

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

**Complaint No. : 1928 of 2018**  
**First date of hearing: 12.03.2019**  
**Date of Decision : 12.03.2019**

Mr. Rajesh Khanna  
Mrs. Deepti Khanna  
R/o H.no. S- 282, Greater Kailash Part II,  
New Delhi-110048

**Complainants**

Versus

M/s Ansal Phalak Infrastructure Pvt. Ltd.  
115, Ansal Bhawan,16,  
Kasturba Gandhi Marg, New Delhi-11001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Venkat Rao Advocate for the complainants  
Shri Siddharth Yadav with Shri Anshul Kumar Pandey on  
behalf of respondent company Advocate for the respondent



**ORDER**

1. A complaint dated 07.12.2018 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 complainant Mr. Rajesh

Khanna and Mrs. Deepti Khanna, against the promoter M/s Ansal Phalak Infrastructure Pvt. Ltd. in respect of allotted unit no. 3253, 2<sup>nd</sup> floor of the respondent's project "Wood Wind Floors" Versalia, sector 67-A, Gurugram for the violation of section 11(4)(a) of the Act.

2. Since the allotment letter dated 04.09.2014 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the Project	Wood wind floors, versalia, sector 67-A, Gurugram
2.	Nature of real estate project	Residential floors
3.	unit no.	P303-0-SF-3253 , 2 <sup>nd</sup> floor
4.	Unit measuring	1818 sq. ft.
5.	RERA registered / not registered.	<b>Registered (154 of 2017)</b>
6.	Revised date of registration as per registration certificate	<b>31.08.2020</b>
7.	Date of execution of BBA	Not executed
8.	Allotment letter	04.09.2014 (annx C/2)
9.	Total sale consideration	Rs. 1,42,83,250 /-(annx C/2)
10.	Total amount paid by the complainant till date	Rs. 35,85,267.73/-(annx C/1)



11.	Due date of possession	Cannot be ascertained
12.	Payment plan	Construction linked payment plan

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. An allotment letter dated 04.09.2014 for aforesaid unit is available on record.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 12.03.2019. The case came up for hearing on 12.03.2019. The reply has been filed on behalf of the respondent which has been perused.

#### **Facts of the complaint**

6. The complainant submitted that he signed advance registration form and booked a floor admeasuring 1800 sq. ft. for agreed basic sale consideration of Rs.1,42,83,250/- calculated at the rate of Rs.7856.57 per sq. ft. excluding service tax, preference location charges, EDC/IDC and paid Rs. 10,00,000/- as booking amount.



7. It is submitted that the complainant made a payment of Rs.10, 00,000/- towards the booking amount as per agreed payment schedule vide cheque no. 138 dated 31.08.2014 which is duly acknowledged by respondent vide customer ledger dated 16.11.2018.

8. It is submitted that the complainant allotted a floor bearing no. 3253 admeasuring 1818 sq. ft. located at second floor in their project Woodwind Floors, Versalia, Sec-67, Gurugram, Haryana through an allotment letter dated 04.09.2014. It is pertinent to note that the said allotment was further subject to builder buyer agreement.

9. It is submitted that since September 2014, complainant/ his relatives had requested many times over phone calls and also personally visited the office of the respondent to execute the builder buyer agreement and to seek information on the status of the project possible etc. date of completion, however, respondent did not give any heed to the requests of the complainant.



10. It is submitted that to the utter surprise of the complainants, respondents sent a reminder for payment of due of Rs. 35,85,267.57 on 26.02.2016. It is pertinent to note that till such date i.e. even after lapse of almost 1.5 years from the date of booking respondents neither bothered to share any update of the project, approvals thereof nor provided a builder buyer agreement for execution by the complainants.

11. It is submitted that complainants strongly protested on being served with a reminder without even raising a proper demand. Also insisted on long pending builder buyer agreement and sought the information on progress of the project. It is also submitted that complainants have since been continuously following up with respondents to know the fate of their hard-earned money.

12. It is submitted that the complainant visited the site of the project of the respondent on 21.11.2018 and took photographs at the site. There is nothing on the site, not even excavation is done by the respondent at the project site..



13. It is submitted that complainants, once again, sent a mail on 15.11.2018 to the respondent seeking the status of project, approvals, RERA registration status etc. .
14. It is submitted that in response complainant received a customer ledger, copy of RERA registration and a copy of zoning plan of additional licensee. It is pertinent to note that the RERA registration pertains to a plotted colony whereas the complainant's unit is a residential floor, therefore, it is difficult to ascertain that whether this RERA registration pertains project in which complainant's unit exists or not. It is further noted that the approved of zonal plan provided by the respondent pertains to a plotted colony and issued to a company called ansal properties & infrastructure Ltd. Whereas the complainant's unit exists in the project being developed by the ansal phalak infrastructure Pvt. Ltd. It is also pertinent to note that the complainant has paid an amount Rs 10,00,000/- towards to cost of the unit. It is pertinent to note that complainant was utterly surprised to see the customer ledger provided by the respondent which



shows the transaction date of 30 September 2016, whereas the complainant had paid Rs. 10,00,000/- on 02.09.2014. It is also pertinent to note that the complainant had paid five years ago, and nothing is done by the respondent to start the project and fraudulently changed the date of transaction from the year 2014 to the year 2016.

