

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

Complaint no. : 1987 of 2018
First date of hearing: 14.03.2019
Date of decision : 08.08.2022

Inderjit Kularia
R/O: H.no. 932 P, Sector-14,
Hisar (Haryana)

Complainant

Versus

Ireo Grace Realtech Private Limited
Office: - 5th Floor, Orchid Centre, Golf Course
Road, Sector-53, Gurgaon-122002

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Ms. Taniya (Proxy Counsel)
for Harshit Batra
Shri M.K Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 07.12.2018 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 thereunder or to the allottee 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. No.	Heads	Information
1.	Project name and location	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Licensed area	37.5125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	05 of 2013 dated 21.02.2013
	License valid up to	20.02.2021
	Licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
5.	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	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
6.	Unit no.	502, 5th floor, tower B1 (as per allotment letter) (annexure C-3 on page no. 25 of complaint)
7.	Unit measuring	1892.09 sq. ft. (as per allotment letter) (annexure C-3 on page no. 25 of complaint)
8.	Date of approval of building plan	23.07.2013 (as per project details)
9.	Date of allotment	07.08.2013 (annexure C-3 on page no. 25 of complaint)
10.	Date of execution of builder buyer's agreement	Not executed
11.	Date of environment clearance	12.12.2013 (as per project details)
12.	Date of fire scheme approval	27.11.2014 (as per project details)
13.	Total consideration	Rs. 2,12,52,028/- [as per payment plan on page no. 92 of complaint annexed with unsigned BBA]
14.	Total amount paid by the complainant	Rs. 36,67,046/- [as per receipts of payment on page no. 20-24 of complaint]
15.	Due date of delivery of possession	23.01.2017



		(calculated from the date of approval of building plans) Note: Grace Period is not allowed.
16.	Possession clause [Possession clause taken from the BBA annexed in complaint no. 1570 of 2018 of the same project being developed by the same promoter]	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



		<p>approval of building plans and/or fulfilment 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> <p>(Emphasis supplied)</p>
17.	Occupation certificate	31.05.2019 (A6 to A10, B1 to B4 and C3 to C7) (as per project details)
18.	Offer of possession	14.06.2019 (as alleged by respondent)

B. Facts of the complaint

The complainant has submitted that:

3. That on 18.03.2013 the complainant booked one apartment admeasuring 1727 sq. ft. for a basic sale price of Rs. 1,51,11,250/- and paid an amount of Rs. 15,00,000/-.
4. That the complainant was allotted an apartment bearing no. CD-B1-05-502, fifth floor, tower B-1 of the project having



tentative super area of 1892 sq. ft. through allotment letter dated 07.08.2013. The complainant raised objections as the super area of the said apartment was more than the unit for which he applied for, creating a huge difference in the amount to be paid.

5. That the complainant had sought changes in the super area and also the terms of forfeiture etc., as he had already requested that he would not be in a position to purchase a bigger unit and had also sought refund. The respondent claimed that such changes have to be carried out in the standard agreements and accordingly would take time.
6. That the complainant received a fresh buyer's agreement dated 22.03.2014 from the respondent for signatures. The buyer's agreement was for the apartment of super area of 1892 sq. ft. As per clause 3.1 of the buyer's agreement, the basic sale price of the said apartment was Rs. 1,77,85,646/- @ Rs. 9400/- per sq. ft., more than the agreed price and the agreed size.
7. That the complainant through an email raised objections against the unfair trade practices by misrepresentation, fraud, and breach of promise, and unprofessional behaviour by not paying any heed to his circumstances and requests.
8. That the complainant, aggrieved with the behaviour of the respondent, sent a legal notice against the unfair trade practices and unprofessional behaviour and also asked it to



take immediate steps for returning the money paid by him along with interest charged @ 18% p.a.

C. Relief sought by the complainant:

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

(i) Direct the respondent to refund the entire amount paid by the complainant along with interest @ 18% from the date of respective deposits till its actual realization.

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 complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed 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:
12. That the complainant, after checking the veracity of the project namely, 'Corridor; sector 67-A, Gurugram applied for allotment of an apartment vide booking application form. The complainant agreed to be bound by the terms and conditions stipulated in the application for provisional registration of the residential apartment.
13. That the respondent in accordance with the agreed payment plan and the terms of the allotment raised the payment demand towards the second installment on 14.04.2013 for the said unit. However, the complainant made the payment of the demanded amount only after a reminder dated 14.05.2013.
14. That based on the application, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainant apartment no. CD B1-05-502 having tentative super area of 1892.09 sq.ft for a total sale consideration of Rs. 2,12,52,028. On 22.03.2014, the respondent sent 3 copies of the apartment buyer's agreement to the complainant.



