



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

Complaint no.	4887 of 2021
Date of filing complaint	13.01.2021
First date of hearing	05.04.2021
Date of decision	15.09.2022

Shyam Sunder Yadav R/O: A-54/4, DLF Phase-1, Gurugram, Haryana-122001	Complainant
Versus	
M/s. International Land Developers Pvt. Ltd. Regd. office: B-418, New Friends Colony, New Delhi-110001	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sanjeev Sharma (Advocate)	Complainant
Sh. Pankaj Chandola (Advocate)	Respondent

ORDER

1. The present complaint 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 29 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 allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details	
1.	Name and location of the project	"Arete", Sector 33, Gurugram	
2.	Nature of the project	Group Housing Colony	
3.	Project area	11.61 acres	
4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid upto 03.06.2019	
5.	Name of licensee	Brijesh-Sanjeev Ss/o Satbir and 2 others	
6.	RERA Registered/ not registered	06 of 2019 dated 08.02.2019 valid upto 02.07.2022	
7.	Allotment Letter	06.04.2014 (Page 26 of complaint)	
8.	Unit no.	As per Allotment Letter	As per BBA
		A-1003, 10 th Floor, Block A (Page 26 of complaint)	A-803, 8 th floor, Tower A (Page 16 of complaint)

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9.	Unit area admeasuring (super area)	As per Allotment Letter	As per BBA
		1765 sq. ft. (Page 26 of complaint)	1765 sq. ft. (Page 16 of complaint)
10.	Date of execution of apartment buyer agreement	Not on record	
11.	Possession clause (taken from BBA of same project annexed in another file)	10. Possession of Apartment 10.1 Subject to timely grant of all approvals (including revisions 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 & Taxes or increase in Levies & 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 endeavour to complete the construction of the Said Apartment within 48(Forty Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months.	
12.	Due date of possession	06.10.2018 (Calculated as 48 months from date of allotment letter as date of execution of BBA is not on record plus 6 months grace period as the same is unqualified)	

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13.	Total sale consideration	Rs. 89,24,345/- (As alleged by complainant on page 3 of complaint)
15.	Amount paid by the complainants	Rs. 56,46,120/- as confirmed by the counsel for the respondent during the proceedings dated 15.09.2022 on the basis of copy of SOA
16.	Occupation certificate	Not obtained and the same was confirmed by the counsel for respondent during proceedings dated 15.09.2022.
17.	Offer of possession	Not obtained

B. Facts of the complaint:

3. That the respondent published very attractive colourful brochure, highlighting the project known as 'Arete Project', located at village Dhunela, Sector - 33, Tehsil Sohna, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers to buy the apartment in the project. There are fraudulent representations, incorrect and false statements in the brochure.
4. That it was humbly submitted that the respondent made representation and advertised the project making tall claims about the project. That the complainant, influence by such representation, decided to book a unit in the project.
5. That the complainant purchased a unit / apartment bearing no. A-1003, 10th floor. Tower-A, admeasuring 1765 Sq. Ft. in the Project i.e., "ARETE located at Sector 33, Gurgaon Manesar Urban Complex" floated by the





respondent and on the inducement that the possession of the unit purchased shall be handed over on time with all amenities as promised.

6. Thereafter, on 01.11.2014, an Apartment Buyer Agreement was executed inter se the parties on 01.11.2014. However it is pertinent to note that the clauses of the agreement were arbitrary and one-sided and the respondent being in dominant position, tried to influence the choice of complainant. Thus, the complainant was left with no other option but to sign on the dotted lines. As per the clause 10.1 of the ABA, the possession of the unit was to be given within 48 months from the execution of Agreement, i.e., by 01.11.2018 and if grace period of 6 months is added, then the possession was to be delivered latest by May 2019.
7. That as per the ABA, the total sale consideration of the unit was agreed to be Rs. 89,24,345/ (rupees eighty-nine lacs twenty-four thousand three hundred forty-five only), excluding service tax and other statutory taxes. It is important to highlight that the complainant till date has paid a total sum of Rs. 57,90,197/- (rupees fifty-seven lacs ninety thousand one hundred ninety-seven only) to the Respondent.
8. That as per clause "10.1" it was stipulated that the possession was supposed to be delivered in May 2019, however, even after a delay of 1 year 7 months, the Respondent till date has failed to handover the possession of the unit to the complainant. Today, in November 2020, the complainant is still without any signs of offer of possession even after the

lapse of 6 years 11 months from date of booking, i.e., 26.12.2013 till 24.11.2020.