15. It is submitted that the complainant has requested the respondent to provide correct status of project, approvals, RERA registration status, statement of account to the complainant vide email dated 15.11.2019 as the details provided by the respondent vide email dated 16.11.2018 was incorrect.

16. It is submitted that the account statement provided by the respondent shows that the complainant had paid the amount of Rs.10,00,000/- on 30.09.2016, whereas the bank statement of the complainant shows that the complainant had paid the amount of Rs. 10,00,000/- on 02.09.2014.

17. The complainant submitted that project is an 'Ongoing Project' and is subject to registration under Section 3 of Real



Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation & Development) Rules, 2017.

18. It is submitted that non-delivery of unit is a continuous default on the part of the respondent and a cause of action arises on each such default arises continuously till date.

19. It is submitted that respondent is 'Promoter' in terms of Section 2 (zk) of Real Estate (Regulation & Development) Act, 2016 (referred herein as 'the Act') and as such this Act is applicable.

20. The project is an 'Ongoing Project' and is subject to registration under Section 3 and Promoter should make an application and provide all the information for such registration under Section 4 of Real Estate (Regulation and Development) Act, 2016 read with Haryana Real Estate (Regulation and Development) Rules, 2017 (referred here as 'the Rules'). The complainant could not ascertain as to whether the project/phase thereof, is registered or not. In case of non-registration of the project or the phase thereof respondent has not only violated the provisions of Section 3





of Real Estate (Regulation and Development) Act, 2016 but also has put to jeopardy rights of complainant under the Act.

21. It is submitted that respondent has utterly failed to fulfil its various obligations under the Act and especially under Section 14 (1) of the Act by not developing and completing the project in terms sanctioned plans /lay out plans as approved ( if at all approved ) by the competent authority i.e. Director Town & Country Planning , Haryana and under Section 14(2) of the Act for changing the layout plans etc.
22. Accordingly, Promoter is liable to be prosecuted and penalties under Section 59, 60 and 61 of the Act.
23. Furthermore, promoter has utterly failed to deliver the possession of the unit or refund amounts on demand in terms of Section 18 of the Act. Accordingly, complainant is entitled for refund of amounts under section 18 of the Act along with the interest as prescribed under rule 15 of the rules. Hence, the complaint is maintainable.



### Issues raised by the complainant

- i. Whether the complainant is entitled for refund of entire amount paid to the respondent along with interest under section 18 of the Act.
- iii. Whether the respondents are required to register the phase/project "Versalia" at Sector-67A, Gurugram, Haryana, in terms of Section 3 & 4 of Real Estate (Regulation and Development) Act, 2016?
- iv. Whether the respondents have violated the provisions of Section 3, 4 and 14 of the Act and liable to be prosecuted and penalties be imposed under section 59, 60 and 61 of the Act ?

#### **Relief sought by the complainant**

- i. To direct the respondent to refund the entire amount paid by the complainant along with prescribed interest from the date of respective deposits till its actual realisation
- ii. To conduct such inquiry under section 35 of the Act into the affairs of the respondents

#### **Respondent's reply**



### Preliminary Objections and Submissions

24. The respondent submitted that at the outset all the pleas, averments, allegations and contentions made by the complainant in the instant complaint are wrong and denied and nothing shall be deemed to be true and correct for want of traverse, unless specifically admitted hereinafter.
25. The respondent submitted that present complaint filed by the complainant is false, frivolous, baseless and nothing but gross abuse of the process of law and this hon'ble forum. It has been filed with the sole purpose of harassing and extracting unlawful gains from the respondent company.
26. The respondent submitted that the complainant has not approached this hon'ble forum with clean hands and is trying to suppress material facts relevant to the matter in dispute. That the complainant is guilty of "Suppresio Veri, Suggestio Falsi" and the complaint is liable to dismissed on this ground alone.
27. The respondent submitted that the present complaint here is liable to be dismissed as the same has been filed without



any cause of action attributable to the respondent. The respondent company is committed to abide with the terms and conditions agreed between the parties.

