

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

Complaint no. : 2114 of 2018
First date of hearing: 28.03.2019
Date of decision : 28.03.2019

Mr. Lokesh Upreti
R/o. 11-129, block-507, Butik Batok, Street-52, **Complainant**
Singapore-650507

Versus

M/s Ansal Phalak Infrastructure Pvt. Ltd.
Regd. Office: 115, Ansal Bhawan, 16, K.G Marg, **Respondent**
New Delhi-110001.

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Asmita Chaudhary Advocate for the complainant
None for the respondent Advocate for the respondent

ORDER

1. A complaint dated 12.12.2018 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. Lokesh Upreti, against the promoter M/s Ansal Phalak Infrastructure Pvt. Ltd., on account of violation of the clause 5.1 of the floor buyer's agreement executed on 29.04.2014 in Sector 67A,



Urban Estate, Badshahpur, Gurgaon, in the project 'Versalia' for not handing over possession on the due date i.e. 29.10.2017 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since the floor buyer's agreement has been executed on 29.04.2014, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Versalia", Sector 67 A, Gurugram
2.	Nature of project	Residential plotted colony
3.	Area of project	38.262
4.	Apartment/unit No.	FF3077, Sector 67A, Urban Estate, Badshahpur, Gurgaon unit shifted to FF3216 vide letter dated 25.09.2014
5.	Flat measuring	1685 sq. ft
6.	DTCP licence no.	81 of 2013 dated 19.09.2013 and 20 of



		2018 dated 09.03.2018
7.	RERA registered/ not registered.	154 of 2017 dated 28.08.2017
8.	Registration valid upto	31.08.2020
9.	Allotment letter	30.01.2014 and 25.09.2014
10.	Date of execution of floor buyer's agreement	29.04.2014
11.	Payment plan	Construction linked payment plan
12.	Total sale consideration	Rs.1,21,30,500/-
13.	Total amount paid by the complainant till date	Rs.37,47,877.36/-
14.	Date of delivery of possession as per clause 5.1 of floor buyer's agreement (36 Months + 6 months grace period from the date of execution of agreement with requisite approvals & permissions from the concerned authorities as well as force majeure conditions)	29.10.2017
15.	Delay in handing over possession	1 year 4 months and 27 days
16.	Penalty clause as per floor buyer's agreement dated 29.04.2014	Clause 5.4 of the agreement i.e. Rs.10/- per sq. ft per month of the carpet area of the said flat.

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 29.10.2017. Neither the respondent has



delivered the possession of the said unit to the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 5.1 of floor buyer's agreement dated 29.04.2014. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 28.03.2019. The case came up for hearing on 28.03.2019. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply.

Facts of the complaint

6. The complainant submitted that the present complaint is being preferred by Mr. Lokesh Upreti [hereinafter referred to as the "**complainant**"] under section 31 of the Real Estate (Regulation and Development) Act, 2016 for seeking directions and relief against the errant actions of the M/s. Ansal Phalak Infrastructure Pvt, Ltd. [hereinafter referred to



as the “**respondent**”] who despite assuring the possession of the residential floor purchased by the complainant, by the year 2017 failed to deliver the same and thereby committed the breach of the flat buyer agreement dated 29.04.2014 and the provisions stated in the Real Estate (Regulation and Development) Act, 2016.

7. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this hon’ble authority as the dwelling unit which is the subject matter of the present complaint is situated in Sector 67-A, Gurugram, Haryana and thus within the jurisdiction of this hon’ble authority. Hence, this hon’ble authority has the power to try and adjudicate upon this present matter.
8. That the complainant believing in the misrepresentations and fake claims made by the respondent with respect to his market reputation, success of his other projects and his project “**Versalia**”, booked a residential floor/dwelling unit by paying a booking amount of Rs.12,05,628.75/-, which was duly acknowledged by the respondent vide the payment receipt no. 2651.



