

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

Date of decision : 06.09.2022

| Name of the builder |              | International Land Developers Pvt. Ltd.   |                                   |
|---------------------|--------------|---|-----------------------------------|
| COMPLAINT NUMBER    |              | PARTIES   | APPEARANCE                        |
| 1.                  | CR/5756/2019 | M/s. International Land Developer Pvt. Ltd.<br><b>R/o:</b> 9 <sup>th</sup> Floor, ILD Trade Centre, Sector 47, Sohna Road, Gurugram-122018, Haryana | Sh. Pankaj Chandola<br>(Advocate) |
|                     |              | Versus  |                                   |
|                     |              | Veenu Chopra<br><b>R/o:</b> C-89, South Extn. Part-II, New Delhi-110049   | Sh. Geetansh Nagpal<br>(Advocate) |
| 2.                  | CR/227/2021  | Veenu Chopra<br><b>R/o:</b> C-89, South Extn. Part-II, New Delhi-110049   | Sh. Geetansh Nagpal<br>(Advocate) |
|                     |              | Versus  |                                   |
|                     |              | M/s. International Land Developer Pvt. Ltd.<br><b>R/o:</b> 9 <sup>th</sup> Floor, ILD Trade Centre, Sector 47, Sohna Road, Gurugram-122018, Haryana | Sh. Pankaj Chandola<br>(Advocate) |

**CORAM:**

|                          |               |
|--------------------------|---------------|
| Shri Vijay Kumar Goyal   | <b>Member</b> |
| Shri Ashok Sangwan       | <b>Member</b> |
| Shri Sanjeev Kumar Arora | <b>Member</b> |

**ORDER**

1. This order shall dispose of the above mentioned two complaints filed before the authority in form CRA under section 31 of the real estate (regulation and development) Act, 2016 (hereinafter referred as "the Act" read with rule 28 of the Haryana Real Estate

(Regulation and Development ) Rules, 2017(hereinafter referred as “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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant in the above refereed matters is an allottee of the project, namely, Arete (group housing complex) being developed by the same complainant/ promoter i.e., M/s. International Land Developer Pvt. Ltd. The terms and conditions of the builder buyer’s agreement, fulcrum of the issue involved in the cases pertains to failure on the part of the promoter to deliver timely possession of the unit in question, seeking refund of the paid-up amount from the promoter. Since both the cases relate to the allotted unit, one filed by the allottee and the other one filed by the builder, so for deciding both the cases, the facts of first case are being taken. But before that the particulars of the project, the details of the sale consideration, the amount paid by the complainant, the date of proposed handing over the possession, delay period, if any are being given in the tabular form.

| S. No. | Heads                                | Information   |
|--------|--------------------------------------|---|
| 1.     | Project name and location            | “Arete”, Sector 33, Village Dhunela, Gurugram                 |
| 2.     | Project area                         | 11.6125 acres   |
| 3.     | Nature of the project                | Group Housing Colony  |
| 4.     | DTCP license no. and validity status | 44 of 2013 dated 04.06.2013<br>Valid/renewed up to 03.06.2019 |
| 5.     | Name of licensee                     | M/s International Land Developers Pvt. Ltd.                   |



|     |   |   |
|-----|---|---|
| 6.  | HRERA registered/<br>not registered                       | <b>Registered</b><br>Vide no.<br>RC/REP/HARERA/GGM/312/44/2019/06<br>issued on 08.02.2019 valid up to 02.07.2022  |
| 7.  | Unit no.  | B-401, 4 <sup>th</sup> Floor, Tower B<br>[annexure C3 on page no. 41 of complaint]  |
| 8.  | Super area  | 1765 sq.ft.<br>[annexure C3 on page no. 41 of complaint]  |
| 9.  | Application form  | 22.12.2013<br>[annexure C2 on page no. 30 of complaint]   |
| 10. | Allotment letter  | 06.04.2014<br>[annexure C3 on page no. 41 of complaint]   |
| 11. | Approval of building<br>plan                              | 23.12.2013<br>[annexure 3 on page no. 2 of promoter's<br>information]   |
| 12. | Date of<br>environmental<br>clearance                     | 15.04.2014<br>[annexure 3 on page no. 9 of promoter's<br>information]   |
| 13. | Date of builder buyer<br>agreement                        | Not Executed  |
| 14. | Possession clause<br>[as per page no. 36 of<br>complaint] | <b>As per clause 13 of application form</b><br><i>The possession of the said unit shall be delivered by the company to the applicant within 48 months from the date of execution of buyer's agreement, with additionally a grace period of 6 months (with no delay penalty). Provided that all amounts due and payable by the camp applicants have been paid to the company in timely manner. The company shall be entitled to reasonable extension in delivery to the applicants of the position of the said unit is in the event of any default or negligence attributable to the applicant's fulfillment of terms and conditions of allotment/buyer agreement.</i> |



