

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

Complaint no. : 726 of 2020

First date of hearing: 20.03.2020

Date of decision : 09.08.2022

1. Mr. Dharmender

2. Mrs. Kavita

Address: House No 11, Villlage Berka,
Tehsil Gurgaon District Gurgaon

Complainants

Versus

International Land Developers Pvt. Ltd.

Office at: ILD Trade Centre, Sector 47,
Sohna Road, Gurugram-122018

Respondent

CORAM:

Shri KK Khandelwal

Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

None

Shri Venket Rao

Shri Pankaj Chandola

Advocate for the complainants

Advocates for the respondent

ORDER

1. The present complaint dated 28.02.2020 has been filed by the complainants/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.

A. Unit and project related details

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

S.no.	Particulars	Details
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 licensee	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.	502, 5 th Floor, tower B (vide annexure C12 on page no. 31 of complaint)



8.	Unit area admeasuring	1998 sq. ft. (annexure C12 on page no. 31 of complaint)
9.	Date of booking	26.12.2013 (annexure A on page 7 of complaint)
10.	Date of allotment letter	13.01.2016 (annexed as C12 on page no. 31 of complaint)
11.	Date of apartment buyer agreement	Not Executed
12.	Due date of possession	26.06.2018 (Calculated on the basis of the date of booking i.e., 26.12.2013 in the absence of buyer's agreement including grace period of 6 months)
13.	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 endeavor 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.
14.	Total sale consideration	Rs. 98,16,674/- [as per allotment letter dated 13.01.2016]
15.	Amount paid by the complainants	Rs. 49,42,010/- [annexure C-13 of complaint]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. That on the basis of representations of the respondent complainants booked a unit in the project of the respondent i.e., "Arete" situated at sector-33, Gurugram.
4. That the elder brother of complainant no. 1 i.e Sh. Bhopal singh also booked a unit no. B-503 in the same project. However later on amount paid by Sh. Bhopal was against said unit (B-503) was adjusted in the unit of complainants (B-502).
5. That now even after 7 years since the complainants have made first payment and even after payment of amount of Rs.



49,42,010/- against the unit, the date of completion of project is unknown.

6. That when the unit was booked by complainants in the year 2013, the respondent assured the complainants that the unit shall be ready for possession within a period of 48 months from the date of booking, however even after passing of said 48 months the respondent failed to deliver possession.
7. Thus, keeping in view of above stated facts and circumstances the complainants are filing the present complaint in order to seek complete refund along with interest at the prescribed rate.

C. Relief sought by the complainants:

9. The complainants have sought the following relief:

- Direct the respondent to refund the entire amount of Rs. 49,42,010/- along with interest at the prescribed rate of interest.

D. Reply by the respondent.

10. That the complainants never adhered the payment schedule and never made payment on time. The payments which were made by the complainants were after the termination of stipulated time. The details of the demands and reminders issued by the respondent and payments made by the complainants and other correspondence are as follows:

- That the respondent raised a demand notice for the instalment due on allotment & start of excavation



amounting Rs.7,37,356/-. However, the respondent received the payment of Rs. 7,12,027/- vide on 30.5.2014, which was after the termination of stipulated time period.

- The respondent issued reminder notice on 23.06.2014 for an amount of Rs. 25,239/- and received payment against the same of Rs. 25,329 on 05.07.2014 which was duly acknowledged by the Respondent on 07.07.2014.
- That the respondent on 03.11.2014 sent a set of builder buyer agreement with cover letter for execution to the complainants.
- That the respondent on 07.07.2015 raised a demand notice for the instalment due on completion of upper basement roof slab amounting Rs.11,58,360.
- The respondent issued a reminder letter on 04.08.2015 against the outstanding amount of Rs. 11,69,645/-.
- That the respondent on 12.10.2015 received a legal notice from the counsel of the complainants stating that the specifications which were assured are not mentioned in the agreement sent for execution. The complainants made a false allegation that the respondent assured him for providing split ac for the apartment booked by them.



