



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

Complaint no. : 6584 of 2019
First date of hearing: 20.01.2020
Date of decision : 24.08.2022

Barinder Singh Sahota through its legal heirs
Smt. Chhavi Sahota
Master Arnav Singh Sahota
Master Ranjodh Singh Sahota
Master Ranveer Singh Sahota
R/O: Village Balkaran Pur, Pilibhit,
Uttar Pradesh- 262001

Complainant

Versus

M/s Ireo Grace Realtech Private Limited
Office: - C-4, 1st floor, Malviya Nagar,
New Delhi-110017

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Sukhbir Yadav
Shri M.K Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 19.12.2019 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 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.	603,6th Floor,D4 Tower (annexure P-2 on page no. 25 of complaint)
7.	Unit measuring	2683.75 sq. ft. (page no. 143 of complaint)
8.	Date of approval of building plan	23.07.2013 (annexure R-8 on page no. 59 of reply)
9.	Date of allotment	07.08.2013 (annexure R-2 on page no. 54 of reply)
10.	Date of environment clearance	12.12.2013 (annexure R-9 on page no. 63 of reply)
11.	Date of fire scheme approval	27.11.2014 (annexure R-10 on page no. 69 of reply)
12.	Date of execution of builder buyer's agreement	31.12.2014 (annexure P-2 on page no. 22 of complaint)
13.	Total consideration	Rs. 2,76,99,153/- [as per payment plan on page no. 58 of complaint]
14.	Total amount paid by the complainant	Rs.85,97,375/- [as per statement of account on annexure P-7 on page no. 93 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	<p>13. Possession and Holding Charges</p> <p>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 fulfilment of the preconditions imposed thereunder(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a</p>
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		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. (Emphasis supplied)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

The complainant has submitted that:

3. That original allottee received a marketing call from the office of the respondent in the month of February 2013, for booking in the residential project "The Corridor", situated at sector - 67A, Gurgaon.
4. That on 22.03.2013, being impressed by the presentation and assurances given by the respondent, original allottee booked a 4BHK unit and was allotted a unit number CD-D4 06-603, on 6th floor, tower D4 having super area of 2683.75 sq. ft. in the project for a total sale consideration of Rs. 2,76,99,153 under construction link payment plan.
5. That on 30.05.2013 respondent issued a letter addressed to the original allottee for acknowledgment of payment received against unit.
6. That on 31.12.2014, a pre-printed, unilateral, one-sided, and arbitrary apartment buyer agreement was executed inter-se the respondent and the original allottee. As per clause 13.3, the builder has to hand over the possession of the said unit within 42 months



from the date of approval of building plans and /or fulfilment of the preconditions imposed thereunder. The building plans of the project were approved on 21.03.2013, therefore the due date of possession was on or before 21.03.2017 (with a grace period of 180 days).

7. That on 02.03.2017, respondent sent a demand letter to original allottee and asked to remit the Rs. 31,94,221/-which was due on casting of lower basement roof slab. The original allottee sent several emails to the respondent and asked to share all approvals for the project, but did not provide such information.
8. That on 22.05.2019, Mr. Barinder Singh Sahota and his authorized representative several times requested the respondent for a refund of paid amount, but the respondent did not pay any heed to the reasonable demand of the original allottee.
9. That on 09.07.2019, Mr. Barinder Singh Sahota served a legal notice through his advocate to the respondent alleging that apartment no. 14 - 603 is not in existence and the respondent failed to comply with the terms and conditions of the agreement, therefore asked for a refund along with interest and compensation. That the Respondent did not reply to the above said legal notice.
10. That on 18.09.2019, respondent issued a statement of account, which shows that till date 09.04.2014 Mr. Barinder Singh Sahota has paid Rs. 85,97,375/ i.e., 31% of the total cost.
11. That on 14.05.2021, the original allottee Mr. Barinder Singh Sahota died, and thereafter, on 01.07.2021, the complainants moved an application along with the document before the authority for impleading his legal heirs. Vide order dated 22.09.2021, the hon'ble



court of adjudicating office allowed the application, and the complainants submitted an amended title of the case.

12. That the main grievance of the complainants in the present complaint is that in spite of paying more than 31% of the actual amounts of flats and was ready and willing to pay the remaining amount, respondent has failed to deliver the possession of flat. Hence, they are seeking refund of the paid up amount besides interest and compensation.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s):
- Direct the respondent to refund of the paid money along with interest.
14. 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.

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

15. 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.

16. That there is no cause of action to file the present complaint.
17. That the complainant has no locus standi to file the present complaint.
18. That the complainant is estopped from filing the present complaint by own acts, omissions, admissions, acquiescence's and laches.
19. That the present complaint has been filed pre-maturely by the complainant.
20. That the complaint is not maintainable for the reason that the booking apartment buyer's 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 apartment buyer's agreement.
21. That the complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts. The present complaint has been filed by it 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 based on the application for booking, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainant apartment no. CD-D4-06-603 having tentative super area of 2683.75 sq. ft. The respondent had issued the payment demand letter dated 14.04.2013 for the net payable amount of Rs. 33,95,024/-. However, the due amount was paid by

the complainant only after a reminder dated 14.05.2013 was sent by the respondent to the complainant. The apartment buyer's agreement was executed between the parties on 31.12.2014 only after reminders dated 28.05.2014, 17.07.2014 and 11.09.2014 were sent by the respondent to the complainant.

