

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

Complaint no. : 1126 of 2021
Date of filing complaint : 23.02.2021
First date of hearing : 28.09.2021
Date of decision : 12.09.2022

<p>Nikhil Behal R/O: - The Indian Hotels Co. Ltd.. 9th floor. Express Towers, 9th floor, Nariman Point, Mumbai-400021.</p>	Complainant
Versus	
<p>1. M/s Selene Construction Limited Regd. Office at: - M-62&63, First Floor, Connaught Place, New Delhi-110001 2. Indiabulls Real Estate Private Limited. Regd. Office at: Indiabulls House, Ground Floor, 448-451, Udyog Vihar, Phase-V, Gurugram, Haryana.</p>	Respondents

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Deepak Samota	Advocate for the complainant
Sh. Rahul Yadav	Advocate for the respondents

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 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 of the project	Indiabulls Centrum Park
2.	Nature of project	Residential Complex
3.	RERA Registered/ Not Registered	Registered
4.	DTPC License no.	N/A
	Validity upto	N/A
	Name of licensee	N/A
	Licensed area	N/A
5.	Unit no.	G-2203, 20 th floor, Tower- G2 [page no. 27 of complaint]



6.	Unit measuring	1950.20 sq. ft. (page no. 27 of complaint]
7	Provisional letter of allotment	05.03.2014 (page no. 53 of complaint)
8	Date of execution of floor buyer's agreement	14.03.2014. (page no. 22 of complaint)
9.	Possession clause	21. Possession The Developer shall endeavor to complete the construction of the/said building/Unit within a period of three years, with an six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or demanded by the Developer. The Developer on completion of the construction/development shall issue final call notice to the Buyer. who shall within 30 days thereof, remit all dues and take possession of the Unit. In the event of his/her failure to take possession of the Unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and maintenance charges/ cost and any other levies on account of the allotted Unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact



		that the Buyer has not taken possession of the Unit or has not been enjoying benefit of the same. The Buyer in such an eventuality shall also be liable to pay the holding charges@ Rs.5per sq.ft (of the super area) per month to the Developer, from the date of expiry of said thirty days till the time possession is actually taken over by the Buyer.
10.	Due date of possession	14.09.2017(including grace period) (calculated from the date of execution of buyer agreement)
11.	Total Sale consideration	Rs. 1,65,67,125/- (As per calculation sheet provided by the respondent)
12.	Total amount paid by the complainant	Rs. 1,53,81,766/- (As per calculation sheet provided by the respondent)
13.	Occupation certificate dated	01.01.2019 (page no. 23 of reply)
14.	Offer of possession	04.06.2019 (page no. 25 of reply)
15	Grace period	Grace period allowed being unqualified

B. Facts of the complaint

3. That the complainant booked the unit bearing No.G2203 on the 20th floor in tower/block no. G2 having an approx. 2875 sq. ft. of super area forming part of the residential complex known as

"Indiabulls Centrum Park", situated in Village Daulatabad, Gurugram by making payments of Rs.1,00,000 to the said respondents vide receipt No.8947 dated 12th march, 2013, Rs.4,27,649/ vide Receipt No.9183dated 23 April 2013, Rs.10,00,000/-vide Receipt No:9188dated 24th April 2013, Rs.10,00,000/-vide Receipt No.9191 dated 25th April, 2013.

4. That subsequently, the complainant executed a Flat Buyers agreement with the respondents to purchase the aforementioned unit for a total sale consideration of Rs.1, 53, 75, 250/- vide provisional letter of allotment dated 5th march 2014 and flat buyer's agreement dated 14th march, 2014 was executed.
5. That the complainant in the year 2014 opted for a loan from India Bulls Housing Finance Ltd. for an amount of Rs. 1.15/ crores, thereby making the complete payment against the flat allotted to him. The loan amount was repaid in full by the complainant by 21st October, 2016. Details of the same can be found in the email regarding closure of home loan account which was sent by Indiabulls Housing Finance Limited to the complainant on 21st October, 2016.
6. That the complainant in order to keep a track of the progress of project sought information from the respondents vide email dated 09.09.2016, to which they replied vide email dated 09.09.2016 by stating that the possession of the flat would be handed over to him in the second-half of 2017. However, no justification was given by the respondents as to why the delay had occurred and whether the possession would be handed over in terms of the flat buyers agreement within the stipulated time.