9. The in addition to the above the Respondent has committed various other discrepancies and defaults under various sections of the RERA Act and the respondent(s) be refrained and directed to stop doing such unlawful acts which are against the duties and obligations of the promoter under chapter III of the real estate regulatory act. That the complainant aggrieved of having not received possession on time is filing the present complaint before Ld. Haryana Real Estate Regulatory Authority for refund along with interest for delayed period.
10. That the complainant with bonafide intention has approached the Authority as it is left with no other option but to approach this Authority for refund of its deposited amount.
11. Because of reasons stated above, the complainants wish to withdraw from the project. The complainants seek the complete refund of their deposited amount along with interest at the prescribed rate for inordinate delay caused due to the complete failure of the respondent. The complainants being aggrieved persons have filed a complaint under section 31 of the Act, 2016 read with Rule 28 of the Rules, 2017 before the HARERA, Gurugram for violation or contravention of provisions of the Act, 2016 and Rules as mentioned therein.

C. Relief sought by the complainant:

- 12* 12. The complainant has sought following relief(s):

- i) Direct the respondent company to refund the amount paid by the complainant along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund.
- ii) Direct the respondent to pay Rs. 5,00,000/- as compensation for mental harassment and Rs. 1,00,000/- as legal expenses to the complainant.

D. Reply by respondent:

13. Even though the defence of the respondent was struck off vide proceedings dated 15.09.2022. However, on the same date i.e., 15.09.2022, the respondent submitted the reply in the registry vide diary no. 41046. The Authority is of the view that the same must be taken on record as it helps ascertain the facts better and gives both the parties, the opportunity to be heard. The Authority thus is diverging from its view that was taken in proceeding dated 15.09.2022 and allowing the reply to be taken on record for the purpose of this order.

The respondent by way of written reply made following submissions:

14. That the present complaint, filed by the complainant, is a bundle of lies and hence liable to be dismissed as it is filed without cause of action. That the present complaint is an abuse of the process of this Authority and is not maintainable.
15. It was further submitted that the complainant has not approached this Authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent

with malicious intent and with the sole purpose of extracting unlawful gains from the respondent.

16. It was submitted that the due date of possession as promised in the builder buyer agreement was subject to various terms and conditions. That the timely payment of dues by the complainant was the essence of the said agreement. It is pertinent to note herein, that a huge number of allottees including the complainant himself have defaulted in the timely payment of dues. that the said defaults have led to various hindrances in the timely execution of the said project. Further the complainant has conveniently and cleverly hidden the said facts while approaching this Id. Authority. That the relevant clause under the builder buyer agreement dated 01.11.2014 is produced herein for ready reference:

10.1 Subject to timely grant of all approvals (including revisions thereof), permissions, certificates, NOCs, permission to operate, fullpart 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 on 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 endeavour to complete the construction of the Said Agreement within 48(Forty Eight) months from the date of execution of this Agreement and further extension/grace period of 6(six) months."

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17. That the project of the respondent got delayed due to the non-payment of the instalments by the various allottees on time including the complainant. The non-payment of instalments as per the payment schedule hampered the development/construction work of the project. It is pertinent to note herein that the respondent has filed various complaints before the Id. authority against various buyers allottees who have defaulted in the payments due to which the progress of the project has been hindered. Further the said project "Arete" of the respondent is registered with the Real Estate Regulatory Authority, Gurugram as per which date of completion of the project falls in the year 2022. Therefore, the present complaint has been filed in prematurity and the same is liable to be dismissed with heavy costs. However, the respondent has bona fide intention to complete the project at the earliest for which he is making every possible effort and is also taking the legal action against the defaulters who have delayed or stopped making the payments
18. It was submitted that the complaint is devoid of merits and should be dismissed with costs. That the present complaint is filed with the oblique motive of harassing the respondent company and to extort illegitimate money while making absolutely false and baseless allegations against the respondent.
19. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainants deserves to be dismissed with heavy costs.

