

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

Complaint no. : 6285 of 2019
First date of hearing: 27.02.2020
Date of decision : 08.12.2022

1. Rajendra Singh
2. Urmil Singh
Both RR/O: 265, DDA Flats, Pocket-1,
Sector-1, Dwarka, New Delhi-110075

Complainants

Versus

M/s Pareena Infrastructure Pvt. Ltd.
Office: C-7A, Second Floor, Omaxe City Centre,
Sector-49, Sohna Road, Gurugram-122018

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member
Member**

APPEARANCE:

Sh. Tushar Behmani (Advocate)
Sh. Prashant Sheoran (Advocate)

**Counsel for the complainants
Counsel for the respondent**

ORDER

1. The present complaint dated 11.12.2019 has been filed by the complainant/allottees 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 there under 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details	
1.	Name and location of the project	"The Elite Residences", sector-99, Gurgaon	
2.	Nature of the project	Group Housing	
3.	licensed area	12.031 acres and 1.289 acres	
4.	DTCP license no.	70 of 2011 dated 22.07.2011 valid up to 21.07.2024 82 of 2012 dated 27.08.2012 valid up to 26.08.2023	
5.	Name of licensee	Shivnandan Buildtech Pvt. Ltd.	
6.	RERA Registered/ not registered	Registered vide no. 46 of 2019 issued on 25.09.2019 up to 31.07.2020	
7.	Unit no.	A-602, 6 th floor, Tower A [page no. 30 of complaint]	
3.	Unit admeasuring area	2150 sq. ft. of super area [page no. 30 of complaint]	
4.	Provisional allotment letter	09.05.2013 [page no. 24 of complaint]	
5.	Date of builder buyer agreement	17.04.2014 [page no. 27 of complaint]	
6.	Possession clause	<i>3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans.....</i> Emphasis supplied....	
7.	Date of start of construction	Not Provided	
8.	Due date of possession	17.04.2018 [calculated from the date of execution of agreement i.e. 17.04.2014]	
9.	Cancellation of booking letter	N/A	
10.	Total sale consideration	Payment plan	Statement of account
		Rs.1,39,11,425/- {excluding taxes}	Rs. 1,45,03,815/- [page 82 of

		[page 53 of complaint] complaint]
11.	Total amount paid by the complainant	Rs.1,02,37,706/- [as per SOA dated 13.08.2019 on page no. 84 of complaint]
13.	Occupation certificate	Not obtained
14.	Offer of Possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- I. That the complainants booked the unit in question with the respondent by paying booking amount of Rs.12,50,000/- on 15.04.2013 and unit no. A-602, admeasuring 2150 sq. ft., in the project named "The Elite Residences' of the respondent was allotted to the complainants.
- II. That the complainants who initially booked a residential unit in the other project of the respondent namely, 'Coban Residences' first and additionally booked the unit in dispute in project namely 'The Elite Residences' merged the from the 'Coban Residences' to 'The Elite Residences' which was approved and accepted by the respondent and the confirmation letter was issued to the said effect by the respondent to the complainants on 04.06.2015. The amount which was initially paid pertaining to the booking and first demand of the unit in 'Coban Residences' was duly transferred to the accounts of 'The Elite Residences' by the respondent. That the complainants received an allotment letter along with schedule of payments and provisional allotment letter from the respondent on 09.05.2013.
- III. That the buyer's agreement was signed between the complainants and the respondent on 17.04.2014. The basic sale price was Rs.1,22,00,175/-. That the clause 1.2 (d) mentions that the complainants had already paid Rs.12,50,000/- towards the sale price of the said unit till the allotment of

the said unit. So, there is no dispute as regard to the payment of booking amount to the respondent. The statement of accounts dated 04.01.2016 also clarifies all the payments were duly made by the complainants to the respondent as and when they were demanded. Further payment of Rs. 18,62,203/- was made to the respondent on 06.10.2016 after issuance of SOA.