9. That the respondent after receiving the booking amount from the complainant, allotted residential floor/dwelling unit no. FF-3077 located at first floor, Versalia, Sector 67-A, Gurugram, Haryana admeasuring 1685 sq. ft. [hereinafter referred to as “**dwelling unit**”], for a basic sale price consideration of Rs.1,16,25,000/- by issuing allotment letter dated 30.01.2014 in the name of the complainant.
10. That thereafter in furtherance of the purchase of the dwelling unit, the flat buyer agreement dated 29.04.2014 [hereinafter referred to as the “**agreement**”] was executed with the respondent for a total sale price consideration of **Rs.1,21,30,500/-**. However, it is quite ironic to note herein that the respondent after allotting dwelling unit no. FF-3077 vide the allotment letter dated 30.01.2014, changed the dwelling unit as unit no. FF-3216 which was allotted vide the hypothetical allotment letter dated 25.09.2014, which was yet to come. That the true copy of the flat buyer agreement dated 29.04.2014 executed between the complainant and the respondent.



11. That in consonance to the **clause 5.1** of the agreement dated 29.04.2014, the respondent had agreed to give the delivery of the possession of the dwelling within unit 36 months from the date of the execution of the agreement with 6 months grace period i.e., by 29.10.2017.
12. The complainant submitted that in consonance to the **clause 5.4** of the agreement dated 29.04.2014, the respondent had agreed to pay a penalty @Rs.10/- per sq. ft. i.e., Rs.16,850/- per month for the period of delay caused in handing over the possession of the dwelling unit.
13. The complainant submitted that further when the complainant enquired about the change of the dwelling unit from the one which was allotted to him, it was told to him that due to some technical glitch, the earlier allotted dwelling unit could not be handed over to him and thus another dwelling unit no. FF-3216 having the same area, specifications, amenities and price was allotted to him vide a hypothetical allotment letter dated 25.09.2014. It is prominent to note herein that no documents were provided to the complainant against the newly allotted dwelling unit



despite his persistent requests. Although in reality the dwelling unit no. FF-3077 was allotted to two people and it was on account of the same reason that some other dwelling unit was allotted to the complainant.

14. That the respondent owing to his dishonest and fraudulent intentions did not give any documents to the complainant with regards to his newly allotted dwelling unit i.e., unit no. FF-3216. That this malafide act of the respondent left the complainant in the midst nowhere since he had no proof of the unit purchased by him as the allotted dwelling unit FF-3077 was snatched from him for no reasons and the complainant had no documentation of the newly allotted dwelling unit no. FF-3216.

15. It is pertinent to mention herein that the respondent acting clever, asked the complainant to send the original allotment letter, BBA and payment acknowledgement receipts with regards to the unit no. FF-3077. That the same was done with a malafide intent to deceive the complainant so that no action could be taken against him for his unlawful act. That the complainant believing that the intentions of the respondent



to be good, send the same to him without delay. That the true copy of the mail sent by the respondent asking for the documents from the complainant.

16. That after repeated requests the respondent gave a new allotment letter to the complainant on 25.09.2014 allotting him the new dwelling unit no. FF-3216 only after making the complainant sign an undertaking stating that the change in the allotment was done at the request of the complainant, which is nothing but a white lie. That this particular act of the respondent shows how cunning he is and how low he can go to dupe the innocent complainant without leaving any doubt on himself by shifting all his mistakes on the shoulders of the complainant.

17. The complainant submitted that although the complainant had made **31%** of the payment against the dwelling unit purchased, the respondent had not started construction at the project site since all the relevant permissions were either not taken by him or the same were not granted by the authority concerned.



18. That the respondent had not only harassed the complainant physically and mentally by his unscrupulous act of lying and deceiving but has also flouted the norms and provisions of the Real Estate (Regulation and Development) Act, 2016 by not taking the due permissions required for the construction of any project.
19. That the irresponsibility of the respondent further becomes abundantly clear by the fact that the respondent has not even registered its project with this authority as per the mandate under Section 3 of the Real Estate (Regulation and Development) Act, 2016 That as per the proviso to Section 3 sub-clause 1, all real estate project which had received completion certificate shall make an application to this hon'ble authority for registration.
20. The complainant submitted that the complainant anguished by the repeated lies of the respondent, himself inspected the project site in March, 2017 wherein he was shocked to see that not a single brick was placed in the name of the construction of the said project. That the complainant thereafter wrote a mail to the respondent bringing to fore the actual position of the project and further asked for withdraw



of his nomination from the project by claiming the entire amount with the delayed interest on account of the inactions of the Respondent. That the true copy of the e-mail dated 21.03.2017 sent by the complainant to the respondent with regards to the current status of the project.