- 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, the 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. That 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 as per clause 35 of the environment clearance certificate dated 12.12.2013, the project was to obtain permission of



mines & geology department for excavation of soil before the start of construction. The requisite permission from the department of mines & geology department has been obtained on 04.03.2014.

- That 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 lapsed only on 27.11.2019.
22. That however, the State Environmental Assessment Authority, Haryana prohibited the respondent from undertaking any construction under the ROW ("Right of way") of the High Tension (HT) wire area for the tower in question. The said ROW of the said high tension wires only affected some portions of the project in question including the tower in question. The respondent was required to get these HT lines removed and relocate such HT Lines for the blocks/floors falling under such HT Lines. That the respondent had already started the construction of the other part of the project which was not affected by the high-tension wire area.
23. That the whole-time directors of the concerned authority i.e HVPNL approved the conversion of 66 kV D/C Badshapur- Sector 56-Dundahera, Gurgaon Line crossing the land of the respondent from overhead line into underground XLPE power cable in new alignment as a deposit work of the associate company of the respondent and



the same was approved vide memo dated Ch-155/DSO-434/Vol-II/CETS-589/Precision Realtors Pvt. Ltd dated 22.01.2014.

24. That the approval of the conversion was intimated by HVPNL to the associate company of the respondent vide its letter dated 03.02.2014 and it was asked to pay an estimate of Rs. 40,29,300/- towards the same.
25. That despite best efforts and regular follow ups by the respondent, the overhead high-tension wires were shifted by the concerned government department only by February, 2016. That the respondent had vide its letter dated 04.08.2016 informed all the allottees including the complainant that the building plans earlier approved are to be revised only with respect to certain towers and had sought objections, if any, from the allottees, including the complainant. The letter dated 04.08.2016 explicitly mentioned that in case there is a failure to file any objections/suggestions for the revised building plan, within the specified time period, it would be assumed that the complainant would have no objections/suggestions to the proposed building plan. No objections were ever received from the complainant with respect to the revised building plans and the concerned authority accordingly certified the conversion of the HT lines from overhead to underground.
26. That once the said pre-condition was fulfilled, the respondent approached the statutory Authority i.e. Director Town and Country Planning, Haryana, Chandigarh for permission to construct, consequent to the removal of the high tension wires, by the way of revised building plans. The revised building plan was approved by



the competent authority for the concerned tower in question on 10.07.2017 after the removal of high-tension wire.

27. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent, and which have affected the materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under :
28. Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization: The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During Demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of



the project in question got delayed due on account of issues faced by contractor due to the said notification of central government.

29. There are also studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.
30. Thus, in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.
31. Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of the respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017.



The district administration issued the requisite directions in this regard.

32. In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of respondent and the said period is also required to be added for calculating the delivery date of possession.
33. Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
34. Inclement Weather Conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.
35. That the respondent raised the demand towards fourth payment instalment for the net payable amount of Rs. 31,94,221/-. However, the complainant has failed to remit the due amount till date. The complainant has made the part payment out of the total ale consideration and is bound to pay the remaining due amount.



36. 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

37. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

38. 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

39. 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) The promoter shall-

(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.

40. 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.
41. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR(C)357*** and 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*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the

same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

42. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

F.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

43. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyers 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.
44. The authority is of the view 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. 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. The 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*** 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."

45. 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."

46. 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

47. 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".

48. 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. Also, section 88 of the Act 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.

49. 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."

50. 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."

51. 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

- G.I Direct the respondent to refund of the paid money along with interest.**

52. That the allottee booked a residential apartment in the project of the respondent named as "corridors" situated at sector 67-A, Gurgaon, Haryana for a total sale consideration of Rs. 2,76,99,153/-. The allotment of the unit was made on 07.08.2013. Thereafter the apartment buyer agreement was executed between the parties on 31.12.2014. As per clause 13 of the apartment buyer agreement the respondent has to handover the possession of the allotted unit within a period of 42 months from the date of approval of building



plans or fulfillment of the preconditions imposed thereunder. The due date for handing over of possession is calculated from the approval of building plans which comes out to be 23.01.2017.

53. 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.
54. 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 10 months 26 days on the date of filing of the complaint.
55. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021

"" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the

apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

56. 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 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.



57. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the 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.
58. 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.
59. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 85,97,375/- with interest at 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 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

60. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure




compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount i.e., Rs. 85,97,375/-received by him to the complainant with interest at the rate of 10% 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.

61. Complaint stands disposed of.

62. File be consigned to the registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.08.2022