

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

Complaint no. : 428 of 2021
Date of first hearing : 04.05.2021
Date of decision : 20.07.2021

1. Rajan Sharma
2. Charu Sharma
Both RR/o- D-22, Greenwood City, Sector-46,
Gurugram, Haryana- 122002

Complainants

Versus

1. Advance India Pvt. Ltd.
Regd. Office: 232B, 4th floor, Okhla Industrial
Estate, Phase-III, New Delhi-122002
2. Anant Raj Ltd.
Regd. Office: Plot no. CP-1, Sector 8, IMT Manesar,
Haryana

Respondents

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Adv. Siddhant Tyagi
Adv. MK Dang

HARERA
GURUGRAM
ORDER

Advocate for the complainants
Advocate for the respondents

1. The present complaint dated 19.02.2021 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) and 13(1) of the Act, wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the flat buyer's agreement executed inter se them.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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	"AIPL JOY SQUARE", Sector- 63A, Gurugram
2.	Nature of the project	Commercial Project
3.	Total Project area	108.1245 acres
4.	DTCP license no.	1. 71 of 2014 dated 29.07.2014 valid till 28.07.2024 of 7.8625 acres Name of licensee- Anantraj Industries Ltd. and Others 2. 119 of 2011 dated 28.12.2011 valid till 27.12.2019 for project area of 100.262 acres Name of licensee- Rose Realty Pvt. Ltd. and Others
5.	HRERA registered/ not registered	Registered vide no. 259 of 2017 dated 03.10.2017
	RERA registration valid up to	31.12.2022
6.	Unit no.	Unit- 0107, Ground floor [As per page no. 37 of complaint]
7.	Date of allotment letter	30.06.2018 [As per page no. 37 of complaint]

8.	Unit area	790.83 sq. ft. (super area)
9.	Revised unit area	796.54 sq. ft.
10.	Payment plan	Construction linked plan [As per page no. 38 of complaint]
11.	Date of execution of unit buyer's agreement	Not executed
12.	Total consideration	Rs. 96,48,126/- [As per page no. 38 of complaint]
13.	Total amount paid by the complainant	Rs. 5,85,600/- [As per page no. 47 of complaint]
14.	Termination letter	15.04.2020 [As per page no. 47 of complaint]

B. Facts of the complaint.

3. That on the proposal of respondent no.1 to offer for sale of commercial shops the complainants booked three commercial shops with respondent no. 1 in "AIPL Joy Square" in Sector 63A, Gurugram. The area of the shops booked by the complainants were 318 sq. ft., 318 sq. ft. & 732 sq. ft. and against which acknowledgement no. 048, 049 & 050 dated 25.11.2013 were given by respondent no.1. The complainants paid an amount of Rs 2,54,400/-, Rs 2,54,400/- & Rs 5,85,600/- towards the booking amount for the respective shops.
4. That in November 2017, representative of respondent no. 2 called upon the complainants and told them that since the commercial project is being developed by them, fresh bookings would have to be done through them. Hence, they asked the complainants to share with them the details of the earlier bookings done with respondent no. 1. The complainants shared the

details vide email dated 27.12.2017 which was acknowledged by respondent no. 2 vide email dated 28.12.2017. On 25.05.2018 respondent no. 2 told the complainants that instead of three shops as booked by them earlier, only two shops could be allotted to them. They refunded the booking amount of the three shops made earlier to the respondent no.1 and a fresh booking amount of Rs 5,08,800/- vide cheque no. 099454 dated 14.06.2018, and an amount of Rs 5,85,600/- vide cheque no. 099455 dated 14.06.2018 was paid and consequently an allotment letters dated 30.06.2018 was issued for two shops viz. unit no. 116 (GF) and unit no. 107 (GF).