|     |                                   | (Emphasis supplied)  |
|-----|-----------------------------------|--|
| 15. | Due date of possession            | 06.04.2017<br>[calculated as 3 years from date of allotment letter in accordance with the Supreme Court judgment on the subject] |
| 16. | Total sale consideration          | ₹ 87,30,195/-<br>[as per allotment letter on page no. 43 of complaint]   |
| 17. | Total amount paid by the allottee | ₹ 22,67,230/-<br>[as alleged by both the parties]  |
| 18. | Occupation certificate            | Not obtained   |
| 19. | Offer of possession               | Not offered  |

**A. Facts of the Case:**

3. A unit measuring 1765 sq. ft. in the project "Arete" at sector 33, Dhunela, Gurugram bearing no. B-401, 4<sup>th</sup> Floor, Tower B was booked by Mrs. Venu Chopra allottee/respondent with the promoter/ builder for a sum of Rs. 87,30,195/- in December, 2013. The allotment letter was issued on 06.04.2014 however, no BBA was executed between the parties. It is the case of complainant/ builder that the allottee, even after multiple reminders did not make payments at the stipulated time. The complainant/builder submitted that it raised demand of Rs. 4,71,731/- vide letter dated 01.05.2014 and further sent reminder letters dated 23.06.2014 and 21.07.2014 for payment of dues but to no avail. This led to complainant/builder issuing a third reminder letter. In lieu of the

- demand letter and all these reminder letters, the respondent-allottee paid the sum of Rs. 4,71,730/- on 01.11.2014.
4. That as per payment schedule, the respondent-allottee was supposed to make payment on completion of upper basement roof slab instalment amount to Rs. 10,43,132/- for which demand was raised on 07.07.2015 followed by reminder letters dated 07.07.2015, 04.08.2015, 14.10.2015 but to no avail.
  5. That as per payment schedule, the respondent/allottee was supposed to make payment on completion of fourth floor slab amount to Rs. 8,56,325/- for which demand was raised by complainant/builder amounting to Rs. 19,09,601/- which included due amount of Rs. 10,53,726/-. The complainant-allottee even sent reminder to the same but to no avail.
  6. That between the years 2015-2019, several demand letters followed by various reminder letters were sent to the respondent-allottee but the payment was never received from her. In the meantime, the complainant/builder also gave an opportunity to the allottee/respondent to clear dues by offering 100% waiver on interest but still there was no response from the respondent/builder. That even the copy of BBA sent to respondent/allottee was not returned.
  7. That on 18.03.2019, the respondent/allottee was informed about the RERA registration of the project and also sent demand letters but to no avail.
  8. The complainant/builder was thus left with no option but to approach the Hon'ble Authority for payment of dues by the respondent/allottee.



**B. Relief sought by the complainant-builder:**

9. The complainant-allottee has sought following relief(s):
- Direct the respondent/allottee to pay the instalment due along with interest as per payment plan from the date when the amount became due for payment.
  - Direct the respondent to pay Rs. 1,00,000/- towards litigation expenses.

