

**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/5754/2019	M/s. International Land Developer Pvt. Ltd. R/o: 9 th Floor, ILD Trade Centre, Sector 47, Sohna Road, Gurugram-122018, Haryana	Sh. Pankaj Chandola (Advocate)
		Versus	
		Shweta Yadav R/o: B-2/6, Agrasen Apartment, Sector 7, Plot no. 10, Dwarka, New Delhi-110075 जयते	Sh. Ayush Beotra (Advocate)
2.	CR/ 183/2021	Shweta Yadav R/o: B-2/6, Agrasen Apartment, Sector 7, Plot no. 10, Dwarka, New Delhi-110075	Sh. Ayush Beotra (Advocate)
		Versus	
		M/s. International Land Developer Pvt. Ltd. R/o: 9 th Floor, ILD Trade Centre, Sector 47, Sohna Road, Gurugram-122018, Haryana	Sh. Pankaj Chandola (Advocate)

CORAM:

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

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. N.	Particulars	Details
1.	Name and location of the project	“Arete” at village Dhunela, sector 33, Tehsil Sohna, Gurgaon, Haryana
2.	Nature of the project	Group Housing Complex
3.	Project area	11.6125 acres



4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid up to 03.06.2019
5.	Name of licensee	M/s International Land Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. RC/REP/HARERA/GGM/312/44/2019 08.02.2019 valid upto 02.07.2022 Registered Area: 8.79 acres
7.	Apartment no.	A-1103, 11 th Floor (annexure C-3 on page no. 45 of complaint)
8.	Unit area admeasuring	1765 sq. ft. (annexure C-3 on page no. 45 of complaint)
9.	Approval of building plans	23.12.2013
10.	Date of booking	26.12.2013 (as per receipt of payment on page no. 32 of complaint)
11.	Date of allotment letter	06.04.2014 (annexure C-3 on page no. 45 of complaint)
12.	Date of environment clearance	15.04.2014
13.	Date of builder buyer agreement	Not executed
14.	Due date of possession	26.06.2018 (calculated from the date of booking i.e., 26.12.2017 as no BBA executed plus 6 months of grace period as the same is unqualified)
15.	Possession clause [Taken from the allotment letter]	13. That, subject to clause 13, the possession of the said unit shall be delivered by the Company to the Applicant(s) within 48 months from

		<p>the date of execution of buyer's agreement, with additional grace period of 6 months, provided that all amounts due and payable by the Applicant(s) have been paid to the company in timely manner. The Company shall be entitled to reasonable extension in delivery to the Applicant(s) have been paid to the Company in timely manner. The company shall be entitled to reasonable extension in delivery to the Applicants of the possession of the said unit in the event of any default or negligence attributable to the Applicants fulfillment of terms & conditions of Allotment/Buyer Agreement.</p>
16.	Total sale consideration	Rs. 88,18,445/- [as per payment plan annexed with allotment letter on page no. 47 of complaint]
17.	Amount paid by the complainant	Rs. 29,92,069/- [as alleged by complainant/builder on pg. 24]
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. A-1103, 11th Floor, Tower A was booked by Mrs. Shweta Yadav allottee/respondent with the promoter/ builder for a sum of Rs. 88,18,445/- in December, 2013. The allotment letter was issued on 06.04.2014 however, no BBA

- was executed between the parties. The due date for completion of the project & offer of possession as calculated from date of booking comes out to be 26.06.2018. 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. 10,57,004/- vide letter dated 01.05.2015 and further sent reminder letters dated 04.08.2015 and 14.10.2015 for payment of dues but to no avail.
4. The complainant/builder further raised demand for payment of Rs. 19,07,786/- vide letter dated 02.11.2015 followed by reminder letters dated 19.12.2015, 01.03.2016, 08.04.2016 and 10.04.2016 and final reminder letter dated 13.06.2016 for an amount of Rs. 30,97,980/-. The complainant/builder received an amount of Rs. 7,00,000 dated 21.06.2016 from the allottee/respondent.
 5. Thereafter, the complainant/builder gave an opportunity to the allottee/complainant to clear the dues by offering 100% waiver on interest. In lieu of the same, a demand letter dated 19.09.2016 was issued but to no avail. The builder then sent reminder letters dated 01.02.2016 and 10.02.2017. An intimation letter was again issued dated 29.03.2017 for payment of dues followed by reminder letter dated 01.05.2017. The builder/complainant, tired of non-payment of dues by allottee/respondent, issued a new allotment letter for the same unit in hope of receiving payment from the respondent/allottee but even after that the allottee did not pay the dues. That even the copy of BBA sent to respondent/allottee was not returned back.

6. 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.
7. The complainant/builder thus was 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:

8. The complainant-allottee has sought following relief(s):
 - i. 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.
 - ii. Direct the respondent to pay Rs. 1,00,000/- towards litigation expenses.

C. Reply by respondent-allottee:

9. 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.
10. 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. 18,00,000/- as booking amount. Thereafter, on 06.04.2014, the respondent was allotted the above-mentioned unit.
11. That the complainant-builder raised demand for 4th installment as per payment plan which was duly paid by the respondent on 24.05.2014. Thereafter, the respondent along with her husband, visited the construction site just to find out that the project is at standstill and nothing is there on ground. Even after this, the

- complainant-builder sent various demand letters for 5th, 6th, 7th and 8th instalments.
12. That after expiry of 26 months from the date of allotment, the respondent-allottee again visited the site and duly made payments towards 5th instalment (which was payable on completion of upper basement roof slab). This clearly indicates that the construction was going on at a very slow pace.
 13. That the allotment letter clearly mentioned that the project would be completed within 54 months from execution of BBA. In absence of an executed BBA, the due date has been calculated from date of allotment letter and comes out to be 06.04.2018 and even today, the possession of the unit has not been delivered.
 14. 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. 88,18,445/- No buyers agreement with regard to the allotted unit was executed between the parties. However, the allottee started making payments against the allotted unit and made a payment of Rs. 29,92,069/-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 payments. 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.

21. Considering the above-mentioned facts, the allottee paid a sum of Rs. 29,92,069/- to the builder against the total sale consideration of Rs. 88,18,445/-. The due date of completion of project was calculated from the date of signing of booking for application as the BBA has not been executed between the parties. 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** observed that, *"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"*.

22. In the instant case, however, unlike the case cited above, the stipulated time of 48 months plus 6 months of grace period from date of execution of BBA has been specified for calculation of due date. However, no BBA was executed between the parties. Therefore, the duration of 48 months plus 6 months of grace period has been calculated from the date of signing of application for booking as it is the only contract that has been executed between the parties. In facts and circumstances of this

case, a period of 48 months plus 6 months of grace period from the date of signing of any contract can be considered as a reasonable time for completion of contract as both the parties agreed to it. In view of the reasoning stated above, the due date of possession comes out to be 26.06.2018.

23. No doubt the allottee committed default in making various payment against the allotted 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.
24. 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.
25. 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.....”

26. 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

27. 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.
28. 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.
29. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 29,92,069/- 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:

30. 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:

31. 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. 29,92,069/-** received by him 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/ 183/2021.
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



HARERA
GURUGRAM