5. That on 13.11.2019 respondent no. 2 sent an email to the complainants asking for a payment of Rs 5003/- for generating an online challan for the registration of the 'builder-buyer agreement'. The complainants vide email dated 18.11.2019 & 06.02.2020 responded to the above-mentioned email and requested respondent no. 2 to send the copy of the 'builder-buyers agreement", so that it could be gone through before getting it registered.
6. That on 26.02.2020 a demand of Rs. 37,01,331.28/- (including tax) was received by the complainants from respondent no. 2 stating it to be outstanding against the payment of the unit no. GF-107 and overdue since February 25, 2020. Further, a second reminder for the demand was raised on 07.03.2020.
7. That on 01.04.2020 the complainants received an email from respondent no. 2 informing them that the registration work of the 'builder-buyers

agreement' would be deferred till 15.04.2020 probably because of COVID-19.

8. That on 04.04.2020 the complainants received a demand notice termed as 'Pre-Termination Letter' from respondent no. 2 asking for the payment of the outstanding amount against the 'unit no. GF-107' within 10 days of the receipt of letter. Further, on 13.04.2020 the complainants again received an email asking them to send the registration amount of Rs.5003/- for the said registration of the 'builder-buyer agreement'.
9. That on 15.04.2020, the complainants received termination letter of the 'Unit: GF-107' booked by them with respondent no. 2. After the protest by complainants on 23.05.2020 against the arbitrary termination of the "unit no. GF-107" by respondent no. 2 and further demanding the payment for the 'Unit' without executing the "builder-buyer agreement". The complainants visited their office on 27.05.2020 and on 28.05.2020, respondent no. 2 agreed to set aside the termination of the shop/unit and sent an email to the complainants attaching therein the draft of 'builder-buyer agreement'. The respondents also informed the complainants that the area of the "Unit/ shop: GF-107" allotted to them has been increased. The super area which was 73.47 sq. mtr. /790.83 sq. ft. for unit: GF-107 was increased to super area 74.00sq. mtr. / 796.54sq ft.
10. That on 03.06.2020, the complainants wrote to respondent no. 1 to revise the payment plan of the 'shop/ unit no. GF-107' as per the area increased

super area. Further, two cheques amounting to Rs.5,003/- each, was sent by the complainants on 06.06.2020 vide speed post for the registration of the said "unit/ shop no. GF-107" and "unit/ shop no. GF-116".

11. That on 10.06.2020 and 23.06.2020 respondent no. 2 sent an email stating that in the letter dated 06.06.2020, they have received only one cheque. From 03.03.2020 to 10.11.2020 the complainants made multiple attempts personally to again and again give the two cheques for registration of the two shops. However, respondent no. 2 refused to accept the cheques and till date has not registered "units/shop: GF-107" allotted to them. The frustration of the complainant can be seen in a few of their letters dated 13.07.2020 & 21.07.2020.
12. That the complainants on various occasions like on 19.10.2020 and 10.11.2020 asked respondent no. 2 to get the registration of the "builder-buyer agreement" of the "unit/ shop:GF-107" and give the revised payment plan for the changed area of the "unit" but the request of the complainants seems to have fallen on deaf ears. Respondent no. 2 was avoiding the registration of the "builder-buyer agreement" and illegally insisted upon the payment of the arbitrary dues.
13. That the complainants are ready and willing to pay the price/ installments of the "unit/ shop: GF-107" allotted to them and to abide by the terms of the agreement, provided they are first given/ shown the "builder-buyer



agreement” and the revised payment plan of the new/ amended area of the “unit/ shop no. GF-107” proposed to be allotted by them.

14. That the complainants have every reasonable apprehension that despite the complainant’s willingness and readiness to pay the price of the “unit” as agreed upon, the respondents are likely to terminate / cancel their allotment of the “unit/ shop no. GF-107” as they are likely to sell it in the market at a higher price, thus putting the complainants to irreparable loss and injury to their rights. Such cancellation/ termination of the “unit”, if done by the respondents would be unfair, unilateral and without any sufficient cause.
15. That the respondents are required to be restrained from terminating/ cancelling the allotment of “unit/ shop no. GF-107” made in their name. The respondents have kept the complainants in dark about the area and the terms and conditions of the “builder-buyer agreement” of the “unit/ shop no. GF-107” allotted to the complainants and have been illegally insisting on payment for the same. The respondents have committed grave deficiency on its part and adopted unfair trade practices by failing to adhere to area of the “unit/ shop no. GF-107” as allotted to the complainants and concealing the terms and conditions of the “builders buyer agreement” from the complainants. There has been a deliberate misrepresentation on part of the respondent regarding the construction of the project comprising the “unit/ shop GF-107” booked by them.