**C. Reply by respondent-allottee:**

10. The case of respondent as set up in the written reply is that she is an allottee in the given project, but the complainant/builder has come before this Authority with unclean hands.
11. It was submitted that the respondent/allottee had opted for a construction linked payment plan in the application form submitted for booking and paid Rs. 6,00,000/- as booking amount. Subsequently, on 18.05.2013, the respondent-allottee made another payment of Rs. 11,95,500/-. Thereafter, only on 06.04.2014, the respondent was allotted the above-mentioned unit.
12. That the complainant-builder raised demand for payment of Rs. 4,71,731/- on 01.05.2014. Thereafter, the respondent visited the construction site just to find out that the project has yet not started. Even after this, the complainant-builder sent various reminder letters to the respondent-allottee for payment of dues. The respondent-allottee paid an amount of Rs. 4,71,730/- on 03.11.2014. The respondent-allottee again visited the construction site just to find out that the project was still at standstill.
13. That no BBA was ever executed between the parties. The complainant-allottee thereafter raised several demands and

reminder letters but the respondent-allottee decided not to pay since the same were frivolous and did not correspond to the construction milestones mentioned in them. The respondent further submitted that the project has even at a standstill from a very long time.

14. That even after so many years of booking, the project was still not completed. Thus, in view of the submissions made above, no relief as claimed by the complainant can be granted to it.

#### **D. Jurisdiction of the Authority**

##### **D. I. Territorial jurisdiction**

16. 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 completed territorial jurisdiction to deal with the present complaint.

##### **D. II Subject matter jurisdiction**

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

##### **Section 11(4)(a)**

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



*or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

18. 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.

**E. Relief Sought:**

**E.1 Direct the respondent/allottee to pay the instalment due along with interest as per payment plan from the date when the amount became due for payment.**

19. The respondent/allottee made a booking in the above-mentioned project of the builder on 26.12.2013. Thereafter, the unit was allotted by the complainant/builder for the total sale consideration of Rs. 87,30,195/-. No buyer's agreement with regard to the allotted unit was executed between the parties. However, the allottee started making payment against the allotted unit and made a payment of Rs. 22,67,230/-after several reminders on different dates. But she didn't pay remaining amount despite reminders by the builder leading to filing a complaint against her. But the case of the respondent/allottee is otherwise who took a plea that since the construction was not going as per the schedule, so she stopped making remaining payment. Even the due date for completion of



the project has also expired so she seeks refund of paid-up amount by filing of complaint before the authority against the builder.

20. Considering the above-mentioned facts, the allottee paid a sum of Rs. 22,67,230/- to the builder against the total sale consideration of Rs. 87,30,195/-. As no builder buyer agreement was executed between the parties, hence the due date of possession has been calculated as per the judgment of the Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018*** wherein it was observed, *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract"*. The due date has thus been calculated from the date of allotment letter which comes out to be 06.04.2017. It is pertinent to note that when the builder approached the Authority, the due date had already expired. Thus, both the parties approached the Authority only after expiry of due date. The occupation certificate of the project has not been received. No doubt, the allottee committed default in making various payment against the allottee unit but the builder has also not placed on file any document to show the exact status and extent of the project even upto now. So as per clause 9.2 of the model buyer agreement, the allottee has the right to withhold payment against the allotted unit.

21. Keeping in view the fact that the allottee wishes to withdraw from the project and is 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.
22. 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 she 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.....”*
23. 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*

24. 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 allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

25. 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.
26. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 22,67,230/- with interest at the rate of 10.00% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**E.2 Legal expenses:**

23. The complainant/ allottee is seeking above mentioned 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.***, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**F. Directions of the Authority:**

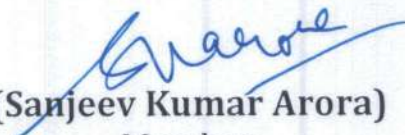
24. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i) The complainant/promoter is directed to refund the amount i.e., **Rs. 22,67,230/-** received by it from the respondent/allottee along with interest at the rate of 10.00% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii) A period of 90 days is given to the complainant/builder to comply with the directions given in this order and failing which legal consequences would follow.


25. A copy of this order be placed on the connected case file bearing no. CR/ 227/2021.

26. Both the complaints stand disposed of.

27. Files be consigned to the Registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 06.09.2022**

