

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

**Complaint no. : 2095 of  
2018**  
**Date of first  
hearing : 28.03.2019**  
**Date of decision : 28.03.2019**

Mrs Neelam Dhingra  
R/o 29, MIG Flats, Suraj Apartments,  
Pul Pehladpur,  
New Delhi-110044

**Complainant**

Versus

Ansal Phalak Infrastructure Pvt Limited,  
115, Ansal Bhawan, 16 K.G Marg,  
New Delhi-110001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri S. K Dhingra Husband of the complainant in person  
Shri Naveen Single Advocate for the complainant  
None for the respondent 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 Mrs Neelam Dhingra against the respondent Ansal Phalak Infrastructure Pvt Ltd. in respect of apartment/unit described below in the project 'Avante Floors, Versalia, Sector 67A, Gurugram on account of violation of clause 5.1 of flat buyer's agreement executed on 01.01.2015 for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer agreement has been executed on 01.01.2015 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

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

1.	Name and location of the project	" Avante Floors Versalia, Sector 67 A Gurgaon, Haryana
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2.	Registered/not registered	<b>Registered (154 of 2017 dated 28.08.2017)</b>
3.	Registration valid upto	<b>31.08.2020</b>
4.	Nature of real estate project	Residential plotted colony
5.	Payment plan	Possession linked plan
6.	DTCP licence number	81 of 2013 dated 19.09.2013
7.	Revised date of DTCP licence	20 of 2018 dated 09.03.2018
8.	Date of execution of flat buyer agreement	01.01.2015
9.	Unit area	1685 sq ft.
10.	Unit no.	SF 3145
11.	Date of allotment	30.06.2015
12.	Basic sale price	Rs1,42,48,000 /- (as per clause 3.1 of the agreement)
13.	Total amount paid by the complainant	Rs. 34,58,702/-/-( as per receipts annexed) Rs. 49,82,176/-(as alleged by complainant)
14.	Due date of delivery of possession As per clause 5.1 : within 36 months with an extended period of 6 months from date of execution of agreement subject to the receipt of	<b>01.07.2018 (due date is calculated from the date of execution of agreement)</b>

	requisite building or revised building plan/other approvals and permission)	
15.	Delay of number of months/ years till date 28.03.2019	8 months 27 days
16.	Penalty as per clause 5.4 of the agreement	Rs 10 per sq. ft. per month on super area

4. The details provided above have been checked as per record of the case file provided by the complainant and respondent dated 01.01.2015. A flat buyer agreement is available on record for unit no. SF-3145 according to which the possession of the aforesaid unit was to be delivered by 01.07.2018. The promoter has failed to deliver the possession of the said unit to the complainant by the due date. 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 case came up for hearing on 28.03.2019. The reply was filed by the respondent and the same has been perused. A rejoinder has been filed by the complainant denying the assertions made

by the respondent in his reply and re-asserting the facts stated in the complaint.

**FACTS OF THE COMPLAINT:**

6. Briefly stated, the facts of the complaint are that on basis of representations of the officials of the respondent that the project will be developed completely in 2-3 years, on 30.09.2014, the complainant booked a unit on the second floor in a project floated by the respondent namely, "Versalia" in Sector 67A, Gurugram, Haryana. At the time of booking, the complainant paid an amount of Rs.15,23,474.00 vide cheque no. 006849 & 000076 dated 07.09.2014 & 26.09.2014 respectively.
7. The complainant submitted that on 01.01.2015, a flat buyer agreement was executed between the parties and the complainants were allotted unit no. SF3145, measuring 1685 sq. ft. on second floor in "Versalia" and on 30.06.2015, the respondent sent the allotment letter along with the payment plan to the complainant. It is further contended by the complainant that the total sale consideration of the flat is Rs.

1,42,48,000.00 out of which the complainant have paid Rs. 49,82,176.00 till date.

8. The complainant submitted that the respondent had to handover the physical possession of the unit to the complainants with in a period of 36 months from the date of execution of flat buyer agreement dated 01.01.2015 with a grace period of 6 months i.e on or before 01.01.2018 but not later than 01.07.2018. However, construction and development works have not commenced at the site and more than 3 years have already passed.
9. The complainant submitted that clause 4.5 of the agreement stipulated for 18% p.a interest for three months of delay but if the delay is beyond three months then the interest shall be payable @ 21% p.a. compounded quarterly and therefore, in terms of RERA, the complainants are also entitled to same rate of interest for delay period in handing over of the physical possession of the flat. Further, as per definition of “interest” provided under section 2(Za) of the said Act, the rate of interest chargeable by the promoter in case of default should

be equivalent to the rate of interest payable by the promoter/colonizer in case it is in default.

10. It is further submitted that complainant made written communication dated 25.04.2018 to which the respondent agreed to refund the total paid up amount along-with interest @ 10% per annum. The respondent played delay tactics and assured the complainant for the refund of the paid-up amount in every email but didn't pay any amount to the complainant till date.

11. Issues to be decided

- i. Whether in terms of sub-section (za) of section 2 of the RERA, 2016 the respondent-promoter is liable to pay 18% compound interest for the delayed period, inasmuch as, it is entitled to charge the same interest for delay in payment of sale consideration?
- ii. Whether in the event of failure to develop the project and offer possession of the unit to the complainant, they are entitled to refund of the entire amount paid along with 18% compound interest?