21. That the respondent played very clever by not responding to the requests of the complainant and thereafter out of a sudden sent a mail dated 28.04.2018 proposing certain vague benefits to the complainant so that the complainant may not withdraw from the project. That the respondent proposed that the a unit will be allotted to the complainant as per his choice in which the preferred location charges will be waived off, the increase in area charges will be waived off, the club membership will be waived off and the delay penalty will be accordingly adjusted in the remaining payments. However, no date of the start of the construction of the project or the date of possession was intimated by the respondent. That entire act of the proposal was a bait to deceive the complainant once again, which none the less the complainant did not accepted the same. That it was only at later stage that the respondent stated that tentatively the construction of the



project will be started by July, 2018. That the true copy of the mail exchanged between the complainant and the respondent dated 28.04.2018.

22. That the claims of the respondent turned out to be a sham since the construction of the project has not yet been started by the Respondent and in order to save himself from any probable legal action against him he is stating wrong facts and circumstances. That apart from lying, the respondent is liable to be prosecuted for committing unlawful act of the breach of the contract and the flouting the provisions of the mandates given under the Real Estate (Regulation and Development) Act, 2016.

23. **Issues raised by the complainant are as follows:**

- i. Whether the respondent has breached the mandatory provisions of the Real Estate (Regulation and Development) Act, 2016 by not registering the Project “Versalia” with the Gurugram Real Estate Regulatory Authority and thus liable for disregarding the same?



- ii. Whether the respondent has breached the provisions of the Act as well as the agreement by not delivering the possession of the said unit as per the agreement?
- iii. Whether the complainant is entitled to refund of entire amount paid to the respondent on account of the fact that no construction has yet been started by the respondent till date despite repeated promises and mails?
- iv. Whether the respondent is liable to pay the delayed penalty/compensation as agreed in the agreement?

24. Relief sought:

The complainant is seeking the following relief:

1. Pass an order for refund of Rs.37,47,877.36/- along with pendente lite and future interest thereon @ 18% from the due date of payment till the date of actual payment, in favour of the complainants and against the respondent; and/or
2. Pass an order for payment of penalty for delay as per the allotment agreement at the rate of Rs. 10/- Sq. yard i.e. Rs. 16, 850 of the 1685 sq. ft. per month for the period of



delay in favour of the complainant and against the respondent; and/or

3. Pass such other order(s), direction(s) relief(s) as this hon'ble authority may deem fit and appropriate in the facts and circumstances of the present case and in the interest of justice.

REPLY ON BEHALF OF THE RESPONDENT:

25. The respondent submitted that the complainant approached the respondent company in the month of January, 2014 expressing interest in booking of a flat in the "Versalia Project" (hereinafter referred to as "project") of the respondent company, proposed to be developed in Gurgaon, Haryana. In this regard, the complainant filed an application form dated 08.01.2014 with the respondent company and based on the representation made in the said application form a residential floor/dwelling unit no. FF-3077 in the project was provisionally allotted in name of the complainant for a total sale consideration of Rs.1,21,30,500/- .



26. That an allotment letter dated 30.01.2014 was duly issued and sent to the complainant intimating about the fact of provisional allotment of the unit in his name. Thereafter, due to revision in the layout plan of the project, the provisionally allotted dwelling unit was changed from floor/unit no. FF-3077 to FF-3216 (hereinafter referred to as the "Dwelling Unit"). That the change in provisionally allotted dwelling unit was done with the consent and approval of the complainant and an undertaking dated 25.09.2014 was also duly furnished by the complainant in this regard.
27. Thereafter, a letter dated 29.04.2014 along with a floor buyer agreement was sent to the complainant for execution of the same. That on 29.04.2014 a floor buyer agreement (hereinafter referred to as the "agreement/FBA") was duly executed between the parties enumerating all the relevant terms and conditions therein. That a new allotment letter dated 25.09.2014 was also duly sent to the complainant.
28. That as per point no. 5.1 of the agreement, the respondent company was liable to complete the development of the residential colony/floor and handover within a period of 42



months (including grace period of 6 months) from the date of execution of the agreement subject to receipt of requisite building plan, approvals etc. as well as force majeure circumstances.

