

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

Complaint no. :	1027 of 2018
Date of filing complaint:	13.09.2018
First date of hearing:	03.05.2019
Date of decision :	13.07.2022

1. Mr. Ashim Aggarwal S/o Mr. J.P. Aggarwal 2. Mrs. Malini Aggarwal W/o Mr. Ashim Aggarwal Both R/o: E-36, Greater Kailash, Part 1, New Delhi	Complainants
Versus	
M/s Orris Infrastructure Private Limited R/o: Vipul Agora 308-309, 3rd floor, MG Road, Gurugram-122002	Respondent

CORAM:

Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member

APPEARANCE:

Sh. Sanjeev Sharma (Advocate)	Complainants
Ms. Charu Rastogi (Advocate)	Respondent

EX PARTE ORDER

1. The present complaint 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 29 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 allottee as per the agreement for sale executed inter se.

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 and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Orris ABW Trade Tower" Sec 83, Gurugram
2.	Project area	9.052 acres
3.	Nature of the project	Commercial
4.	DTCP License	260 of 2007 dated 14.11.2007 and valid up to 13.11.2024
5.	Name of the licensee	Seriatim Land & Housing Pvt. Ltd
6.	RERA Registered/ not registered	Unregistered
7.	Unit no.	326, 3rd floor, tower B [Page 37 of the complaint]
8.	Unit measuring (carpet area)	500 sq. ft. [Page 37 of the complaint]
9.	Date of execution of buyer agreement	06.04.2009 [Page no. 32 of the complaint]
10.	Date of Memorandum of understanding	05.12.2007 [Annexure 1 at page no. 24 of the complaint]

11.	Sanctions of the plans	Not placed on record (Even the counsel during proceedings failed to mention the date of sanction of the plans)
12.	Commencement of construction	Not placed on record (Even the counsel during proceedings failed to mention the date of commencement of construction)
13.	Possession clause	Clause 10.1. The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said unit within the period of 36 months from the date of execution of the space buyer agreement by the company or sanctions of the plans or commencement of construction whichever is later unless there shall be failure due to reasons mentioned in clauses 11.2, 11.3 and clause 38 or due to failure of allottee to pay in time the price of the said unit. (emphasis supplied)
14.	Due date of possession	06.04.2012 Calculated from the date of agreement i.e. 06.04.2009
15.	Total sale consideration	Rs.32,72,500/- [Page 37 of the complaint]
16.	Total amount paid by the complainants	Rs.32,72,500/- [Page 45 of the complaint]
17.	Payment plan	Assured return payment plan [Page 69 of the complaint]
18.	Occupation Certificate	Not obtained
19.	Offer of possession	10.03.2017 for fit out

		[Page 76 of the complaint] 21.02.2018- offer of constructive possession [Page 78 of the complaint] <i>It is surprising that offer of possession has been given without obtaining occupation certificate and the promoter has invented new term such as constructive possession, fit out possession.</i>
20.	Assured return clause	Clause 3 of MOU dated 05.12.2007 That a committed return/interest of Rs.60/- per sq. ft. per month amounting in all to Rs.30,000/- shall be paid by the developer to the purchaser from 09.12.2007 to 31.03.2010. Towards this, PDCs for specific amount (net amount of TDS if there any change in Govt. taxes [TDS] the same may be recovered from your future PDCs payments) shall be issued in favour of the purchaser for the entire period of construction which is estimated at 28 months from 9th December, 2007

B. Facts of the complaint:

3. That the respondent herein entered into a development agreement with above said M/s Seriatim land and housing (P) Limited for developing 50 % area in the land as above said measuring 9.052 acres of commercial towers A & B proposed to be known as "Floreal Towers" as a part of Orris ABW Trade Tower.
4. That it is on the above pretext and information the respondent herein entered into agreement dated 05.12.2007 with the

complainants herein vide which agreement space admeasuring 500 sq. ft. super area on the third floor of the project of the respondent was allotted to the complainants for a total consideration of Rs. 32,72,500/- and that was paid to the respondent prior to the execution of the agreement, the construction of which unit as per clause 3 of the agreement was to be completed within 28 months.

5. That in terms of the above said agreement dated 05.12.2007, the respondent was to enter into space buyer agreement with the complainants in respect of the allotted area within 6 months from the date of said agreement, however after an inordinate delay and repeated request, the respondent finally executed space buyer agreement with the complainants dated 06.04.2009 vide which unit no. 326 on third floor in tower b having super area of 500 sq. ft. was allotted to them for total consideration of Rs. 32,72,500/-.
6. That on the date of the buyer agreement, the construction of the said project had not even started, which though as agreement dated 05.12.2007 was to be handed over within 28 months. However, the complainants having paid the whole consideration and left with no choice while entering the buyer agreement unilaterally agreed for extension of time to handover the possession of the unit in question which as per the clause 10.1 of the present agreement was now to be handed over within 36 months i.e. latest by 06.04.2012.

7. That even on the said date i.e. 06.04.2012, the completion of the unit/project was far away from completion, which left the complainants completely aghast. They inquired the respondent as to the status when the possession would be given to which it replied that it will be completed within the year.
8. That even after elapse of three years from the date as promised on which possession of the unit was to be given, the respondent issued a letter dated 26.12.2014 to the complainants informing that the project in question has been constructed and that as now, the project is constructed the assured return as per the agreement dated 05.12.2007 would be paid to the complaint.
9. However, it is pertinent to mention here that the above said letter was a complete sham as even on that date the unit in question was far away from the state in which possession could be handed over to the complainants which is evident from the fact that after almost three and a half years of the current letter, the possession was offered to the complainants vide separate offer of possession letter. It is must to mention here that this letter was only issued by the respondent to save his skin and not paying assured return as per the agreement dated 05.07.2007.
10. That after an exorbitant delay of almost 6 years, the complainants received letter dated 10.03.2017 from the respondent offering temporary possession to the complainants as ever on the said date the unit was not in position to handed over for possession.

