



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

Date of decision: 10.08.2022

NAME OF THE BUILDER		M/S IREO GRACE REALTECH PVT. LTD.	
PROJECT NAME		THE CORRIDORS	
S. No.	Case No.	Case title	Appearance
1	CR/810/2019	M/s Echjay Industries Pvt. Ltd. V/S M/s Ireo Grace Realtech Pvt. Ltd.	Shri Vinayak Chawla Shri M.K Dang
2	CR/1324/2019	M/s Echjay Industries Pvt. Ltd. V/S M/s Ireo Grace Realtech Pvt. Ltd.	Shri Vinayak Chawla Shri M.K Dang
3	CR/1325/2019	M/s Echjay Industries Pvt. Ltd. V/S M/s Ireo Grace Realtech Pvt. Ltd.	Shri Vinayak Chawla Shri M.K Dang

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

Chairman
Member

ORDER

1. This order shall dispose of all the three complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Corridors situated at Sector-67 A, Gurugram being developed by the same respondent/promoter i.e., M/s Ireo Grace Realtech Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"The Corridors" at sector 67A, Gurgaon, Haryana.
Project area DTCP License No. Name of Licensee	37.5125 acres 05 of 2013 dated 21.02.2013 valid upto 20.02.2021 M/s Precision Realtors Pvt. Ltd. and 5 others
Rera Registered	Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017 (Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3)
Validity Status	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
<p>Possession Clause: - 13. Possession and Holding Charges Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfillment of the</p>	

preconditions imposed thereunder(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.

Date of approval of building plans: 23.07.2013

Date of environment clearance: 12.12.2013

Date of fire scheme approval: 27.11.2014

Due date of possession: 23.01.2017

(Calculated from the date of approval of building plans)

Note: Grace Period is not allowed.

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Unit admeasuring	Date of apartment buyer agreement	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/810/2019 M/s Echjay Industries Pvt. Ltd. V/S M/s Ireo Grace Realtech Pvt. Ltd. DOF: 18.03.2019	19.04.2019	801,8th Floor, C10 Tower (page no. 90 of complaint)	1300 sq. ft.	11.07.2014	TSC: - Rs.1,43,86,083/- AP: - Rs.1,29,43,996/-	Refund the entire amount along with interest
2.	CR/1324/2019 M/s Echjay Industries Pvt. Ltd. V/S M/s Ireo Grace Realtech Pvt. Ltd. DOF: 25.03.2019	26.04.2019	701, 7th Floor, C10 Tower (page no. 88 of complaint)	1300 sq. ft.	11.07.2014	TSC: - Rs.1,43,86,083/- AP: - Rs.1,29,43,996/-	Refund the entire amount along with interest



3.	CR/1325/ 2019 M/s Echjay Industries Pvt. Ltd. V/S M/s Ireo Grace Realtech Pvt. Ltd. DOF: 25.03.2019	26.04.2019	901, 9th Floor, C10 Tower (page no. 95 of complai nt)	1300 sq. ft.	11.07.2014	TSC: - Rs.1,43,86, 083/- - AP: - Rs.1,29,43, 996/-	Refund the entire amount along with interest
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
- The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/810/2019 M/s Echjay Industries Pvt. Ltd. V/S M/s Ireo Grace Realtech Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest.

A. Project and unit related details

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

**CR/810/2019 M/s Echjay Industries Pvt. Ltd. V/S M/s Ireo Grace
Realtech Pvt. Ltd**

S. N.	Particulars	Details
1.	Name of the project	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	37.5125 acres
4.	DTCP license no. and validity status	05 of 2013 dated 21.02.2013 valid upto 20.02.2021
5.	Name of licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
6.	RERA Registered/ not registered	Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017(Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3)
	Validity Status	30.06.2020 (for phase 1 and 2)

