

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

Complaint no. : 3731 of 2019
1105 of 2021
First date of hearing: 15.10.2019
Date of decision : 10.08.2022

Mahesh Chand Goyal

Address: E-11/8, Vasant Vihar,
New Delhi-110057

Complainant

Versus

M/S Ireo Grace Realtech Pvt. Ltd.

Regd. Office at: C-4, 1st Floor,
Malviya Nagar, New Delhi-110017

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

None

Shri M.K Dang

Advocate for the complainant

Advocates for the respondent

ORDER

1. The present complaint dated 27.08.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of



section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	37.5125 acres
4.	DTCP license no.	05 of 2013 dated 21.02.2013 valid upto 20.02.2021
5.	Name of licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
6.	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 status	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
7.	Apartment no.	802,8 TH Floor, B4 Tower (page no. 31 of complaint)

8.	Unit area admeasuring	1932.15 sq. ft. (page no. 31 of complaint)
9.	Date of approval of building plan	23.07.2013 (annexure R5 on page no. 48 of reply)
10.	Date of allotment	07.08.2013 (annexure R-2 on page no. 42 of reply)
11.	Date of environment clearance	12.12.2013 (annexure R-6 on page no. 55 of reply)
12.	Date of builder buyer agreement	22.04.2014 (page no. 23 of complaint)
13.	Date of fire scheme approval	27.11.2014 (annexure R-7 on page no. 67 of reply)
14.	Due date of possession	23.01.2017 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
15.	Possession clause	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 approval of building plans and/or fulfillment 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.
16.	Total sale consideration	Rs. 2,31,15,855/- [as per payment plan on page no. 65 of complaint]
17.	Amount paid by the complainant	Rs. 2,30,64,004/- [as per statement of account on page no. 78 of reply] Rs. 2,39,64,004/- [as alleged by respondent]
18.	Occupation certificate	31.05.2019 (A6 to A10, B1 to B4 and C3 to C7) [as per project details]
19.	Offer of possession	14.06.2019 [annexure R-11 on page no. 75 of reply]

B. Facts of the complaint

3. That on the representations of the respondent the complainant booked the unit bearing no. CD-B4-08-802 admeasuring 1932.15 sq.

- ft in the project namely, Corridors, situated at sector 67 A, Gurugram and made a payment of Rs. 20,00,000/-.
4. That after issuance of allotment letter by respondent in favour of him, he made a payment of Rs. 20, 03,626/-.
 5. Thereafter floor buyer agreement was executed between the parties on 22.04.2014. As per clause 13 of the buyer's agreement, the respondent assured that the possession of the said unit would be handed over within a period of 42 months from the date of approval of building plans or fulfilment of preconditions imposed thereunder with a grace period of 6 months.
 6. That the said unit was purchased for a total sale consideration of Rs. 02,31,15,855/- out of which complainant has made a payment of Rs. 02,28,74,108.37/- towards various instalments raised by respondent builder and Rs. 1,89,897/- as TDS.
 7. That as per biased buyers' agreement clause 7.4 the complainant was liable to pay 20% interest per annum from the date that is due for payment till the date of actual payment thereof. If the same remains in arrears beyond the period of 90 days from the due date the agreement shall stand cancelled without any further notice to the allottee. While the complainant is being charged to pay 20% p.a. for delayed payments the respondent as under clause 13.3 of the agreement is liable to pay only Rs. 7.50 per sq ft. per month for delay in handing over of possession. The complainant had no other option but to accept the terms and conditions of the buyer's agreement.

C. Relief sought by the complainant:

8. The complainant has sought the following relief:

- Direct the respondent/builder to refund the total amount paid by the complainant of Rs. 2,28,74,108/- along with interest.
- Direct the respondent to grant compensation and cost of litigation.

D. Reply by the respondent.

The respondent has contested the complaint on the following grounds: -

9. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer agreement was executed between the complainant and the respondent 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.
10. That there is no cause of action to file the present complaint.
11. That the complainant has no locus standi to file the present complaint.
12. That the respondent has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.

13. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 35 of the residence purchase agreement.
14. That the complainant has not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by him 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:
- That the complainant, after checking the veracity of the project namely, 'Corridor, Sector 67 A, Gurugram had applied for allotment of an apartment vide his booking application form. The complainant agreed to be bound by the terms and conditions of the booking application form.
 - That based on the said application, the respondent vide his allotment offer letter dated 07.08.2013 allotted to the complainant apartment no. CD-B4-08-802 having tentative super area of 1932.15 sq. ft. for a total sale consideration of Rs. 2,31,15,855. It is submitted that the complainant executed the apartment buyer's agreement on 22.04.2014.
 - That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment



plan and the complainant made some payments in time and delayed in making timely payment towards the second installment amount. That the respondent had raised the second installment demand on 14.04.2013 for the net payable amount of Rs. 20,03,626/-. However, the complainant made the payment of the due amount only after a reminder dated 14.05.2013 was issued by the respondent.

- That the complainant has made the part-payment of Rs. 2,39,64,004/ out of the total sale consideration of Rs. 2,61,53,599/- and was bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, payable along with it.
- That as per clause 13.3 of the agreement, the possession has to be handed over within 42 months from the date of approval of building plans and preconditions imposed thereunder. The time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction could not be raised in the absence of the necessary approvals. That it has been specified in sub-clause (iv) of clause 17 of the approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. The environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in

clause 39 of part A of the environment clearance dated 12.12.2013 it was stated that fire safety plan was to be duly approved by the fire department before the start of any construction work at site.

- That the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, would have expired only on 27.11.2019.
15. That the respondent has already completed the construction of the project of the tower in which the unit allotted to the complainant is located. The respondent had applied for the grant of occupation certificate on 06.07.2017 and the same was granted by the concerned authorities on 31.05.2019. Furthermore, the respondent has even offered the possession of the unit to the complainant vide notice of possession dated 14.06.2019.
16. That the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that his calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to harass and pressurize the respondent to submit to his unreasonable demands on highly flimsy and baseless grounds.
17. 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

18. 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

19. 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

20. 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.

21. 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 respondent:

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.

22. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the residence purchase agreement was executed between the complainant and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
23. 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 would 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."

24. Further, 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."

25. 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.

F.II Objection regarding complainant is in breach of agreement for non-invocation of arbitration



26. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"35. Dispute Resolution by Arbitration

"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".

27. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as



non-arbitrable seems to be clear. Section 88 of the Act also says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force. Consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

28. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."



It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

29. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under

Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

30. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

G. Findings on the relief sought by the complainant.

- **Direct the respondent/builder to refund the total amount paid by the complainant of Rs. 2,28,74,108/- along with interest.**

31. The complainant has booked the residential apartment in the project named as 'The Corridors' situated at sector 67 A for a total sale consideration of Rs. 2,31,15,855/-. The complainant was



allotted the above-mentioned unit vide allotment letter dated 07.08.2013. Thereafter the apartment buyer agreement was executed between the parties on 22.04.2014.

32. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or 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 has 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 demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
33. The due date of possession as per agreement for sale as mentioned in the table above is 23.01.2017 and there is delay of 2 years 7 months 04 days on the date of filing of the complaint. The allottee in this case has filed this application/complaint on 27.08.2019 after possession of the unit was offered to him after obtaining occupation certificate by the promoter. 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 to him 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

34. 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 to him, 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 are protected accordingly.

35. 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.

36. 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 entitle to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest 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.

37. 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)

Provided 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 as rate as may be prescribed.

38. In case allottee wishes to withdraw from the project, the promoter is liable on demand to the allottee return of the amount received by the promoter with interest at the prescribed rate if promoter fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words liable on demand need to be understood in the sense that allottee has to make his intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest if he has not made any such demand prior to receiving occupation certificate and unit is ready then impliedly he has agreed to continue with the project i.e. he does not intend to withdraw from the project and this proviso to sec 18(1) automatically comes into operation and allottee shall be paid by the promoter interest at the prescribed rate for every month of delay. This view is supported by the judgement of Hon'ble Supreme Court of India in case of of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.(Supra)** and also in consonance with the judgement of Hon'ble Supreme Court of India in case of **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors.,**



39. 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 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 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 compensation for the period of delay occurred from the due date till the date of offer of possession was made to the allottees.

- **Direct the respondent to grant compensation and cost of litigation.**

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

H. Directions of the authority


41. 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 is directed to pay interest at the prescribed rate of 9.80% p.a. for every month of delay from the due date of possession i.e., 23.01.2017 till offer of possession of the booked unit i.e., 14.06.2019 plus two months which comes out to be 14.08.2019 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.
 - ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.
 - iii. The complainant is also directed to pay the outstanding dues, if any.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2 (za) of the Act.

- v. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.

42. Complaint stands disposed of.

43. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 10.08.2022


HARERA
GURUGRAM