7. That after the stipulated date, including the grace period for handing over possession of the flat had lapsed and the complainant received no intimation for handing over possession. So, he sent an email to the respondents dated 22.11.2017, enquiring about the status of the project and the registration number for the unit under RERA. The respondents vide email dated 23.11.2017 gave false assurances to the complainant about the status of completion of the unit as well as the RERA registration which they were yet to be obtain from the requisite authorities. Further, the email sent by the respondents did not state as to when the actual possession would be handed over.
8. That faced with such a situation, when the respondents were not providing any information as to the date when actual possession would be handed over, the complainant left with no alternative but to wrote email dated 22.05.2019 to them seeking cancellation of his allotment and refund of the entire amount. The respondents, instead of refunding the amount to the complainant, wrote a letter dated 23.05.2019 stating therein that they had received the occupation certificate and would be handing over the possession soon. At this juncture, it would be pertinent to mention that even by way of email dated 23.05.2019, the respondents still did not intimate the actual date of handing over possession. Further, no answer was forthcoming from the respondents as to why the fact regarding obtaining the occupation certificate was never communicated to the complainant till date.
9. The complainant had set out to purchase the flat back in the year 2013 for the purpose of having a place primarily available for his ageing parents. It is pertinent to note the fact that the

complainant's mother had contributed a sum to the tune of Rs.55 Lacs from the lifelong savings for purchasing the flat and because of the inordinate delay in handing over possession of the flat, she has suffered great emotional and psychological distress. To compound her emotional and psychological distress, her husband and the complainant's father passed away in December, 2017. Thus, the complainant has been through a significant amount of monetary, emotional and psychological stress ever since he came into an agreement with the respondent for purchasing the aforementioned unit. The respondent on their part have been lackadaisical and irresponsible in dealing with the complainant's grievances and have never really communicated with him the true nature of the project, seemingly keeping him in the dark for close to three years, depriving him of the possession of the flat as well as taking payments to the tune of Rs.1, 53, 81, 766/-.After approximately 21 months of the stipulated date for handing over possession of the flat had passed, the respondents vide email dated 4th June, 2019 offered to hand over possession of the flat to the complainant. But due to the inordinate delay in handing over of the possession and simultaneous violation of clause 21 of the flat buyers agreement by the respondents, the complainant wished to cancel/withdraw his allotment in the project and seeks a complete refund of the money paid along with adequate interest and compensation stipulated by the Real Estate(Regulation and Development) Act, 2016.

10. Relief sought by the complainant:

The complainant has sought following relief(s):

- Direct the respondents to refund total sale price of Rs. 1,53,81,766/- deposited by complainant along with

interest @18% per annum from the respective date of deposit till realization.

- Direct the respondents to pay costs toward litigation incurred by the complainant.
- Direct the respondents to pay compensation to the complainant towards harassment, mental agony and installment paid towards loan amount.

B. Reply by the respondents

11. That the instant complaint filed by the complainant is not within the preview of this Hon'ble Authority as he himself approached the respondents and showed interest to book unit in the project. Thereafter post understanding the terms & conditions of the agreement(s), he had voluntarily executed flat buyer agreement (hereinafter referred as "FBA") with the respondents on 14.03.2014.
12. It is pertinent to mention herein that the complainant is further falsifying his claim from the very fact that, he has filed the instant claim on the alleged delay in delivery of possession of the provisionally booked unit. However, the complainant from the very beginning was aware, that the period of delivery as defined in Clause 21 of flat buyer's agreement is not sacrosanct as in the said clause it is clearly stated that "the developer shall endeavour to complete the construction of the said building/unit" within the stipulated time.
13. It is submitted that the respondents never failed to deliver possession of the unit booked by the complainant. The instant complaint is preferred on baseless facts misrepresenting the same.

The respondents have already offered possession of the subject unit to him on 04.06.2019, however, he has failed to take possession of the unit till date.

14. It is stated that it is a universally known fact that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, non-availability of the water required for the construction of the project work & drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., continued for around 22 months, starting from February'2015. Due to the above-mentioned reasons, the project of the respondents was severely affected. It is in these above elaborated circumstances, beyond the control of the respondents, that the progress and construction activities, sale of various flats and spaces has not taken place as envisaged.
15. Further, as per the license to develop the project, external development charges were paid to the State Government and the State Government in lieu of the EDCs was supposed to lay the whole infrastructure in the licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. The State Government miserably failed to provide the basic amenities due to which the construction progress of the project was badly hit.
16. Furthermore, the Ministry of Environment and Forest (hereinafter referred to as the "MoEF") and the Ministry of Mines (hereinafter

referred to as the “MoM”) had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and Kiln which is the most basic ingredient in the construction activity. The MoEF restricted the excavation of top soil for the manufacture of bricks and further directed that no manufacturing of clay bricks, tiles or blocks can be done within a radius of 50 (fifty) kilometres from coal and lignite based thermal power plants without mixing at least 25% of ash with soil. The shortage of bricks in the region and the resultant non-availability of raw materials required in the construction of the project also affected the timely schedule of construction of the project.