16. That according to section 4(h) while making the application for registration of the project the promoter has to provide the particulars of the carpet area of the 'unit' proposed to be sold. The respondents have not provided the information regarding the carpet area of the "units" proposed to be sold nor have they provided any information of the same to the complainants.
17. That section 13 of the Act provides that no deposit or advance more than 10% ought to be taken by promoter without first entering into agreement for sale and getting it registered. The law also provides that the "Agreement for sale" shall also specify the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees. But in the instant case respondents have been incessantly demanding payment from the complainants which is more than 10% of the sale consideration of the "unit/ shop" without first providing to the complainants the "builder-buyer agreement" and getting it registered.
18. That section 14 of the Act provides provided that the promoter may make such minor additions or alterations (which does not include increase or decrease of the area of the unit) as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized architect or engineer after proper declaration and intimation to the allottee. But no such intimation was given by respondents to the complainants before increasing the area of the "unit/ shop" allotted to the complainants.

19. That as per section 15 the Act casts an obligation upon the promoter that it shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the authority. But the respondent no. 1 who had initially taken the license to develop the project and had even taken the advance bookings of the "units" has transferred the rights and liabilities in respect of the real estate to respondent no. 2 without taking necessary consent and approval. The respondents have contravened the provisions of the Act and are liable to be punished under section 61 of the same.
20. That the directors of the respondents and associated companies were in charge of and were responsible to the company for the conduct of the business of the company and were in consent, connivance knowledge of the offence. The offence committed by them is attributable to their neglect and hence they are guilty of the offence and are be liable to be proceeded against and punished accordingly.
21. The respondents kept the complainants in dark about the construction of the project and has been taking the payment for the same illegally. The respondents have committed grave deficiency on its part and adopted unfair trade practices by failing to deliver to the complainants the flat/unit as promised by them. The respondents have failed to fulfil his obligation u/s 11(4)(a) of Act.

22. That the respondents have committed various breaches of Act and are liable to be punished for the same under the Act. The respondents have also adopted unfair & malpractice in allotting and confirming the sale of "unit/ shop no. GF-107" due to which the complainants have been put to mental stress and harassment. The respondents have verbally told the complainants that they will terminate and cancel the allotment of "unit/shop no. GF-107" made in their favour as the same is now likely to fetch better price for them in the market.

C. Relief sought by the complainants:

The complainants have sought following relief(s):

- (i) Direct the respondents to be restrained from terminating/ cancelling the allotment of "unit/ shop no: GF-107" made in their favour. The complainants are ready and willing to pay for the said "unit" after the registration of the "builders-buyers agreement".
- (ii) Direct the respondents to be restrained from alienating or re-allotting the "unit/ shop no: GF-107" to any third person after terminating the allotment of the complainants.
- (iii) Direct the respondents to get the "builders-buyers agreement" of the "unit/ shop no: GF-107" registered in the name of the complainants.
- (iv) Direct the respondents to take the payment of the "unit/ shop no GF-107" after getting the "builders buyers agreement" registered and on the revised payment plan due to change in the area of the said "unit".

(v) Direct the respondents be directed to compensate the complainants with Rs 5,00,000/- due to the mental stress and harassment caused to them by the respondents and further due to the expenses bore by the complainants for getting his rights adjudicated Act.

23. On the date of hearing, the authority explained to the respondent/promoter and complainants about the contravention committed in relation to section 11(4)(a), 13(1), 19(6) and 19(7) of the Act to plead guilty or not to plead guilty.