		31.12.2023 (for phase 3)
8.	Unit no.	801,8th Floor, C10 Tower (page no. 90 of complaint)
9.	Unit area admeasuring	1300 sq. ft. (page no. 90 of complaint)
10.	Date of approval of building plans	23.07.2013 (annexure R-23 on page no. 83 of reply)
11.	Date of allotment	07.08.2013 (page no. 64 of complaint)
12.	Date of environment clearance	12.12.2013 (annexure R-24 on page no. 91 of reply)
13.	Date of builder buyer agreement	11.07.2014 (page no. 87 of complaint)
14.	Date of fire scheme approval	27.11.2014 (annexure R-25 on page no. 102 of reply)
15.	Due date of possession	23.01.2017 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
16.	Possession clause	13. Possession and Holding Charges Subject to force majeure, as defined herein and further subject to the



		<p>Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfillment of the preconditions imposed thereunder(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.</p>
17.	Total sale consideration	Rs. 1,43,86,083/- [as per payment plan on page no. 125 of complaint]
18.	Amount paid by the complainants	Rs. 1,29,43,996/- [as alleged by complainant]

19.	Occupation certificate	27.01.2022
20.	Offer of possession	16.02.2022

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -

- I. That in 2013 the complainant submitted an application for booking of a residential apartment in the project named as "The Corridors" situated at sector-67A, Gurugram.
- II. That the respondent builder issued the allotment letter to the complainant allotting the said unit. Thereafter the apartment buyer agreement was executed between the parties on 11.07.2014 for a total sale consideration of Rs. 1,43,86,083/-.
- III. That as per clause 13.3 of the agreement the period of handing over the possession of the said apartment allotted in favor of the complainant was to be delivered within 42 months from the date of approval of building plans or fulfillment of preconditions imposed thereunder.
- IV. That on 08.06.2016 a letter was sent by the complainant to developer requesting the handover of the flat as per clause 13.3 of the agreement. The respondent builder replied to that letter on 16.06.2016.
- V. That on 05.11.2016, 22.05.2018 a letter was sent by the complainant through counsel to the developer calling upon to handover the

possession of unit, but the respondent builder has miserably failed to do so.

- VI. That the complainant paid a total sum of Rs. 1,29,43,996/- till date including TDS amount and seeks refund of the same from the respondent along with interest as it has failed to complete its project by the due date and offer possession of the allotted unit to it.

C. Relief sought by the complainants: -

9. The complainant has sought following relief(s):

- I. Direct the respondent to pay a sum of Rs.1,29,43,996/- as refund along with pendente lite and future interest payable in accordance with the provisions of RERA from the date on which each payment, till actual realization of the amount.

10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds.

- I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the parties prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
- II. That there is no cause of action to file the present complaint.
- III. That the complainant has no locus standi to file the present complaint.

- IV. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 35 of the buyer's agreement.
- V. That the complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts. The present complaint has been filed by it maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
- That the complainant, after checking the veracity of the project namely, 'Corridor, Sector -67 A, Gurugram had applied for allotment of an apartment vide booking application form. The complainant agreed to be bound by the terms and conditions of the booking application form. The complainant delayed in completing the documentation process for the application and completed the same only after reminders dated 15.07.2013 and 18.03.2014 were sent by respondent to it.
 - That based on the said application, respondent vide its letter dated 07.08.2013 allotted to the complainant apartment no. CD-C10-08-801 having tentative super area of 1300 sq.ft for a total sale consideration of Rs. 1,43,86,083. It is submitted that the complainant signed and executed the apartment buyer's agreement on 11.07.2014 only after it was intimated to it by respondent vide its letter dated 29.05.2014.

- That respondent raised payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and it made some payments in time
- That vide letter dated 06.05.2015 the respondent raised demand towards fourth instalment for a payable amount of Rs. 18,98,134/- . However, said was paid by the complainant only after reminders dated 05.06.2015 and 10.07.2015.
- That vide request letter dated 06.04.2016 the respondent raised the demand towards fifth instalment for the payable amount of Rs. 16,93,086/-. However, the complainant failed to pay the same despite reminders dated 04.05.2016 and 26.05.2016.
- That vide payment request letter dated 07.06.2016 the respondent raised the demand towards sixth instalment for the payable amount of Rs. 33,89,912/-. However, the complainant failed to remit the due amount despite reminders dated 06.07.2016 and 01.08.2016.
- That vide payment request letter dated 08.08.2016 respondent raised the demand towards seventh instalment for the payable amount of Rs. 47,83,482/-. However, the respondent received only part payment out of total demanded amount after reminders dated 06.09.2016 and 28.09.2016 respectively.
- That vide payment request letter dated 20.10.2016 the respondent raised demand towards eighth instalment for the

payable amount of Rs. 26,77,286/-. However, the complainant failed to remit the due amount despite reminders dated 16.11.2016 and 12.12.2016.

