

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

Complaint no. : 159 of 2021
First date of hearing: 05.04.2021
Date of decision : 13.07.2022

Dr. Ashok Jain

Address: H.no. 272, Sector-7,
Urban Estate, Gurugram, 122001

Complainant

Versus

M/s International Land Developers Pvt. Ltd.
Regd. Office at: - ILD, Trade Center,
Sector-47, Sohna Road, Gurgaon,
Haryana-122018

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Vibhor Sharma
Shri Venket Rao and
Shri Pankaj Chandola

Advocate for the complainant

Advocates for the respondent

ORDER

1. The present complaint dated 27.01.2021 has been filed by the complainant/allottee 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) of the Act wherein it is inter alia prescribed



that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

2. The reply on behalf of the respondent has not been received. However, the AR of the respondent appeared, but the written reply was not filed. So, the defence of the respondent was struck of vide order dated 01.09.2021. Thus, the authority is proceeding as per the pleadings and documents on the record.

A. Unit and project related details

3. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"ARETE" at Village Dhunela, Sector-33, Sohna, Gurgaon, Haryana
2.	Nature of the project	Residential group housing project
3.	Project area	11.6125 acres
4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid upto 03.06.2019
5.	Name of license holder	M/s international land Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered



		Registered vide no. 06 of 2019 issued on 08.02.2019 valid up to 02.07.2022
7.	Apartment no.	E-502, 5th Floor (page no. 17 of complaint)
8.	Unit measuring	1275 sq. ft. (page no. 17 of complaint)
9.	Date of booking	09.01.2014 (vide receipt on page no. 13 of complaint)
10.	Date of provisional allotment	17.04.2014 (page no. 17 of complaint)
11.	Date of builder buyer agreement	Not Executed
12.	Withdrawal letters by complainant	24.09.2016 08.10.2016 (page no. 85-86 of complaint)
13.	Due date of possession	19.07.2018 (Calculated on the basis of the date of booking i.e., 09.01.2014 in the absence of buyer's agreement)
14.	Possession clause [Possession clause taken from the BBA annexed in complaint no. 162 of 2021 of the same project being developed by the same promoter]	10.1 Possession of Apartment Subject to the timely grant of all approvals (including revision thereof), permissions certificates, NOCs, permission to operate, full /part occupation certificate etc. and further subject to the buyer



		having complied with all its obligations under the terms and conditions of this agreement, and subject to all the buyers of the apartments in the project making timely payments including but not limited to the timely payment of the total sale consideration, stamp duty and other charges, fees, IAC, levies and taxes or increase in levies and taxes IFMSD, Escalation charges, deposits additional charges to the developer and also subject to the buyer having complied with all formalities or documentation as prescribed by the developer, the developer shall endeavour to complete the construction of the said apartment within 48 months from the date of execution of this agreement and further extension/grace period of 6 months.
15.	Total consideration	Rs. 74,14,325/- [as per the provisional allotment letter on page no. 17 of complaint]
16.	Total amount paid by the complainant	Rs. 13,11,305/- [as alleged by complainant]
17.	Occupation certificate	Not received
18.	Offer of possession	Not offered

B. Facts of the complaint

4. That the complainant booked a residential unit in the project as mentioned above for a basic sale price of Rs. 61,20,000/- and the complainant has paid an amount of Rs. 3,00,000/- as booking amount on 09.01.2014.
5. That on booking the respondent raised a demand of Rs. 10,11,305/- towards allotment of the apartment and it was informed that the said demand was to be honoured within 60 days of application as per terms of allotment. The complainant has made such payment through cheque.
6. That on 17.04.2014 issued the provisional allotment letter for the said unit. Further after repeated requests made by the complainant the apartment buyer agreement accompanied with a letter dated 20.11.2015 was sent to the complainant wherein detailed terms and conditions of the allotment were shared first time with the complainant at such belated stage. That on reading such terms and conditions complainant was in shock to see arbitrarily and one-sided conditions and hence requested for the fresh buyers agreement.
7. That the complainant had thereafter enquired about the construction status and project details from the office of the respondent, but it failed to share the requisite details with the complainant. That the officials of the respondent never responded to the queries of the complainant well in time and on most of the occasion(s) there was absolutely no response from the side of the respondent. Since there was no



construction-in-progress at site at that time and no fresh apartment -buyer agreement in consonance with the valid terms was provided to the complainant, the complainant withheld next demands until receipt of satisfactory response from the respondent side.

8. That the complainant has paid an amount of Rs. 13,11,305/- , the respondent has raised a wrongfully demand for making further payments without providing a valid builder buyer agreement.
9. That due to no response of the respondent on account of builder buyer agreement and about the construction the complainant approached the respondent for cancellation of his unit.
10. That on 24.09.2016 complainant sent an email to respondent for cancellation of his unit. Further on 08.10.2016 respondent sent a reminder email to the respondent for processing the cancellation of the unit.
11. That though the complainant had verbally and in writing had requested the respondent to cancel his allotment of flat in question and had requested to refund the booking amount, the respondent without giving any response to the complainant, for reasons known best to the respondent, kept on sending various reminders for making the payment towards the booking.



12. That the complainant issued a legal notice to the respondent dated 19.08.2020 for refund of an amount paid by the complainant.

C. Relief sought by the complainant:

13. The complainant has sought the following relief:

- Direct the respondent to refund the entire amount received by the respondent from the complainant.
- Direct the respondent to pay compensation of Rs. 2,00,000/- to the complainant on account of harassment, suffering and mental agony.
- Direct the respondent to pay cost of litigation of Rs. 55,000/-.

D. Jurisdiction of authority

14. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

15. 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.

D. II Subject matter jurisdiction



16. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;

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.

17. 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 complainant at a later stage.

E. Findings on the relief sought by the complainant.

- Direct the respondent to refund the entire amount received by the respondent from the complainant.
18. The complainant booked a residential apartment in the project of the respondent detail above for a total sale consideration of Rs. 74,14,325/- on 09.01.2014 out of which the complainant has made a payment of Rs. 13,11,305/- through cheques. That the builder buyer agreement was sent to the complainant with



terms and conditions, but he didn't sign and requested for fresh agreement. That further the respondent vide emails dated 24.09.2016 and 08.10.2016 informed the respondent for withdrawal from the project and requested the refund of the paid up amount.

19. The complainant has surrendered his unit vide withdrawal letter dated 24.09.2016 and 08.10.2016. In the present case it has been observed that no builder buyer agreement has been executed between the parties. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

20. Keeping in view the aforesaid legal provisions, the respondent shall refund the deposited amount after forfeiting 10% of the basic sale price of the unit within a period of 90 days from the date of this order failing which it shall pay the amount due along with prescribed rate of interest.



- Direct the respondent to pay compensation of Rs. 2,00,000/- to the complainant on account of harassment, suffering and mental agony.
 - Direct the respondent to pay cost of litigation of Rs. 55,000/-.
21. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.
- F. Directions of the authority**
22. 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 respondent /promoter is directed refund the deposited amount after forfeiting 10% of the basic sale price of the unit within a period of 90 days from the date of this order failing which it shall pay the amount due along with prescribed rate of interest.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.07.2022