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20. That as has been elaborated at length in the previous paras that the delay in the seamless completion of the project due to the defaults of allottees including the complainant himself, and that at this stage the liability arising out of the said delay cannot be weighed upon the respondent by any stretch of imagination. It is wrong and denied that the construction of the project is far from completion, and the same can be perused from the present status of the project.

21. All other averments were denied in toto.

22. Copies of all 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 submissions made by the parties.

E. Jurisdiction of the authority:

23. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

24. 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.

A E. II Subject matter jurisdiction



25. 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;

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.

26. 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 objections raised by the respondents:

F.I Objection regarding delay in completion due to default in making payments due by the complainant

27. The respondent has alleged that the complainant along with other allottees have breached the terms and conditions of the agreement and contract by defaulting in making timely payments which eventually led to delay in completion of the project. It was submitted by the respondent that the complainant even after knowing the payment schedule did not pay the instalments on time.

46. But the plea raised in this regard is devoid of merit. The complainants had made payments regularly and timely till 2019 and have paid 63% of total sale consideration which clearly shows that the complainant always intended to pay but the respondent delayed the project. Further, it is not denied that some allottees might have defaulted in making payment but the complainant cannot be made to suffer on account of fault of others. Hence, the plea of the respondent is devoid of merits and liable to be rejected.

G. Entitlement of complainant for refund:

G.1 Direct the respondent company to refund the amount paid by the complainant along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund

28. That the complainants booked a unit in the project of the respondent named as "Arete" situated at sector 33, Gurgaon, Haryana for a total sale consideration of Rs. 89,24,345/-. The complainants paid an amount of Rs. 56,46,120/-. The BBA was executed between the parties, however no date can be ascertained.

29. Due to lack of possession clause on record, the same was taken from another file of the same project. As per the possession clause so specified, ".....the Developer shall endeavour to complete the construction of the Said Apartment within **48(Forty Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months**". However, since the date of execution of BBA is not on record, the date of allotment letter has been taken for the purpose of calculation of due date of possession. In accordance with the

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abovementioned reasoning, the date of allotment letter is 06.04.2014 and 48 months from the same comes out to be 06.04.2018. However, the possession clause also specifies for a grace period of six months and the same is unqualified and hence, the same has been allowed. As such, the due date of possession comes out to be 06.10.2018 i.e., 48 months from allotment letter plus 6 months of grace period.

30. 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.
31. The due date of possession as per agreement for sale as mentioned in the table above is 06.10.2018 and there is delay of 2 years 3 months 7 days on the date of filing of the complaint.
32. 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

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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....."

33. 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* and observed that:

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

34. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and

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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.

35. 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.
36. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 56,46,120/- with interest at the rate of 10.00% (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).

F.II. Direct the respondent to pay Rs. 5,00,000/- as compensation for mental harassment and Rs. 1,00,000/- as legal expenses to the complainant

37. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has

held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority:

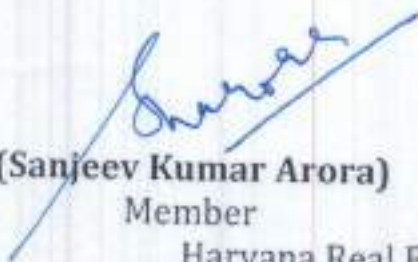
38. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The complainant/promoter is directed to refund the amount i.e., **Rs. 56,46,120/-** received by him from the respondent/allottee along with interest at the rate of 10.00% p.a. 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.
- iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if,

any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

39. Complaint stands disposed of.

40. File be consigned to the registry.



(Sanjeev Kumar Arora)
Member



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.09.2022