- That vide payment request letter dated 20.12.2016 respondent raised the demand towards seventh instalment for the payable amount of Rs. 39,57,166/-. However, the respondent received only part payment out of total demanded amount despite reminders dated 16.01.2017 and 07.02.2017.

- VI. That from the aforesaid terms of the buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise the construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in Sub- clause (iv) of Clause 17 of the approval of building plans dated 23.07.2013 of the said project that the Clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. The environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in Clause 39 of Part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan was to be duly approved by the fire department before the start of any construction work at site.
- VII. That the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and that the time period for offering the possession,

according to the agreed terms of the buyer's agreement, was to elapse only on 27.11.2019. However, the complainant has filed the present complaint prematurely prior to the due date of possession and no cause of action has accrued till date.

12. Copies of all the relevant documents have been filed and placed on the 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.
13. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement of the Hon'ble Apex Court in case ***M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. 2021-2022 (1) RCR(C),357*** the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in ***CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP*** that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.
14. Keeping in view the judgement of Hon'ble Supreme Court in case titled as ***M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)*** the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale

irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019* has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleadings and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

15. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

16. 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

17. 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) The promoter shall-

(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.

18. 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.
19. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and 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*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is

that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

20. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

F. I Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

21. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyers agreement was executed between the complainant and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
22. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous

agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017*** which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

23. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into

even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

24. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objection regarding complainant is in breach of agreement for non-invocation of arbitration

25. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"36. Dispute Resolution by Arbitration

"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the

terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".

26. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

27. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

28. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in **case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of**

2017 decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

29. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay a sum of Rs.1,29,43,996/- as refund alongwith pendente lite and future interest payable in accordance with the provisions of RERA from the date on which each payment has been made, till payment or actual realization of the amount.

30. That the complainant booked a residential apartment in the project of the respondent named as "Corridors" situated at sector 67-A, Gurgaon, Haryana for a total sale consideration of Rs. 1,43,86,083 /-. The allotment of the unit was made on 07.08.2013 and the complainant was allotted the above-mentioned unit. Thereafter the apartment buyer agreement was executed between the parties on 11.07.2014.
31. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and is 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.
32. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and the builder. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be

understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoter/developer to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoter/developer. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoter/developer or gave them the benefit of doubt because of the total absence of clarity over the matter.

33. The respondent/ promoter has proposed to handover the possession of the subject apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.
34. Further, in the present case, it is submitted by the respondent promoter that the due date of possession should be calculated from the date of fire scheme approval which was obtained on 27.11.2014, as it is the last of the statutory approvals which forms a part of the preconditions.
35. The authority has gone through the possession clause of the agreement in the present matter. On a bare reading of the said clause of the agreement reproduced above, it becomes clear that the possession in the present case is linked to the "fulfilment of the preconditions" which are so vague and ambiguous in itself. Nowhere in the agreement, it has

been defined that fulfilment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the unit in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject unit. According to the established principles of law and natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one sided and against the interests of the allottee must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken as the date for determining the due date of possession of the unit in question to the complainant. Accordingly, in the present matter the due date of possession is calculated from the date of approval of building plans i.e., 23.07.2013 which comes out to be 23.01.2017.

36. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete

or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

37. 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.

38. 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.
39. 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 section 71 read with section 31(1) of the Act of 2016.
40. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 1,29,43,996/- 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*.

H. Directions of the authority

41. 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 1,29,43,996/-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.
42. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
43. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter. There shall be separate decrees in individual cases.
44. Files be consigned to registry.

V.1-3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)

Chairman

Dated: 10.08.2022