29. The respondent submitted that the license of the said project wherein the subject dwelling unit is located, was applied long back but same has been granted by the concerned authority recently and that was the sole reason for delay in completion. 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.
30. That the project under which floor buyer agreement was executed between the parties was commenced prior to enforcement/ commencing of RERA Act, 2016 and as such prior to RERA, the parties were bound by the agreed terms of the said agreement. Subsequently, the respondent company has got the project registered under RERA, Haryana as per RERA Guidelines and norms, wherein a RERA registration Certificate dated 28.08.2017 with **validity upto August, 2020** for this project has been duly issued in favour of the



respondent company. That in term of said RERA certificate, the respondent company is fully committed and bound to complete the development work of the project by the said date and deliver the plots/floors/flats to the buyers.

31. The respondent submitted that delay in procurement of requisite licenses was beyond the reasonable control of the respondent company and now the respondent company has got all the licenses in place. That as per the terms of the agreement, the respondent company was/ is contractually liable, obligated and committed to complete the construction within a period of 36+6 months as stipulated in clause 5.1 of the agreement and handover the possession of the subject unit complete in all respect to the complainant. However, 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 of the agreement nor the provisions of RERA and even if this learned forum adopts either of the above stated two



approaches then still the respondent company cannot be held liable for any alleged default/delay in handover of possession of the floor/flat.

32. That without prejudice, even though it is assumed but not admitted that there has been some delay in completion of the project attributable to the respondent then there is an appropriate mutually agreed remedy provided in the agreement in form of clause 5.4 which provides for compensation for delay in handover of possession of the floor/flat.

33. The respondent submitted that the present complaint has been filed prematurely well before the agreed date for handover of possession of the flat/unit in dispute. That the complainant filed the present complaint before any cause of action ever arose in favour of the complainant to file the complaint in terms of the agreement executed between the parties.

34. That the answering respondent has never refused to abide by the contractual obligations on its part and has always acted bonafide and in good faith. There was/is no occasion with the



complainant to file the present complaint in absence of any valid or tenable cause of action.

35. It is further submitted that even if the complainant does not desire to wait any further even then the complainant, in agreed terms of said FBA, is not entitled to seek refund or compensation but is entitled for agreed available alternate remedies provided in said FBA.

36. The respondent submitted that the respondent shall abide with its obligation to pay either agreed delay penalty, if such delay is established on part of respondent or also ready and willing to offer alternate unit in its other project, if complainant desires. Besides, without prejudice to the rights and contentions, 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.

37. That the project commenced prior to RERA Act and hence the agreed terms and conditions mentioned in floor buyer agreement between the parties were pre-dominant till the commencement of RERA Act. Now some of the terms have



been changed/ revised in terms of applicable RERA provisions. Project is now RERA registered and completion/ possession date has been revised/ changed. The answering respondent is committed to handover the possession before stipulated date. Hence, 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.

38. 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.

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:



39. With respect to **first issue** raised by the complainant, the respondent has already got the project registered with the authority vide registration no. **154 of 2017 dated 28.08.2017 and valid upto 31.08.2020.** hence, this issue is decided in negative.

40. With respect to the **second and fourth issue** raised by the complainant, as per clause 5.1 of floor buyer's agreement, the possession of the flat was to be handed over within 36 Months + 6 months grace period from the date of execution of agreement with requisite approvals & permissions from the concerned authorities as well as force majeure conditions. The clause regarding the possession of the said unit is reproduced below:

"5.1 possession of floor

...the company shall endeavour to complete the development of residential colony and floor as far as possible within 36 Months + 6 months grace period from the date of execution of agreement with requisite approvals & permissions from the concerned authorities as well as force majeure conditions."