11. That on 17.08.2017 the complainants received a letter dated 17.08.2017 from the respondent informing that OC with respect to the tower in question has been received. However even after repeated request by the complainants to give a copy of the said OC, the said OC has not been shared till date.
12. That after an exorbitant delay of more than 7 years, the respondent vide its letter dated 21.02.2018 offered the possession of the unit in question to the complainants. That further it is humbly submitted that the actual date of possession should in all case should though be calculated from 28th months of first agreement i.e. 28 months from 05.02.2007.
13. The complainants completely aggrieved by the illegal acts of the respondent issued a legal notice dated 22.05.2018 as it had not only delayed in giving the possession also as even at present, the unit was not ready and moreover the respondent had stopped making payment of assured return of Rs. 30,000/- to the complainants since April 2017.
14. It is pertinent to mention here that under the initial agreement dated 05.02.2007, the respondent had agreed to pay a monthly assured return of Rs. 30,000/- to the complainants till the possession of the unit as also to pay another Rs. 30,000/- per month to the complainants as assured lease rent for a period of 36 months after the completion of the building.
15. It is must to mention here that even if the story of the respondent is believed to be true the building was completed only in February

2018 through same is also a blatant lie. Further while offering possession in Feb 2018 the respondent also demanded monies toward EDC, IDC and maintenance from the complainants which was in total contradiction of clause 5 of the agreement dated 05.07.2007.

16. That on the above said legal notice the respondent vide their letter dated 30.06.2018 though agreed to pay the assured return, however did not took back the demand for EDC, IDC and maintenance to contrary adjusted the assured return in the demanded amount.

C. Relief sought by the complainants:

17. The complainants have sought following relief(s):
- i. Direct the respondent to refund the amount of Rs.32,72,500/- paid by the complainants towards the purchase of the unit in question as the complainants is no more interested in the unit as it has been delayed for over a decade.
 - ii. Direct the respondent to make payment of interest accrued on amount collected by the respondent from the complainants on account of delayed of offer of possession and which interest should be @24% p.a. from the date as and when the amount was received by the respondent from the complainants.
18. The respondent put in appearance through its counsel Ms. Charu Rastogi but did not file any written reply despite giving several opportunities. So, the authority was left with no option but to

proceed with the complaint based on averments given in the complaint and the documents placed on the file.

D. Jurisdiction of the authority:

D. I Territorial jurisdiction

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

Section 11(4)(a) of the Act, 2016 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;

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.

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.

E. Entitlement of the complainants for refund:

E.1. Direct the respondent to refund the amount of Rs.32,72,500/- paid by the complainants and to make payment of interest accrued on amount collected by the respondent from the complainants on account of delayed offer of possession.

19. Vide memorandum of understanding dated 05.12.2007, the complainants were allotted the subject unit by the respondent for a total sale consideration of Rs. 32,72,500/-. A buyer's agreement dated 06.04.2009 was executed between the parties. The due date of possession of the subject unit was fixed within the period of 36 months from the date of execution of the space buyer agreement by the company or sanction of the plans or commencement of construction whichever is later and which comes to 06.04.2012. After signing of buyer's agreement, the complainants started depositing various amounts against the allotted unit and paid a sum of Rs.32,72,500/- as per page 45 of the complaint.

20. Keeping in view the fact that the allottee-complainants wish to withdraw from the project and are 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. The due date of possession as per agreement for sale as mentioned in the table above is 06.04.2012 and there is delay of **more than 5 years** on the date of filing of the complaint on 18.09.2018. The counsel for the respondent produced a copy of the occupation certificate no, ZP-328/SD(BS)/2017/20018 dated 16.08.2017 wherein the tower B, occupation certificate is only for ground floor to 2nd floor whereas the unit of the allottee is situated on 3rd floor which clearly indicates that occupation certificate for the unit has still not been obtained.

21. Though the occupation certificate of the project where the unit is situated has not been obtained by the respondent-promoter on after a gap of more than 5 years from the date of filing of the complaint but 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.....”

22. 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)* and followed by the Hon'ble High Court of Punjab & Haryana in case *Ramprashtha Promoters and Developers Pvt Ltd Vs Union of India and Ors. in CWP No.6688 of 2021* decided on 04.03.2022, and wherein it was observed as under:

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

23. 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 allottees 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 allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to

return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

This is without prejudice to any other remedy available to the allottees including compensation for which they 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.

The authority hereby directs the promoter to return the amount received by him i.e., Rs.32,72,500/- with interest at the rate of 9.70% (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 after adjusting the amount received by them if any by way of assured returns within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F. Directions of the Authority:


24. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:


- i) The respondent /promoter is directed to refund the amount i.e. Rs. 32,72,500/-received by it from the complainants along with interest at the rate of 9.70% 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 after adjusting the amount received by them if any by way of assured returns.

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.

25. Complaint stands disposed of.
26. File be consigned to the registry.


(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.07.2022

HARERA
GURUGRAM