

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

Complaint no. : 1154 of 2021

First date of hearing: 05.04.2021

Date of decision : 09.08.2022

Ajay Kumar

Address: House no. 61, Gali no. 4, Sheetla
Colony, Part 2, Gurugram, Haryana-122001

Complainant

Versus

International land Developers Pvt. Ltd.

Regd. Office at: B418, New Friends Colony,
New Delhi-110025

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Sunil Kumar

Advocate for the complainant

Shri Venket Rao

Shri Pankaj Chandola

Advocates for the respondent

ORDER

1. The present complaint dated 26.02.2021 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.

A. Unit and project related details

2. 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. N.	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.	1504, 14 th floor, tower C (page no. 34 of complaint)
8.	Unit area admeasuring	1275 sq. ft. (page no. 34 of complaint)
9.	Date of allotment letter	06.04.2014 (page no. 34 of complaint)
10.	Date of apartment buyer agreement	23.05.2014 (page no. 30 of complaint)

11.	Due date of possession	23.11.2018 (calculated as per possession clause including grace period of 6 months)
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 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.
13.	Total sale consideration	Rs. 69,19,625/- [as per agreement on page no. 51 of complaint]

14.	Amount paid by the complainant	Rs. 46,72,796/- [as per statement annexed on page no. 108 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant was desirous of owning a house and thus decided to book a unit in the project named 'ARETE' being developed by the respondent. The complainant was allotted a unit bearing no. C-1504, Tower-C.
4. Thereafter, on 23.05.2014, a apartment buyer's agreement was executed between the parties. According to clause 10.1 of the agreement, the possession of the unit was to be delivered within 48 months of execution of the agreement excluding the 6 months grace period.
5. The respondent, however, had taken more than 10% of BSP even before signing the BBA.
6. That the complainant has paid a sum of Rs. 46,72,796/- as demanded by the respondent till February 2016 but no offer of possession was made to them.
7. The complainant, tired of respondent's tactics, approached the respondent for delivery of possession of the unit but there was no reply from respondent's end. The respondent even requested for refund of its amount but to no avail.

8. The complainant also submitted that he intends to withdraw from the project and thus, this present complaint was filed.

C. Relief sought by the complainant:

9. The complainant has sought the following relief:

- Direct the respondent/builder to refund an amount of Rs. 46,72,796/-received by them along with interest from the date of receipts at the prescribed rate as per the Act, 2016.

D. Reply by the respondent.

10. The respondent in its reply has challenged the jurisdiction of the authority.
11. It was submitted that the respondent, on several occasions, conveyed to the complainant vide telephonic conversation to execute the agreement in regard to complainant's unit but the complainant had always showed lackadaisical attitude and after repeated requests, the BBA was executed on 23.05.2014.
12. That the respondent has faced with various unforeseen circumstances which caused huge obstruction in scheduled handing over of the possession of the unit. The said project was slightly decelerated due to the reasons beyond the control of the respondent company no. 1 like the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2016-17 along with many obstructions led by



government bodies in carrying out the construction activities in all over Gurugram.

13. It was submitted that the complainant is a habitual defaulter in terms of payment as he made repetitive delay in making the payments as agreed with the respondent during booking period. That due to constant delay in making payment, the project of the respondent got slightly decelerated in terms of its development.
14. That it is pertinent to mention that the respondent being a developer has provided several intimation to the complainant vide telephonic conversation regarding the force majeure events faced by respondent company which has obstructed the schedule period for handing over of the possession of allotted unit of complainant. Therefore, the complainant has been engaged in raising false contentions upon the known facts and trying to shift the onus of failure upon the shoulder of respondent which are not maintainable in the eyes of law.
15. Therefore, it is pertinent to note that the complainant has repeatedly engaged in raising false and misleading contentions which are non est in the eyes of law and the complainant is trying to extract favourable order from the Hon'ble Adjudicating officer by producing bare and falsified.
16. 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

17. 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

18. 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

19. 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.

20. 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.

F. Findings on the relief sought by the complainant.

- **Direct the respondent to refund an amount of Rs. 46,72,796/-received by them along with interest from the date of receipts at the prescribed rate as per the Act, 2016.**
21. That the complainant booked a residential unit in the project of the respondent named as "Arete" situated at sector 33, Gurgaon, Haryana for a total sale consideration of Rs. 69,19,625/-. The complainant paid an amount of Rs. 46,72,796. The allotment of the unit was made on 06.04.2014 and the complainant was allotted the above-mentioned unit. The apartment buyer agreement interse parties was executed on 23.05.2014. As per clause 10.1 of the apartment 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 with further grace period of 6 months. Therefore, the due date for handing over of possession comes out to be 23.11.2018.



22. 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.
23. The due date of possession as per agreement for sale as mentioned in the table above is 23.11.2018 and there is delay of 2 years 3 month 3 days on the date of filing of the complaint.
24. 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.....”

25. 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

26. 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.

27. 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.
28. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 46,72,796/- 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

29. 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 46,72,796/-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.

30. Complaint stands disposed of.

31. File be consigned to registry.

V.K.
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2022

HARERA
GURUGRAM