28. The respondent submitted that the present complaint is not maintainable before this hon'ble forum for want of jurisdiction. That the complainants are investors who made some long-term investment in the project under dispute and in lieu of the same an independent floor/dwelling unit was provisionally allotted in their name. Hence, the present complaint is liable to be dismissed for want of jurisdiction.
29. The respondent submitted that delay in procurement of requisite additional licenses was beyond the reasonable control of the respondent company and now the respondent company has got all the licenses in place. That post registration with RERA Authority, Haryana, the respondent company has been mandated by the provisions of RERA to complete the development work of the project with revised timeline of August 2020. It is submitted that the respondent company has neither violated the terms and conditions agreed between the parties nor any provisions of RERA.



30. The respondent submitted that there was/is no occasion with the complainant to file the present complaint in absence of any valid or tenable cause of action. Further, a floor buyer agreement/agreement has also not been executed between the parties thereby making it apparent that the timeline for handover of the dwelling unit was tentative and not fixed and the complainant was fully aware of this fact. That the conduct of the respondent has always been bonafide and in good faith. It is submitted that the present complaint has been filed prematurely well before any agreed date for handover of possession of the flat/unit in dispute. That the complainant has filed the present complaint before any cause of action arising in favor of the complainant to file the complaint.

31. The respondent submitted that without prejudice, it is submitted that the respondent is willing to either pay delay penalty charges as stipulated in a standard floor buyer agreement, if such delay is established on part of respondent or offer alternate unit in its other project, if complainant desires. That the respondent company has previously also offered to the complainant and is still offering the



complainant alternate plots in the Versalia projects of the company in Gurgaon or some other places/projects.

32. The respondent submitted that the booking of the dwelling unit was done by the complainant for investment purposes and no floor buyer agreement or any similar agreement was executed between the parties. The intention of the parties was never to be bound by floor buyer agreement, etc. and the date for handover of the dwelling unit was not fixed but was tentative and based on mutual understanding between the parties.

33. The respondent submitted that 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.

34. The respondent submitted that the present complaint is filed at premature stage and without any cause of action and hence, liable to be rejected forthwith. Besides, the



complainant has filed the present complaint without exhausting the agreed alternate remedies for his alleged grievances, which is neither tenable nor permissible either in law or equity.

35. The respondent submitted that in view of the above stated facts and circumstances it is, therefore, respectfully prayed that above said complaint lodged before your good office may kindly be rejected/cancelled/closed in the interest of justice.

**36. Determination of issues**

- i. With respect to **first and second issue** raised by the complainant since completion certificate with respect to internal development works for the plotted colony area has not been obtained by the developer so far, therefore, respondent is not in a position even to start the construction of the floor allotted to the complainant after getting the building plan approved from the competent authority under the rules. Therefore, complainant is well within his right to seek refund along with prescribed rate of interest i.e. 10.75% per annum from the date of deposit of amount till the date of this order, which shall be paid by the respondent to the



complainant within a period of 90 days from the issuance of this order

- ii. With respect to the **third and fourth issue** raised by the complainant, the said project is registered vide registration no. 154 of 2017 and the revised date of completion is 31.08.2020. Hence, this issue become infructuous.

### Findings of the authority

37. **Jurisdiction of the authority-** The authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The authority has complete jurisdiction to decide the complaint regarding 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

38. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority finds that no BBA to this effect was executed inter-se the parties only one allotment letter dated 04.09.2014(Annex C/2) is available on record. Accordingly, the exact due date to deliver the unit cannot be ascertained. Counsel for the respondent has submitted that since the respondent has not started the construction of the project in which unit of the complainant is located, therefore the complainant is seeking refund of amount along with interest. Counsel for the respondent pointed out that they have already got this project registered with the authority and the revised date of possession is 31.8.2020.

39. Counsel for the complainant pointed out that registration is only for 38 acres area which is only a part of the total licence area which is earmarked for plotted colony. He further emphasized that since completion certificate with respect to internal development works in the plotted colony area has



not been obtained by the developer so far, therefore, respondent is not in a position even to start the construction of the floor allotted to the complainant after getting the building plan approved from the competent authority under the rules.

40. Considering the submissions raised by counsel for the complainant and counsel for the respondent, the authority has ordered that since completion certificate has not been obtained by the respondent for the plotted colony area, therefore, complainant is well within his right to seek refund along with prescribed rate of interest i.e. 10.75% per annum from the date of deposit of amount till the date of this order, which shall be paid by the respondent to the complainant within a period of 90 days from the issuance of this order.

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

41. 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 directions to the respondent in the interest of justice and fair play:

(i) The respondent is directed to refund along with prescribed rate of interest i.e. 10.75% per annum from the date of deposit of amount till the date of this order, which shall be paid by the respondent to the complainant within a period of 90 days from the issuance of this order.

42. The order is pronounced.

43. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 12.03.2019

Judgement uploaded on 28.03.2019

