

BEFORE THE HARYANA REAL ESTATE REGULATORY

AUTHORITY, GURUGRAM

Complaint no. : 751 of 2018

First date of hearing : 21.01.2019

Date of decision : 12.03.2019

Mrs Veena Bhatia and Mr. Manoneet Bhatia
R/o A-12/6 DLF, Phase 1, Gurugram.

..Complainants

Versus

M/s Ansal Phalak & Infrastructure Pvt. Ltd
Registered office: 115, Ansal Bhawan, 16
Kasturba Gandhi Marg, New Delhi – 110001

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Ms. Srishti Girdhar Advocate for the complainant
None for the respondent Proceeded ex parte on 12.03.2019

ORDER

1. A complaint dated 04.09.2018 was filed 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 complainants Mrs. Veena Bhatia and Mr. Manoneet Bhatia against the promoter, M/s



Ansal Phalak & Infrastructure Pvt. Ltd in respect of apartment/unit described below in the project 'Esencia', on account of violation of section 11(4)(a) of the Act ibid.

2. The complaint was filed on 04.09.2018. Notices w. r. t. hearing of the case were issued to the respondent on 22.09.2018, 16.11.2018 and 29.11.2018 for making his appearance. Besides this, a penalty of Rs. 5000/- and 10,000/- was imposed. However despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainants in their complaint.



3. Since, the floor buyers agreement has been executed on 07.11.2011 i.e. prior to the commencement of the Real Estate

(Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

4. The particulars of the complaint are as under: -

1.	Name and location of the project	Sovereign floors, Esencia, Sector 67, Gurugram
2.	Project area	28.556 acres
3.	DTCP	21 of 2011 dated 24.03.2011
4.	Registered/Unregistered	Registered 336 of 2017 dated 27.10.2017
5.	RERA registration valid up to	31.12.2019
6.	Allotment letter	07.10.2011
7.	Date of floor buyer agreement	07.11.2011
8.	Unit no.	E2150GF, block E
9.	Area of unit	2542 sq. ft.
10.	Total consideration As per statement of account dated 13.06.2016	Rs 1,52,67,019.72/-
11.	Total amount paid by the complainant as per statement of	Rs 1,46,71,381.17/-



	account dated 13.06.2016	
12.	Date of approval of building plans	23.01.2013
13.	Possession As per clause 5.1: Within 30 months+ grace period 6 months from date of execution of agreement i.e. 07.11.2011 or date of sanction of building plan whichever is later	23.01.2016 (Note: building plan being sanctioned later, due date is calculated from the said date)
14.	Delay	No delay as possession has already been offered
15.	Penalty as per clause 5.4	Rs 10 per sq. ft. of super area per month for the period of default.
16.	Offer of possession	02.12.2015
17.	Occupation certificate	30.08.2016

FACTS OF THE CASE:

5. Complainants made payment of Rs.13,00,000/- vide cheque number 470171 dated 05.10.2011 towards booking amount to the respondent which was duly acknowledged by the respondent vide receipt no. 634 dated 07.10.2011.
6. Floor buyer agreement was executed between the complainants and respondent wherein independent residential dwelling bearing unit no. E2150GF, having super area of 2542 Sq. Ft. in sector/block "E" of the "Sovereign



Floor, Esencia” was allotted for total sale consideration of Rs.1,21,60,000/-

7. Respondents sent possession letter dated 02.12.2015 to the complainants. Complainants frustrated with the construction progress through their legal counsel sent a legal notice dated 6th October, 2017 to the respondent highlighting their concerns and promises made by the respondent, which were not met and were made with an intention of attracting the complainants to purchase the unit
8. The complainants sent another legal notice on 18.11.2017 as no proper response or reply was given by the respondent till this day. Even after such notices the respondent have not given any response.
9. Project has not been completed still and all the demand have already been made no payment is due. Therefore, this present complaint is filed by the complainant for refund along with interest and compensation.



ISSUES RAISED BY THE COMPLAINANTS:

10. The following issues have been raised by the complainants:

- i. Whether or not the respondent has delayed possession of the booked unit and whether or not the complainants are entitled to interest for the said period of delay?
- ii. Whether or not the respondent is liable to refund the money invested by the complainants?

RELIEF SOUGHT BY THE COMPLAINANTS:

11. In view of the facts mentioned the following reliefs have been sought by the complainants:
 - i. Direct the respondent to refund the amount of Rs.1,63,50,697/- along with interest @18% per annum on compounded rate from the date of booking of the flat in question.
 - ii. Any other order as this hon'ble authority deem fit and proper to meet the ends of justice.

DETERMINATION OF ISSUES:

12. No reply has been filed by the respondent. After considering the facts submitted by the complainants and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under



- i. With respect to the **first issue**, the authority came across that as per clause 5.1 of floor buyer agreement, the possession of the said apartment was to be handed over within 30 months plus grace period of 6 months from the date of approval of building plans or date of agreement whichever is later. The date of approval of building plans is 23.01.2013 and date of execution of agreement is 07.11.2011. Thus due date shall be computed from i.e. 23.01.2013. The clause regarding the possession of the said unit is reproduced below:

“Clause 5: 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”

Accordingly, the due date of possession was 23.01.2016 and there is no delay in possession as offer of possession was made on 02.12.2015. Offer of possession was made in the year 2015. Since occupation certificate has been received by the respondent in the year 2016, the complainants/buyers are directed to take over the



possession of the unit within one month. The respondent-company is also directed to hand over the physical possession of the unit to the complainants within one month.

- ii. With respect to the **second issue** raised by the complainants, the offer of possession has been made 02.12.2015 and occupation certificate has been obtained on 30.08.2016. The complainants therefore shall pay outstanding dues, if any and thereby take possession of the unit. Refund in such a case shall not be allowed.

FINDINGS OF THE AUTHORITY:

13. 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 complainants at a later stage.



14. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.

15. As per clause 5.1 of the floor buyer agreement dated 07.11.2011 executed between parties for unit no E2150GF, block E, in project "Sovereign floors, Escencia, Sector 67, Gurugram, possession was to be handed over to the complainants within a period of 30 months from the date of execution of floor buyer agreement or the date of sanction of building plans whichever is later plus grace period of 6 months. The complainants have already paid Rs. 1,46,71,381/- to the respondent against a total sale consideration of Rs 1,52,67,019/-.

16. Offer of possession was made in the year 2015. It has been alleged by the complainants that no occupation certificate was received on that date. Since occupation certificate has been received by the respondent in the year 2016, the



complainants/buyers are directed to take over the possession of the unit within one month.

DECISION AND DIRECTIONS OF THE AUTHORITY:

17. Thus, the authority exercising power under section 37 of Real Estate (Regulation and Development) Act, 2016 hereby issues directions:

- i. The complainants/buyers are directed to take over the possession of the unit within one month.
- ii. The respondent-company is directed to hand over the physical possession of the unit to the complainants within one month.

18. The order is pronounced.

19. Case file be consigned to the registry.



(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Date:12.03.2019

Judgement uploaded on 19.03.2019