

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

Complaint no. : 5009 of 2020
First date of hearing: 05.04.2021
Date of decision : 13.07.2022

Arun Kumar

Address: H. No. 2913, Block C-1,
Sushant Lok, Phase-I, Gurugram
Haryana-122002

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 Prateek Jain
Shri Venket Rao and
Pankaj Chandola

Advocate for the complainant

Advocate for the respondent

ORDER

1. The present complaint dated 15.01.2021 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.	C-303, 3rd Floor (page no. 17 of complaint)
8.	Unit measuring	1325 sq. ft. (page no. 17 of complaint)
9.	Date of builder buyer agreement	18.04.2015 (page no. 14 of complaint)
10.	Due date of possession	18.10.2019 (calculated from the date of agreement including grace period of 6 months)
11.	Cancellation letter by complainant	22.11.2019 (page no. 73 of complaint)
12.	Possession clause	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.
13.	Total consideration	Rs. 80,66,725/- [as per agreement on page no. 34 of complaint]
14.	Total amount paid by the complainant	Rs. 28,76,205/- [as per statement of account on page no. 75 of complaint]
15.	Occupation certificate	Not received
16.	Offer of possession	Not offered

B. Facts of the complaint

4. That the complainant booked a residential apartment as stated above on 17.10.2014 and paid a booking amount of Rs. 5,00,000/- to the respondent.
5. That on 18.04.2015 the apartment buyer agreement was executed between the parties with respect to the said unit for a total sale consideration of Rs. 80,66,725/- out of which Rs. 28,00,167/- was to be paid initially i.e., at the time of booking



and within 120 days of application and the balance was to be paid on offer of possession.

6. That the complainant at the time of execution of agreement paid an amount of Rs. 23,76,205/- to the respondent. As per the agreement the possession was promised within 48 months and further period of 6 months was also agreed as the grace period for the purposes of handing over the possession.
7. That the complainant visited the site and shocked to see that after lapse of 54 months, the civil work has not complete and there was no likelihood of the project to be completed anytime. That due to such condition of project complainant sent an email and sought refund of the paid amount.
8. That subsequently respondent sent an email dated 31.12.2019 along with statement of account wherein the paid amount is shown as Rs. 28,76,205/-.
9. That the complainant has several times visited the office of the respondent and made several telephonic conversations for the refund of an amount. The respondent has assured him that amount would be refunded shortly since the respondent is facing some financial problem.
10. That the respondent is liable to refund an amount along with interest at the rate of 18% per annum from the date of deposit till the realization of payment.
11. That the complainant has also suffered mental tension and harassment due to callous attitude of the respondent for which respondent is liable to pay Rs. 5,00,000/-.

C. Relief sought by the complainant:



12. The complainant has sought the following relief:

- Direct the respondent to refund a sum of Rs. 28,76,205/- along with interest @ 18% per annum from the date of deposit till the date of its refund.
- Direct the respondent to pay compensation of Rs. 5,00,000/- for causing mental agony, undue harassment and financial loss.
- Direct the respondent to pay cost of litigation.

D. Jurisdiction of authority

13. 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

14. 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

15. 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.

16. 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 a sum of Rs. 28,76,205/- along with interest @ 18% per annum from the date of deposit till the date of its refund.
17. That the complainant booked a residential apartment in the project of the respondent named as "Arete" situated at sector 33, Gurgaon, Haryana for a total sale consideration of Rs. 80,66,725/-. The complainant paid an amount of Rs. 5,00,000/- as booking amount on 17.10.2014. A builder buyer agreement of the said apartment was executed between the parties on 18.04.2015. As per clause 10.1 of the builder buyer agreement the respondent has to handover the possession of the allotted unit within a period of 48 months from the date of



execution of agreement and further grace period of 6 months. Therefore, the due date for handing over of possession comes out to be 18.10.2019 including the grace period of 6 months. The complainant thereafter on 22.11.2019 sent an email to the respondent for the cancellation of his unit and demanded the refund of his entire amount paid by him.

18. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
19. The due date of possession as per agreement for sale as mentioned in the table above is 18.10.2019 and there is delay of 1 year 2 months 28 days on the date of filing of the complaint.
20. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021



“ The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give



possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

23. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
24. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 28,76,205/- with interest at the rate of 9.50% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
 - Direct the respondent to pay compensation of Rs. 5,00,000/- for causing mental agony, undue harassment and financial loss.
 - Direct the respondent to pay cost of litigation.
25. 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

26. 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 to refund the amount i.e., Rs 28,76,205/-received by him from the complainant along with interest at the rate of 9.50% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.



HARERA
GURUGRAM

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27. Complaint stands disposed of.
28. File be consigned to registry.



(Vijay Kumar Goyal)
Member



(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.07.2022