17. That in view of the ruling by the Hon’ble Apex Court directing for suspension of all the mining operations in the Aravalli Hill range in State of Haryana within the area of approx.. 448 sq. kms in the district of Faridabad and Gurgaon including Mewat led to a situation of scarcity of the sand and other materials which derived for the stone crushing activities , directly affecting the construction schedules and activities of the project
18. Copies of all the relevant do 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

19. The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. 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

20. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

21. 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.

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 promoters 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.

F.I Direct the respondents to refund the entire amount of Rs.1,53,81,766/- along with interest.

22. The complainant is admittedly an allottee of respondents of a unit in the project namely INDIABULLS CENTRUM PARK, situated in village Daultabad District Gurugram, for a total sale of consideration of RS. 1,65,67,125/-. He admittedly paid a sum of Rs. 1,53,81,766/- to the respondents against the allotted unit. A buyer's agreement was executed between the parties on 14.03.2014 and as per the same the possession of the allotted unit was to be offered to the complainant by 14.09.2017 inclusive of grace period. But, the respondent builder failed to complete the project by the due date and offer possession of the allotted unit to the allottee leading to his withdrawal from the project and seeking refund of the paid up amount vide email dated 22.05.2019 and ultimately filing this complaint seeking refund.
23. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or is unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter offered possession of the unit **after obtaining occupation certificate** and on demand of due payment at the time of offer of possession the allottee wishes to withdraw from the project and is demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
24. The due date of possession as per agreement for sale as mentioned in the table above is 14.09.2017 and there is delay of 1 years 11 months 26 days on the date of filing of the complaint. The allottee

in this case has filed this application/complaint on 09.09.2020 after possession of the unit was offered after obtaining occupation certificate by the promoters. The allottee never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made and demand for due payment was raised, then only filed a complaint before the authority. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after obtaining occupation certificate. Section 18(1) gives two options to the allottee if the promoter fails to complete or is 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:

- (i) Allottee wishes to withdraw from the project; or
- (ii) Allottee does not intend to withdraw from the project

25. The right under section 18(1)/19(4) accrues to the allottee on failure of the 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. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made, it impliedly means that the allottee has tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the

handing over of possession and allottee's interest for the money, he has paid to the promoter is protected accordingly.

26. 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 (1)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 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

27. 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). This judgement of the Supreme Court of India recognized unqualified right of the allottee and liability of the promoter in case of failure 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. But the allottee has failed to exercise this right although it is unqualified one. He has to demand and make his intentions clear

that the allottee wishes to withdraw from the project. Rather tacitly wished to continue with the project and thus made him entitled to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invested in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottee in case of failure of promoter to give possession by due date either by way of refund if opted by the allottee or by way of delay possession charges at prescribed rate of interest for every month of delay.

28. In the case of *Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.2021*, some of the allottees failed to take possession where the developer has been granted occupation certificate and offer of possession has been made. The Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. However, the developer was obligated to pay delay compensation for the period of delay occurred from the due date till the date of offer of possession was made to the allottees. As per proviso to sec 18(1), where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such as rate as may be prescribed.

29. The authority hereby directs that the allottee shall be paid by the promoter an interest for every month of delay till handing over of possession at prescribed rate i.e. the rate of 10% (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 within the timelines provided in rule 16(2) of the Haryana Rules 2017 *ibid*. The allottee is obligated to take the possession of the apartment since the construction is completed and possession has been offered after obtaining of occupation certificate from the competent authority. However, the developer is obligated to pay delay possession charges for the period of delay occurred from the due date till the date of offer of possession was made to the allottee.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in

use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

31. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
32. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.09.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10% prevalent at that time.
33. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

“(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

*Explanation. —For the purpose of this clause—
the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”

34. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10% by the respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.

F.II Direct the respondents to pay costs toward litigation incurred by the complainant.

F.III Direct the respondents to pay compensation to the complainant towards harassment, mental agony and installment paid towards loan amount.

35. The complainant in the aforesaid relief 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.*, (supra.) 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

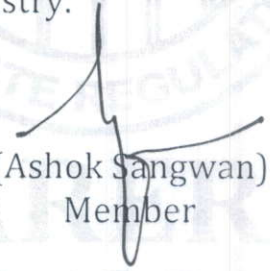
G. Directions of the Authority:

36. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:



- i) The respondents are directed to pay interest at the prescribed rate of 10% p.a. for every month of delay on the amount paid by the complainant to the respondent, from the due date of possession i.e. 14.09.2017 till the date of offer of possession i.e. 04.06.2019 plus two months i.e. 04.08.2019 to the complainant as per section 19(10) of the Act.
- ii) The arrears of such interest accrued from 14.09.2017 till offer of possession shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
37. Complaint stands disposed of.
38. File be consigned to the Registry.


(Sanjeev Kumar)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Dr. K.K. Khandelwal
Chairman
12.09.2022

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.09.2022