

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

Complaint no. : 2846 of 2019  
First date of hearing: 17.12.2019  
Date of decision : 23.02.2021

1.Sayan Bandyopadhyay.

2. Rituparna Roy.

Both R/o: A-1105,Sumadhura Lake Breeze ,  
Siddhapur Varthur Main Road, Opp Main Land  
China and Yes Bank,2<sup>ND</sup> Floor, Udyog Vihar  
Phase-5,Gurugram-122016

**Complainants**

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:**

Ms. Shrishti  
Shri. Gagan Sharma

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 17.07.2019 has been filed by the complainants/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 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	"Versalia", Sector-67A, Gurugram
2.	Project area	38.46 acres
3.	RERA Registered/ not registered.	<b>Registered vide no. 154 of 2017</b>
4.	Nature of the project	Residential Colony
5.	DTCP license no.	81 of 2013 dated 19.09.2013
	DTCP license validity status	19.09.2019
	Name of licensee	Ansal Properties & Infrastructure Ltd
6.	Unit no.	GF-3083 [Page 15 of complaint]
7.	Change of Unit no. as per Annexure R-2	GF-3232 [Page 15 of reply]
8.	Apartment measuring	2793 sq. ft.
9.	Date of Allotment Letter	10.10.2014 [Page 48 of complaint]
10.	Date of execution of apartment buyer's agreement [As per both the parties averments]	<b>24.04.2014</b>
11.	Payment plan	Construction linked payment plan [page 44 of complaint]
12.	Total consideration	Rs.1,71,72,900/- as per customer ledger dated 04.02.2020 at page 18 of reply



13.	Total amount paid by the complainant till date	Rs.53,17,875.29/- as per customer ledger dated 04.02.2020 at page 19 of reply
14.	Due date of delivery of possession as per clause 5.1 of floor buyer agreement i.e. 36 months + 6 months grace period from the date of execution of this agreement	24.10.2017
15.	Delay in handing over possession till order dated 23.02.2021	3 years 3 months 30 days

3. As per clause 5.1 of the floor buyer agreement dated 24.04.2014, the possession was to be handed over within 36 months plus 6 months grace period from the date of execution of agreement which comes out to be 24.10.2017. Clause 5.1 of the floor buyer agreement is reproduced below:

*"5.1," subject to clause 5.2 infra and further subject to all the buyers of the floors in the residential colony making timely payment, the company shall endeavour to complete the development of residential colony and the floor as far as possible within 36 months with an extended period of six months from date of execution of this builder buyer agreement subject to the receipt of requisite building/revised building plans /other approvals and permissions from the concerned authorities, as well as force majeure as defined in the agreement and subject to fulfilment of the terms and condition of the allotment, certificate and agreement including but not limited to timely payments by the buyer(s), in terms hereof.*

4. The complainants submitted the respondent issued a provisional letter dated 10.10.2014 via which they unilaterally



changed the unit no. and sale consideration. Unit no. was changed to 3232 instead of 3083 admeasuring 2793 sq. ft. for a and total consideration of Rs. 1,56,75,000/-

5. The complainants submitted that as per clause 5.2 of the apartment buyer agreement the possession of the said unit was to be given by October 2017 i.e. within 36+6 months grace period from the date of the agreement.

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.
6. The respondent filed reply to the complaint on 28.02.2020 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.
  7. The respondent contests the complaint on the following grounds:



- i. That the complainant approached the respondent company in the month of November, 2013 expressing interest in booking of a flat/unit/independent floor in the "Versalia Project" of the respondent company, proposed to be developed in Gurgaon, Haryana.
- ii. That the respondent company allotted an independent floor/unit no. GF 3083 in the name of the complainants on 30.12.2013. Later due to change in the layout plan the complainant was allotted a different floor/unit no. GF-3232 vide allotment letter dated 10.10.2014. It is further pertinent to mention here that the total sale consideration was reduced to Rs. 1,56,75,000/- on change of the layout plan and in the interest of the buyer the same was also informed and a fresh allotment letter dated 10.10.2014 was issued.
- iii. That respondent company was liable to complete the development of the residential colony/unit and handover within a period of 36 months along with grace period of 6 months from the date of execution of FBA subject to receipt of requisite building plan, approvals etc. as well as force majeure circumstances.





- iv. That that the license of the said project, where the subject unit is located, had been applied long time back however, same was granted by the concerned authority recently and that led to some delay in development of the project and that the Town and Country Department, Haryana Government was pleased to grant license for the additional land admeasuring 51 acres in favour of the respondent vide letter/order dated 09.03.2018 valid till 08.03.2023. It is further submitted that the respondent company got the project registered under RERA, Haryana and as per RERA guidelines and norms, wherein a RERA registration Certificate dated 28.08.2017 with validity upto August, 2020 has been duly issued in favour of the respondent company.
- v. That the date for handover of the dwelling unit was not fixed but was tentative and based on mutual understandings between the parties and the same shall begin from the date of issuance of changed allotment letter i.e. 10.10.2014. The dwelling unit was booked and allotted well before the enactment of RERA Act, 2016. That the project is now RERA registered and completion/possession date has been



revised/changed. The respondent company is committed to handover the possession of the dwelling unit before the date stipulated in the RERA Registration Certificate.

8. 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.
9. 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.
10. Arguments heard.
11. 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 Act, 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 10.04.2014, the possession was to be handed over within 36 months plus 6 months grace period from the date of execution 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 24.10.2017.

12. 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 24.04.2014 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.
13. 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 delayed possession charges at the prescribed rate of interest @ 9.30% p.a. w.e.f. 24.10.2017 till the date of handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
14. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
  - 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

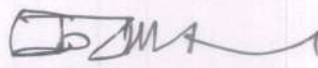




date of possession i.e. 24.10.2017 till the date of handing over of possession.

- ii. 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 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 flat buyer's 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.
15. Complaint stands disposed of.
16. File be consigned to registry.

  
(Samir Kumar)  
Member

  
(DR. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021