24. The counsel for the respondent no. 1 appeared on the final date of hearing and has made oral submissions. However, no written reply has been submitted by the respondent.

E. Jurisdiction of the authority

E.I Territorial jurisdiction

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

26. Section 11(4)(a) of the Act provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides 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.

27. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants

Relief sought by the complainants:

- i) Direct the respondents to be restrained from terminating/ cancelling the allotment of "unit/ shop no: GF-107" made in their favour. The complainants are ready and willing to pay for the said "unit" after the registration of the "builders-buyers agreement".

- (ii) Direct the respondents to be restrained from alienating or re-allotting the “unit/ shop no: GF-107” to any third person after terminating the allotment of the complainants.
- (iii) Direct the respondents to get the “builders-buyers agreement” of the “unit/ shop no: GF-107” registered in the name of the complainants.
- (iv) Direct the respondents to take the payment of the “unit/ shop no GF-107” after getting the “builders buyers agreement” registered and on the revised payment plan due to change in the area of the said “unit”.
- (v) Direct the respondents to compensate the complainants with Rs 5,00,000/- due to the mental stress and harassment caused to them by the respondents and further due to the expenses borne by the complainants for getting his rights adjudicated as per Act.

F.I Finding on relief that respondents be directed to execute “builder buyer’s agreement” and to accept payment made towards consideration of allotted unit.

28. In the present complaint, the complainants intend to continue with the project and is seeking relief under the section 13(1) of the Act. Sec. 13(1) proviso reads as under.

“Section 13: - No deposit or advance to be taken by promoter without first entering into agreement for sale.

13(1). A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

29. In the present case, the complainants have paid an amount of Rs.5,85,600/- towards consideration of unit/shop no. GF-107, which is less than ten percent of total sale consideration. But it is to be noted that aforesaid provision of Act, provides that no advance or deposit to be taken by promoter before entering into an agreement, which further provides as promoter shall not accept a sum more than ten percent of consideration from a person without first entering into a written agreement for sale. It is clear from bare reading of provision of Act, that it provides a bare basic limit of ten percent for executing builder buyer's agreement that at any cost amount collected by the builder/promoter shall not exceed ten percent unless a buyer's agreement is executed inter-se parties, but not a concrete limit as a matter of right that a builder buyer agreement can only be executed after getting a minimum ten percent consideration towards unit concerned.

F.II Finding on relief that respondents be restrained from terminating/ cancelling the allotment of "unit/ shop no: GF-107" and be restrained from alienating or re-allotting the "unit/ shop no: GF-107" to any third person after terminating the allotment of the complainants.

30. The complainants have paid an amount of Rs.5,85,600/- towards consideration of unit/shop no. GF-107 against total consideration of Rs.96,48,126/-. There is default on part of complainants towards payment of consideration of the unit. Whereas counsel for respondents stated at bar that the unit cannot be kept blocked for a long period of time. But the fact

cannot be ignored that there was a delay on part of respondents in execution of buyer's agreement and moreover, the complainants have tried to reach the respondents to get the buyer's agreement executed which is evident from page 56 to 63 of complaint. Therefore, a reasonable time must be given to the complainant to realise the payment towards consideration.

F.III Finding on relief that respondents be directed to compensate the complainants with Rs 5,00,000/- due to the mental stress and harassment.

31. The complainants are claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.
32. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the complainants and the respondents are in contravention of the section 19(6), 19(7) and section 13(1) of the Act respectively, by not making payment towards total consideration on unit/shop and by not executing builder buyer's agreement.

Directions of the authority

33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondents are directed to execute buyer's agreement with the complainants of the allotted unit within a period of 10 days according to provision of sec 13(1) of Act.
- ii. The complainants are also directed to pay outstanding dues, if any within 10 days according to provision of sec 19(6) of Act.
- iii. The complainants are also directed to pay equitable interest at the rate of 9.30% per annum on such delay payments according to the provision of sec 19(7) of Act.

34. Complaint stands disposed of.

35. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.07.2021

JUDGEMENT UPLOADED ON 10.12.2021