

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

Complaint no. : 1036 of 2020
First date of hearing: 20.03.2020
Date of decision : 09.08.2022

1. Kapil Jain
2. Rekha Jain

Address: G-11, Konark Splendour,
Wadgaonsheri, Pune, Maharashtra-411014

Complainants

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 Rahul Yadav

Advocate for the complainants

Shri Venket Rao

Shri Pankaj Chandola

Advocates for the respondent

ORDER

1. The present complaint dated 03.03.2020 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. 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.	2101, 20 th Floor, tower F (page no. 32 of complaint)
8.	Unit area admeasuring	1325 sq. ft. (page no. 32 of complaint)
9.	Date of provisional allotment letter	26.07.2014 (page no. 11 of complaint)



10.	Date of apartment buyer agreement	15.04.2015 (page no. 15 of complaint)
11.	Due date of possession	15.10.2019 (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 consideration	sale	Rs. 80,41,900/- [as per payment plan annexed with agreement]
14.	Amount paid by the complainants		Rs. 28,92,553/- [as per receipts annexed on page no. 77-81]
15.	Occupation certificate		Not obtained
16.	Offer of possession		Not offered

B. Facts of the complaint

3. The representatives of the promoter made utterly false representations and thereby induced the complainants to book a flat in the project namely "ARETE" being developed by the respondent. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within the promised time frame.
4. The complainants were further induced to sign a pre-printed apartment buyer's agreement dated 15.04.2015. The said flat buyer agreement was totally one sided which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent.
5. The complainants have paid a total sum of Rs. 28,92,553/- towards the aforesaid residential flat in the project from 19.05.2014 to 09.09.2015 as and when demanded by the respondent.
6. That the complainants booked the unit under possession linked plan and as per the apartment buyer's agreement have honoured

their part of agreement and have made payments as per the payment plan opted by the complainants.

7. That the respondent had promised to complete the project within a period of 48 months from the date of execution of the apartment buyer agreement with a further grace period of six months. The apartment buyer's agreement was executed on 15.04.2015 and till date the construction is not complete, in fact the construction of the tower have commenced in the month of April 2019, which is resulting in extreme kind of mental distress, pain and agony to the complainants.
8. That the respondent/ promoter has failed to complete the project in the time bound manner as per the terms of the apartment buyers agreement and have started the construction of the Tower F in the month of April 2019 and have sent letter dated 18.04.2019 categorically admitting that the construction of the Tower F in which the unit of the complainants is situated, had only started in April 2019.
9. That the respondent has not acknowledged the requests of the complainants in regard to the status of the project and it is believed that the respondent has siphoned off the hard-earned money paid by the complainants for his personal use. The respondent has breached the fundamental term of the contract by inordinately delaying in starting the construction of the project.

C. Relief sought by the complainants:

9. The complainants have sought the following relief:



- Direct the respondent to refund an amount of Rs. 28,92,553/- along with interest as per provisions of Rera Act.

D. Reply by the respondent.

10. The case of the respondent is based on the premise that complainants are an allottee in its project, but the complaint needs to be dismissed.
11. That the complainants never adhered the duly agreed payment schedule. The respondent has sent a demand letter on 19.08.2014 for a payment of Rs. 12,39,666/- including taxes which was due on 14.09.2014 but the complainants have not adhere for the payment of due instalment despite of receipt of demand letter dated 19.08.2014. further the respondent has sent reminder letter dated 06.07.2015 which was duly received on 07.07.2015.
12. It was submitted that the project got delayed due to reasons beyond the control of the respondent. The same was delayed due to orders passed by National green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016. The demonetisation and new tax law i.e., GST also led to adverse impact on the construction of the project.
13. It was further submitted that the complainants were regularly informed about the status of the project.

14. It was submitted that the complainants have not approached the authority with clean hands and has defaulted in making regular payments itself.
15. It was further submitted that if refund is allowed in the present case, then the project would be adversely affected.
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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

- Direct the respondent to refund an amount of Rs. 28,92,553/- along with interest as per provisions of Rera Act.
21. That the complainants 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. 80,41,900/-. The complainants paid an amount of Rs. 28,92,553/- till 09.09.2015. The provisional allotment of the unit was made on 26.07.2014 and the complainants were



allotted the above-mentioned unit. The apartment buyer agreement interse parties was executed on 15.04.2015. 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 15.10.2019.

22. 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.
23. The due date of possession as per agreement for sale as mentioned in the table above is 15.10.2019 and there is delay of 4 month 17 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. 28,92,553/- 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

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 28,92,553/-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.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 09.08.2022