12. Reliefs sought:-

- i. In the event the registration has been granted to the respondent-promoter for the project namely, "Versalia" Sector-67 A, Gurugram, Haryana, under RERA read with relevant rules, it is prayed that the same may be revoked under Section 7 of the RERA for violating the provisions of the RERA.
- ii. In exercise of powers under section 35, direct the respondent-promoter to place on record all statutory approvals and sanctions of the project;
- iii. To compensate the complainant for the delay in completion of the project and refund the entire amount of Rs. 49,82,176.00 along with interest @ 18% compound interest from dates of respective instalments/realization of the sale consideration by the respondent-promoter.

REPLY BY THE RESPONDENT:

13. The respondent submitted that the complainant approached the respondent company in the month of August, 2014 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.

14. The respondent submitted that the complainant filed an application form dated 09.09.2014 with the respondent company and based on the representation made in the said application form a residential floor/dwelling unit no. SF-3145 was provisionally allotted in name of the complainant for a total sale consideration of Rs.1,47,53,500/ Subsequently, a floor buyer agreement dated 01.01.2015 (hereinafter referred to as “FBA/agreement”) was executed between the parties stipulating all the relevant terms and conditions therein. Also, an allotment letter dated 30.06.2015 was issued and sent to the complainants in this regard.

15. It is further submitted 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.

16. The respondent submitted 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.

17. The respondent submitted that out of the total sale consideration of Rs.1,47,53,500/- for the unit, the complainant has only paid a sum of Rs.49,82,176/- and defaulted in payment of the remaining amount and hence, intentionally breached the terms and conditions agreed between the parties. That despite making just 1/3<sup>rd</sup> payment

of total amount, the Complainant has been alleging delay and demanding possession of the unit which clearly shows malafide and ill-will on part of the complainant. It is also 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.

18. The respondent submitted that the project commenced prior to RERA Act, 2016 and hence the agreed terms and conditions mentioned in the agreement between the parties were pre-dominant till the commencement of RERA Act, 2016. 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 respondent company is committed to

handover the possession of the unit 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 the present complaint without exhausting the agreed alternate remedies for his alleged grievances, which is neither tenable nor permissible either in law or equity

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

19. With respect to the **first and second issue** raised by the complainant, as per clause 5.1 of the agreement, the respondent was under contractual obligation to deliver the possession of the unit within a period of 36 months from the date of execution of agreement subject to the date of obtaining all the required sanctions and 6 months grace period.
20. The due date of possession (on calculation from the date of agreement) comes out to be 01.07.2018. However, the

respondent has failed in handing over the possession on or before the said due date, thereby breaching the terms and conditions stipulated in the agreement. Further, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. However, on account of failure in handing over possession on the due date, the respondent is liable to pay delayed possession interest at the prescribed rate of 10.75% per annum from the due date of possession till offer of possession of the unit. If respondent fails to deliver the project on the revised committed date of possession, i.e. by 31.08.2020 in that case the complainant will be entitled to refund of the deposited amount along with prescribed rate of interest.

Findings of the authority

21. **Jurisdiction of the authority-** The authority has complete subject matter 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & 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.

22. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
23. 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 and fulfil obligations.
24. Reply has already been filed by the respondent which is taken into consideration while passing final order in the matter. Case of the complainant is that she had booked a residential floor no. SF-3145, in project "Versalia" Sector- 67A, Gurugram. An

agreement to this effect was executed on 1.1.2015 and as per clause 5.1 of the Agreement, the unit was to be handed over to the complainant on 1.7.2018 (36 months + 6 months grace period). It was a construction linked plan. The date of delivery of possession comes out to be 1.7.2018. 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 root cause for late delivery possession. Project is delayed for 8 months 27 days.

25. Keeping in view the dismal state of affairs of the project, it will not be possible for the respondent to complete the project 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 31.8.2020.

26. Counsel for the complainant has specifically pointed out and alleged that respondent has sold the floor in the year of 2015 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. 31.8.2020 in that case complainant will be eligible for refund of the deposited amount along with prescribed rate of interest i.e. 10.75% per annum.

27. As per record, the date of registration certificate of the project has been given as 28.08.2017 by interim authority Panchkula. The project registration branch is directed to verify the registration case file as to on what basis and on what documents this registration has been allowed when the license has been stated to have been issued to this project on 09.03.2018. Since project is registered, it is advisable for the

complainant 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. 1.7.2018 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 along with prescribed rate of interest @ 10.75% per annum.

**Directions of the authority**

28. The authority exercising its power under section 37 of the Act hereby issues the following directions: -

- i. The respondent is directed to pay delayed possession charges at prescribed rate i.e 10.75% per annum from the due date of delivery of possession (01.07.2018) till actual offer 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 along with prescribed rate of interest @ 10.75% per annum.
- ii. The registry is directed to verify the registration case file as to on what basis and on what documents this registration has

been allowed when the license has been stated to have been issued to this project on 09.03.2018.

iii. DTCP is directed to enquire into the matter and submit action taken report within a period of 2 months from the date of this

29. Complaint stands disposed of.

30. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

**Dated:** 28.03.2019

**Judgement uploaded on** 25.04.2019

HARERA  
GURUGRAM