41. Accordingly, the due date of possession was **29.10.2017**, the delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said flat as per

clause 5.4 of floor buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.** (W.P 2737 of 2017), wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

42. Therefore, under proviso to section 18(1) respondent is liable to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act ibid read with rule 15 of the rules ibid, to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondent



u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainants with the promoter on the due date of possession i.e. **29.10.2017** upto the date of offer of possession.

43. With respect to **third issue** raised by the complainant, keeping in view the present status of the project the refund cannot be allowed at this stage of project. As the project is also registered with the authority vide registration no. **154 of 2017 dated 28.08.2017 and valid upto 31.08.2020** and refund will effect the interest of other allottee who wish to continue with the project and will also hamper the completion of the project.

FINDINGS OF THE AUTHORITY

44. 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 complainant at a later stage.



45. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.
46. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
47. The complainant 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.
48. It has been stated that the complainant had booked the residential floor no. FF3077, Sector-67-A, Urban Estate, Badshahpur, Gurugram. A floor buyer agreement to this effect was executed on 29.4.2014 and as per clause 5.1 of the agreement, the residential floor was to be handed over to the complainant on 29.10.2017 (36 months + 6 months grace



period). Under subvention payment plan, the complainant has deposited an amount of Rs.37,47,877/- against a total sale consideration Rs.1,21,30,500/-. The date of delivery of possession comes out to be 29.10.2017.

49. However, it has been brought to the notice of authority that the respondent had actually received license in the month of March 2018 i.e. the main root cause for late delivery possession. Project is delayed by 1 year, 4 months and 27 days.

50. The unit no. FF3037, Sector 67A Urban Estate, Badshahpur Gurugram allotted to the complainant changed to FF-3216 vide letter dated 25.9.2014. Complainant has attached photographs which are annexure-A at page no.14 to 16, a perusal of which indicate that the project is at initial stage of starting.

51. Keeping in view the dismal state of affair of project, it will not be possible for the respondent to complete it in time. Project is recently registered with the authority and registration is valid upto 31.8.2020. As such, revised date of



delivery of possession is 31.08.2020. Complainant is entitled for late delivery possession charges.

52. Counsel for the complainant has specifically pointed out and alleged that respondent has sold the floor in the year 2014 whereas license has been granted by DTCP Haryana in March 2018. In view of above, it is clear that the respondent has sold the floor illegally without having license from the competent authority. The authority has viewed this matter very seriously and has ordered to make a reference to DTCP to enquire into the matter and take suitable action in view of the provisions of Urban Areas Act, 1975 against the respondent. Action taken report be also submitted to this authority within a period of 2 months. Project is registered with the authority. As such, it is admissible that complainant may be given prescribed rate of interest on account of delayed delivery of possession till actual handing over the possession of the unit to the complainant. If respondent fails to deliver the project on the revised committed date of possession i.e 31.08.2020 in that case complainant is eligible



for refund of the deposited amount alongwith prescribed rate of interest i.e. 10.75% per annum.

53. As per record, the date of registration of the project has been given as 28.08.2017 by interim authority Panchkula. The registry is directed to verify the registration case file on what basis and on what documents this registration has been allowed when the license has been stated to have been issued of this project on 09.03.2018. Since project is registered, it is admissible for the buyer to continue with the project till the actual date of delivery of possession. However, the complainant is entitled to delayed possession charges w.e.f. 29.10.2017 till actual date of possession @ 10.75% per annum. If respondent fails to deliver the possession on the committed date of possession, the complainant is entitled for refund of amount alongwith prescribed rate of interest @ 10.75% per annum.



Decision and directions of the authority

54. 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 issue direction to the respondent

- i. The respondent is directed to handover the possession of the said unit to the complainant by **31.08.2020** as committed by the respondent in the registration certificate.
- ii. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.75% p.a. from due date of possession i.e. **29.10.2017** till the handing over of the possession to the allottee.
- iii. Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid on or before 10th of subsequent month.

55. The order is pronounced.

56. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2019

Judgement uploaded on 12.04.2019