However, he failed to execute the same despite reminders dated 28.05.2014 and 17.07.2014 respectively.

15. That vide payment request dated 18.03.2014, the respondent had raised the demand of third installment for net payable amount of Rs.28,37,694 followed by reminders dated 13.04.2014 and 04.05.2014. However, the same was never paid by the complainant.
16. That the respondent had raised demand of fourth installment for net payable amount of Rs. 56,53,406/- on 7.01.2015 followed by reminders dated 24.03.2015. However, the complainant failed to pay the due installment amount.
17. That vide payment request dated 05.06.2015, the respondent had raised the demand of fifth installment for net payable amount of Rs.81.65.629 followed by reminders dated 09.07.2015 and 19.10.2015. Yet again, the complainant defaulted in abiding to his contractual obligations.
18. That vide payment request dated 01.07.2015, the respondent had raised the demand of sixth installment for net payable amount of Rs. 1,06.77,851 followed by reminder dated 28.08.2015. However, the complainant again failed to pay the due installment amount.
19. That vide payment request dated 02.09.2015, the respondent had raised the demand of seventh installment for net payable amount of Rs.1,26,73,616/- followed by reminders dated 28.09.2015 and 12.11.2015. However, the same was never paid by the complainant.



20. That again vide payment request dated 19.11.2015, the respondent had raised the demand of eighth installment for net payable amount of Rs.1,45,29,548 followed by reminders dated 7.01.2016 and 16.02.2016. Yet again, the complainant defaulted in abiding by his contractual obligations.
21. That vide payment request dated 22.12.2015, the respondent had raised the demand of ninth installment for net payable amount Rs. 1,63,85,480 followed by reminder dated 12.02.2016. However, the complainant again failed to pay the due installment amount.
22. That again vide payment request dated 14.02.2017, the respondent had raised the demand of tenth installment for net payable amount of Rs.1,75,23,882/- followed by reminders dated 14.03.2017 and 17.04.2017. Yet again, the complainant defaulted in abiding to his contractual obligations.
23. That the respondent has already applied for an occupation certificate on 06.07.2017 and received OC on 31.05.2019. Thereafter the possession has been offered on 14.06.2019.
24. That the complainant has till date made the part-payment of Rs. 4,39,04,987/- (inclusive of interest on delayed payments, stamp duty, other charges) and is bound to pay the remaining due amount along with registration charges.
25. 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.

E. Jurisdiction of the authority

26. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

27. 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

28. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;



The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

29. 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 objections raised by the respondents.

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.

30. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

31. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would 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 will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. 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 and 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."

32. Also, 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."

33. 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.

G. Findings regarding relief sought by the complainant.

(i) Direct the respondent to refund the entire amount paid by the complainant along with interest @ 18% from the date of respective deposits till its actual realization.

34. The complainant has booked the residential unit in the project named as 'The Corridors' situated at sector 67 A, admeasuring super area of 1727 sq. ft. for a basic sale price of Rs. 1,51,11,250/- and made an advance payment of Rs. 15,00,000/- as for registration of apartment. Thereafter the complainant made a payment of Rs. 21,67,046/- as per the payment schedule.
35. The respondent issued an allotment letter on 07.08.2013 in which the area of the unit was changed to 1892 sq.ft. The respondent on 22.03.2014 sent copies of builder buyer agreement to complainant for signing, but he refused to sign due to change in area. Further he raised an objection against such change in the area of an apartment through email dated 28.09.2014 and thereafter sent a legal on 06.12.2014 to the respondent regarding such change.
36. 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.

37. The due date of possession as per the possession clause which is taken from the BBA annexed in complaint no. 1570 of 2018 of the same project being developed by the same promoter comes out to be 23.01.2017 and there is delay of 1 year 10 months 14 days on the date of filing of the complaint.
38. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated has been received after filing of application by the complainant for return of the amount received by the promoter on his failure 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 he has become entitled to the right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as he 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. This is without prejudice to any other remedy available to the allottee including compensation for which he



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.

39. 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. 2021-2022 RCR(C), 357** 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 as under:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.



40. 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 he 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.
41. 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.
42. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 36,67,046/- 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: -

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

- i. The respondent/promoter is directed to refund the amount i.e., Rs. 36,67,046/-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.

44. Complaint stands disposed of.

45. File be consigned to the registry.

v.1-3
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.08.2022