (hereinafter referred to as the "said Unit/flat") in the said Project was provisionally allotted in name of the Complainants for a total sale consideration of Rs.83,96,800 and an Allotment Letter dated 04.10.2011 was duly issued in name of the Complainant in this regard.



- iii. Thereafter, a Flat Buyer Agreement dated 07.11.2011 (hereinafter referred to as the "FBA/Agreement") was executed between the parties enumerating all relevant terms and conditions between the parties.
- iv. That the Respondent Company in its said FBA, by way of Clause 5.1 provided for the timeline for handover of possession of the Units to its various buyers. As per said Clause 5.1, the handover of the units was to be calculated from the date of execution of the said FBA subject to force majeure circumstances and other events. For ready reference, said Clause 5.1 is reproduced herein below  
*"Subject to clause 5.2 and further subject to all the buyers of the dwelling in the said Sovereign Floors, Essencia making timely payment, the Company shall endeavour 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 building plans which ever falls later."*
- v. It is submitted that the said project was launched on procurement of requisite licenses from concerned authorities and thereafter, provisional allotment of units in the said project were made in favour of various

buyers/allottees on the basis of application/representation made by them towards booking of flats/floors/units. Subsequently, other necessary approvals/sanctions were procured by the Respondent and construction work at the Project site commenced.

- vi. However, soon thereafter, unforeseen and uncontrollable events such as farmer's agitation/obstruction by local villagers etc. did not let the construction work at project site pickup full steam and led to delay in completion of project. It is submitted that the said events were beyond the reasonable control of the Respondent Company and it took great effort and follow-ups by the Respondent Company to overcome such events and get the construction/development going ahead satisfactorily.
- vii. That presently requisite licenses/sanctions stands approved and renewed and the said project is in an advanced stage of construction. That said unit/building of the Complainant is ready with exterior and interior work also in place and the said unit is ready to be handed over to the Complainant is within a span of approximately 4-5



months, after completion of certain legal, procedural formalities. The structure is complete and external/internal work is in progressing rapidly.

- viii. That the relevant phase/part of the project has also been duly registered under RERA, Gurugram and complies with the laws as applicable.
- ix. That the Complainants are fully aware that their said unit is complete and ready to be handed over to them in some time. However, alleging delay in handover of the said unit and making other baseless claims and allegations, the Complainants have filed the present Complaint with the sole purpose of extracting unlawful gains from the Respondent Company.
- x. It is submitted that delay in development/construction of the project was to reasons beyond the reasonable control of the Respondent Company and now the Respondent Company has got all the clearances, licenses, plans in place. Further, in terms of said FBA it cannot be said that the Respondent Company has breached any terms or conditions agreed between the parties and that there is any delay in handover of possession of unit to the



Complainant. That as on the present date the terms of the FBA still subsists and the Respondent Company is contractually liable, obligated and committed to handover the possession of the subject unit complete in all respect to respective buyers/allottees including the Complainants.

- xi. It is submitted that the Project under which the Complainants had applied for the said unit had commenced prior to enforcement/commencement of said Act and hence, prior to that the parties were bound by the agreed terms of the Flat Buyer Agreement/FBA. Subsequently, the said Act came into force and the Respondent Company got the project registered under RERA Authority, Haryana as per RERA Guidelines and norms, wherein RERA registration Certificates dated 27.10.2017 with validity upto December, 2019 were issued in favour of the Respondent Company.

11. 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.

**C. Findings of the authority.**

12. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.
13. As per clause 5.1 of the floor buyer agreement 07.11.2011, the possession was to be handed over within 30 months plus 6 months grace period from the date of execution of agreement or date of sanction of the building plan whichever falls later. Both the parties failed to provide the required sanction of the building plan on record therefore the due date is calculated from the date of agreement which comes out to be 07.11.2014. Clause 5.1 of the floor buyer agreement is reproduced below:

***"5.1, Possession of floor***

***Subject to clause 5.2 and further subject to all the buyers of the dwelling units in the said sovereign floors, Escencia, making timely payment, the company shall endeavour to complete the development of residential colony and the dwelling unit as far as possible within 30 months with an extended period of 6 months from the date of execution of this agreement or the date of sanction of the building plan whichever falls later"***



14. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 5.1 of the floor buyer agreement 07.11.2011, the possession was to be handed over within 30 months plus 6 months grace period from the date of execution of agreement or date of sanction of the building plan whichever falls later. Both the parties failed to provide the required sanction of the building plan on record therefore the due date is calculated from the date of agreement. The grace period of 6 month is allowed to the respondent due to exigencies beyond the control of the respondent. Accordingly, the due date of possession comes out to be 07.11.2014.
15. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the floor buyer agreement dated 07.11.2011 executed between the parties. As such this project is to be treated as an on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

16. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 9.30% p.a. w.e.f. 07.11.2014 till the date of handing over possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

17. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Ac

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 09.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 07.11.2014 till the date of handing over of possession. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till the date of handing over of possession shall be paid on or before 10th of each subsequent month.



- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. The respondent shall not charge anything from the complainant which is not part of the floor buyer agreement.
  - iv. Interest on the delay payments from the complainant shall be charged at the prescribed rate @09.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
19. Complaint stands disposed of.
20. File be consigned to registry.

(Samir Kumar)  
Member

(DR. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021

Judgement uploaded on 09.06.2021.