- In response to said legal notice, the respondent sent his reply on 03.11.2015 by denying the entire allegation and stated that the specifications which they are claiming are available only in the upgraded units which were appraised to them at the time of booking. The respondent further stated that they are at liberty to continue with the "upgraded unit" in tower A or else continue with the standard unit they have booked.
- That the respondent again raised demand notice on 05.01.2016 against and overdue outstanding of Rs. 21,19,276/- which includes instalment of fourth floor roof slab amounting Rs. 9,46,631/- and amount due of previous installment Rs. 11,69,645/-.
- That a meeting held on 06.01.2016 between the complainants and the respondent, the complainants agrees to pay Rs. 50/- per sq. ft. extra for the upgraded specification as seeking in the Legal Notice. That the respondent issued a new allotment letter in the favour of them on 13.01.2016 having total sale consideration of Rs. 98,16,674/-.
- That on the request of one Mr. Bhopal Singh, the respondent cancelled his unit no. 503 and further issued a credit note on 13.01.2016 in favour of the complainants and transferred the entire amount i.e., Rs. 24,09,154/- paid against the flat no. 503 in the account of the flat no. 502.

- That the respondent on 08.04.2016 raised a demand notice seeking a due instalment of Rs. 7,24,953/-.
 - The respondent sent a reminder mail for payment of outstanding amount on 12.04.2016, 07.06.2016, 18.07.2016, 22.07.2016.
 - The respondent on 29.08.2016 raised a demand notice seeking amount of Rs. 17,41,705/- which includes instalment of twelfth floor roof slab installment amounting Rs.10,07,010/- and amount due of previous installment Rs.7,34,695.
 - The respondent sent reminders for clearing outstanding dues dated 31.08.2016, 03.12.2016, 10.02.2017, 02.05.2017, and intimation letter on 12.05.2017.
 - That on 17.08.2017 respondent sent an email to complainants for sharing a signed copy of builder buyer agreement. Respondent again sent a reminders dated 14.10.2017, 21.06.2018 and 18.03.2019 for payment of outstanding amount.
11. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of authority



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

E. I Territorial jurisdiction

13. 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.

E. II Subject matter jurisdiction

14. 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.

15. 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.

F. Findings on the relief sought by the complainants.

- **Direct the respondent to refund the entire amount of Rs. 49,42,010/- along with interest at the prescribed rate of interest.**
16. The complainants booked a residential apartment in the project of the respondent detail above for a total sale consideration of Rs. 91,89,095/- for which the respondent issued an allotment letter dated 06.04.2014. Though the respondent sent apartment buyer agreement for execution, but the parties did not mutually agree on the terms and conditions of the agreement. Thereafter on 12.10.2015 complainants sent legal notice regarding the change in agreement. On 06.01.2016 the meeting was held between the parties and the complainants agreed to pay Rs. 50/- per sq. ft. extra for upgraded specification and on such basis new allotment letter was issued by the respondent on 13.01.2016 having a total sale consideration of Rs. 98,16,674/-.
17. On consideration of record and submission the authority is of the view that no apartment buyer agreement has been



executed between the parties till date. So, the possession clause for calculating the due date is taken from the compliant no. 162 of 2021 of the same project being developed by the same promoter. Hence, due date is calculated on the basis of the date of booking application i.e., 26.12.2013 in the absence of buyer's agreement which comes out to be 26.06.2018 including grace period of 6 months.

18. Keeping in view the fact that the allottee complainants 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 26.06.2018 and there is delay of 1 year 08 months 02 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. सत्यमेव जयते
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. 49,42,010/- with interest at the rate of 9.80% (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*.

G. Directions of the authority


25. 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. 49,42,010/-received by him with interest at the rate of 9.80% 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.
- 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.

26. Complaint stands disposed of.

27. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2022