

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

Complaint no. :	744/2018
Date of filing complaint:	09.03.2022
First date of hearing:	15.01.2019
Date of decision :	25.08.2022

Jitender Chugh R/o: A 45 , Ground Floor, East Uttam Nagar, New Delhi 110059	Complainant
Versus	
M/s Earth Infrastructures Limited R/o: B- 100, Second Floor, Naraina Industrial Area, Phase 1 Delhi South West, Delhi 110028	Respondent

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
None	Complainant
None	Respondent

EX-PARTE ORDER

1. The present complaint has been filed 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) by the complainant/allottees named above seeking refund of

Rs.60,92,030/- deposited for booking of a residential floor in the project known as "Earth Copia " sector-112 , Gurugram against total sale consideration of Rs.78,72,105/- besides taxes against the respondent-builders for violation of obligations under sections 11(4) of the Real Estate (Regulation and Development) Act 2016 . Before taking up the case of the complainants, the reproduction of the following details is must, and which are as under.

A. Unit and project related details

2. The particulars of project, unit, sale consideration, the amount paid by the complainants, 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	" Earth copia " , sector - 112, gurugram, Haryana.
2.	Project area	10.318 acres
3.	Nature of the project	Residential project
4.	DTCP license no.	Un-Registered
	License valid up to	-
	Name of the licensee	-
5.	RERA registered/not registered	Un-Registered
	HAERA registration no.	-
	Registration valid up to	-
6.	Unit no.	503, 5 th floor , tower / block - G.
7.	Size of unit	1835 sq. ft.
8.	Allotment letter	05.10.2012
9.	Date of execution of buyer's agreement	19.09.2012



10.	Total sale consideration	Rs.78,72,105/- (as per alleged by the complainant .)
11.	Total amount paid by the Complainants	Rs.60,92,030/- (as per alleged by the complainant .)
12.	Possession clause	<p>11.schedules for possession of the said apartment</p> <p><i>The company based on its present plans estimates and subject to all just exceptions shall endeavour construction of the said building / said apartment within a period of 36 months plus grace period from the date of execution of this agreement unless there shall be delay or failure due to force majeure but not limited to reasons mentioned in clause 14 and 15 or due to failure of allottee to pay in time the charges and dues / payments mentioned in this agreement or any failure on the part of allottee to abide by terms and conditions of this agreement</i></p> <p>16.failur to deliver Possession by the company : remedy to allottee</p> <p><i>If for any reasons than those of in clauses 14, 15 and clause 50 , the company is unable to or fails to deliver the possession of the said agreement to the allottee within thirty six (36) months plus the said of six (6) months from the date execution of the agreement or within any extended period</i></p> <p>(as per pages 18-19 of agreement).</p>
13.	Due date of delivery of possession	19.03.2016 (as per the agreement date.)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint: -

3. That the Complainant had booked a residential apartment bearing Unit No. 503, 5th floor , tower / block – Ground floor under the project name “**Earth Copia**” situated at Sector 112 of Gurugram, Haryana. That the Complainant has been provided with the Buyers Agreement dated 19.09.2012 .
4. That as per aforesaid agreement, the promoter stated that the possession of the aforesaid space shall be delivered to the complainant by March 2016 .
5. That there has been more than 2 years of delay and the possession of the aforesaid unit as agreed between the parties in the agreement .
6. That it evident that the Promoter had malafide intentions behind the above-mentioned acts with a view to commit cheating, fraud and fabrication against the Complainant and has contravened the various laws including the provisions of Indian Penal Code, 1860 as may be amended from time to time.
7. That in any case, the promoter has not given possession to the complainant so far and hence the complaint is seeking refund of the paid amount

C. Relief sought by the complainants: -

8. The complainants has sought following reliefs:
 - i. Direct the Respondent to return the amount along with @24% per annum.
9. The authority issued a notice dated 29.12.2018, 11.01.2019 & 21.01.2019 of the complaint to the respondent by speed post and

also on the given email address at secretarial@earthinfra.com. The delivery reports have been placed in the file. Despite service of notice through email, the respondent preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.

10. 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.

D. Jurisdiction of the authority

11. The plea of the respondents 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.

D.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

D. II Subject-matter jurisdiction

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.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings regarding relief sought by the complainant:

E.1 Direct the respondents to refund the amount deposited by the complainants along with interest rate of 24% p.a.

12. 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. The due date of possession as per agreement for sale as mentioned in the table above is 19.03.2016 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.."

13. 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. 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.

14. 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. The authority hereby directs the promoter to return the amount received by him i.e., Rs.60,92,030 /- 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*.


Directions of the Authority:

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

compliance of obligations casted upon the as per the functions entrusted to the authority under section 34(f): -

- i. The respondents/ promoters are directed to refund the amount of Rs. 60,92,030 /- received by them from the complainants along with interest at the rate of 10% 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 deposited amount.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
16. Complaint stands disposed of.
 17. File be consigned to the registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 25.08.2022

