



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

Complaint no.:	2461 of 2018
First date of hearing:	27.03.2019
Date of decision:	10.10.2022

1. Neeraj Karwal
R/o Flat no. 2C, Green View Apartments, Mayapuri
Road, Hari Nagar, New Delhi-110064
2. Ravi Tuli
R/o EA-77, Maya Enclave, Behind BSES Office, Hari
Nagar, Mayapuri, New Delhi-110064

Complainants

Versus

Ansal Housing & Construction Ltd.
Office address: 15 UGF, Indraprakash, 21, Barkhamba
Road, New Delhi- 110001.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Ms. Aditi Bhatia (advocate)
Smt. Meena Hooda (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 14.01.2019 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



		[pg. 63 of complaint]
11.	Possession clause	<p>Clause 31.</p> <p>31. The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit.</p> <p>(Emphasis supplied)</p> <p>[pg. 52 of complaint]</p>
12.	Date of construction taken from another complaint	18.05.2013
13.	Due date of possession	08.07.2018 <p>(Note: 48 months from date of agreement i.e., 08.01.2014 being later + 6 months grace period allowed being unqualified)</p>
14.	Delay in handing over possession till the date of filing of this complaint i.e., 14.01.2019	6 months 6 days
15.	Basic sale consideration as per payment plan annexed with BBA at page 60 of complaint.	₹ 72,95,253.13/-
16.	Total amount paid as per call notice dated 07.12.2018 at page 77 of complaint.	₹ 69,31,278.55/-
17.	Offer of possession	Not offered
18.	Occupation certificate	Not yet obtained



- e. It is submitted that one Mr. Gurbachan Singh Paul on 20.06.2012 booked a unit with the respondent company. That the respondent company allotted him a flat bearing no. KINRS-1002.
- f. It is submitted that the allottee, Mr. Gurbachan Singh paid Rs. 36,07,828/- (Rupees thirty-six lacs seven thousand eight hundred and twenty-eight only) towards the said allotment after which because of certain personal reasons the allottee transferred his right in the said allotment to the complainants herein.
- g. That an application dated 03.01.2014, requesting for change in right to purchase was made to the respondent by the then allottee, Mr. Gurbachan Singh Paul and the complainants.
- h. That during the intervening period an apartment buyer's agreement was also executed between the respondent company and the then allottee on 08.01.2014. That as per the agreement a flat bearing no. KINRS-1002 was allotted to Mr. Gurbachan Singh Paul for a basic sale price of Rs. 65,85,933.12/- (Rupees sixty-five lacs eighty-five thousand nine hundred thirty-three and twelve paise only) measuring 1,762 Sq. Ft. That the payment for the said allotment was to be made as per the construction linked payment plan which means the payment was to be made as per the milestone achieved by the respondent in constructing the project.
- i. That it is to be noted that the agreement had been executed only after obtaining all the necessary approvals and sanctions from the competent authorities and the respondent had also charged the allottee for the commencement of the project. Thus, keeping all factors in mind the possession of the flat was to be delivered within



respondent has miserably failed to complete the construction of the project and is in no position to deliver the possession anytime soon in the near future. That the complainants have parted with a considerable amount of their hard-earned money and there is stagnant construction at the site with no hopes of getting the possession anytime in the near future, leading to mental and financial hardships borne by the complainants. That the failure of the respondent company has resulted in serious consequences being borne by the complainants as they were financially burdened to make payment for a possession which till date has not been completed. Thus, the complainants now seek the intervention of the Hon'ble Authority to grant them the refund of the amount of Rs.69,71,278.46/- (Rupees sixty-nine lacs seventy-one thousand two hundred and seventy-eight only) deposited by them with the respondent along with a prescribed rate of interest.

- o. That in spite of several requests of the complainants regarding the progress at the project and the date of delivery of possession of the flat no reply was ever made by the respondent answering the same or assuring the complainants of the possession of the flat. The complainants had not received any intimation from the side of the respondent regarding the reason for delay or the date of possession. That irrespective of the stage of construction the respondent yet again arbitrarily and illegally raised a demand of Rs.3,58,945.09/- on 07.12.2018. That the complainants also preferred a protest letter against the same as they now realized that they had been trapped by the respondent into making the



not maintainable before this Hon'ble Authority. The complainant has filed the present complaint seeking refund and interest for alleged delay in delivering possession of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone.

- b. That even otherwise, the Complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Apartment Buyer's Agreement dated 03.06.2013, as shall be evident from the submissions made in the following paragraphs of the reply.
- c. That the respondent is a Public Limited Company registered under the Companies Act, 1956, having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi-110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Vaibhav Chaudhary whose authority letter is attached herewith. The above said project is related to license no.32 of 2012 dated 12.04.2012, received from the Director General, Town & Country Planning, Haryana, Chandigarh (DGTCP) over the land measuring an area of 11.70



- f. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swinging in full mode and the work will be completed within prescribed time period as given by the respondent to the authority.
- g. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no. 20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing air quality index being worse, maybe harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only by liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of agreement as well as in compliance of other local



projects which registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled *as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298*, the liberty to the promoters/developers has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para No. 86 and 119 of the above said citation are very relevant in this regard.

- j. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the agreement.
- k. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainant has alleged that due date of possession in respect of the said unit was June 2016, and therefore, no cause of action is arisen in favour of the complainant, and thus, the present complaint



baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

m. That, it would be relevant to mention here in case titled as **Mr. Abhishek Mohan Gupta Vs. Mis Ireo Grace Realtech (Pvt.) Ltd., complaint No.2044 of 2018**, date of first hearing 12.03.2019, decided on 12.03.2019 by the hon'ble authority, in para no.36, it was held by the hon'ble authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtain clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 3 months and 13 days till the date of decision...."

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.
8. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement M/s



10. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I. Territorial jurisdiction

11. 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

12. 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.

13. 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 as per provisions of section 11(4)(a) of



the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", 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.I Objection regarding jurisdiction of authority w.r.t. retrospectivity of the Act

17. Objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority



18. Also, 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"

19. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the 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, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainant

G.I. Refund entire amount paid by the complainant along with the interest.

20. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of



incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoter are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

23. **Admissibility of grace period:** The respondent/promoter has raised the contention that the construction of the project was badly affected on account of the orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden



reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

26. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **10.10.2022** is **8%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10%**.
27. 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 08.07.2018 and there is delay of 6 months 6 days on the date of filing of the complaint.
28. 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....."



31. 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.
32. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 69,31,278.55/- 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

33. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f):
 - i. The respondent/promoter is directed to refund the entire amount of Rs. 69,31,278.55/- paid by the complainants along with prescribed rate of interest @ 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited 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.
 - iii. The respondent builder is directed not to create third party right against the unit before full realization of the paid-up amount along