- IV. That the clause 3.1 of the buyer's agreement dated 17.04.2014 mentions that the respondent shall handover the possession of the unit within a period of 4 years from the date of start of construction or execution of this agreement whichever is later. Hence, the due date of handing over of the possession is to be determined from date of execution of the buyer's agreement dated 17.04.2014. So, the actual date of handing over of actual physical possession after adding period of 6 months (clause 5.1) if the developer is unable to complete construction of the said unit as provided in was on or before 17.10.2018.
- V. That the clause 5.1 of the buyer's agreement dated 17.04.2014 specifies that in the event the respondent fails to deliver the possession of the unit to the complainants within the stipulated time period and as per the terms and conditions of the buyer's agreement, then the respondent shall pay to the complainants, compensation at the rate of Rs.5/- per sq. ft. per month of the super area till the date of notice of possession as provided hereinabove in the agreement.
- VI. That the complainants had paid the 70% of the total amount of sale consideration as per the payment schedule i.e. Rs. 1,02,37,706.03/- as demanded by the respondent. This is admitted fact as per the statement of accounts as on 04.01.2016 that payment of Rs. 81,95,631/- was made till 04.01.2016. The said statement of accounts dated 04.01.2016 clearly shows the deposited amount with the respondent in way back in January

2016. On 06.10.2016, the complainants deposited further an amount of Rs. 18,62,203/-, and thereafter, the respondent has not raised further demands after its last demand dt. 16.09.2016.

- VII. That as per the buyer's agreement dated 17.04.2014, the respondent required to handover the actual physical possession of the mentioned unit on or before 17.10.2018 which includes 6 months' time of grace period after the expiry of 4 years from the date of execution of the buyer's agreement. But due to the factual circumstances at the site of the said project, the construction work has not completed even 50% of the total construction work. The construction work has been stalled for last 2 years for the reasons unknown to the complainants. That the complainants dream to own the unit in question has been thrashed by the respondent by not fulfilling its terms and conditions which are prescribed the said buyer's agreement.
- VIII. That the complainants have been duped off with their hard-earned money invested in the said residential project in present complaint. The said investment was made by the complainants with all her efforts to suffice the dream of their family of having their own home and live a peaceful and secured life.
- IX. That the respondent has violated every promise to provide all property till date despite taking the 70% of the total sale consideration i.e. Rs.1,02,37,706.03/- from the complainants due to their own known reasons of delay in completion of the project at the site for which the complainants have suffered. That already August 2019 has come but the construction work at the site of the project in dispute has not been completed yet and which does not seem to be getting completed in another 2 years as per the factual conditions of the construction work at the site.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. **Direct the respondent to refund the money of Rs. 1,02,37,706/- paid by the complainants for allotment in the project along with interest from the date of respective deposits till its actual realisations.**
 - II. **To pay the compensation of Rs. 10,00,000/- for causing mental agony, harassment.**
 - III. **To pay the legal cost of Rs. 1,00,000/- for the legal costs.**
5. 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

6. The respondent has contested the complaint on the following grounds.
- a. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "COBAN RESIDENCES" at sector 99A and another one is "Elite Residences" at Sector-99, Gurugram.
 - b. That the construction work of both the above said projects are at an advance stage and the structure of various towers has already been completed and remaining work is endeavored to be completed as soon as possible.
 - c. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of installments by various allottees. This clearly shows un-wavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon

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as possible. The amounts which were realized from the complainant have already been spent in the development work of the proposed project. On the other hand the respondent is still ready to deliver the unit in question of this due completion to the complainant, of course, subject to payment of due installments and charges.

- d. That admittedly completion of project is dependent on collective payment by all the allottees and just because few of the allottees paid the amount demand does not fulfill the criteria of collective payment. That the numerous allottees have defaulted in payment demanded by respondent, resulted in delaying of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds. That current status of amount due to other allottees is being assessed by respondent and it will be provided as soon as possible.
- e. That the builder buyer agreement was executed between the parties on 17.04.2014. However, certain extremely important facts were concealed by the complainants while drafting the present complaint. That the complainants admit the fact that they had also booked a unit at "COBAN RESIDENCES" and the amount of same was later on merged with unit at Elite residences, however, the complainants have intentionally concealed the facts which lead to merger of both the units.
- f. That a unit bearing number T-6/102 was booked by the complainants in the project of the respondent i.e. "COBAN RESIDENCES" and apartment buyer agreement was executed between the complainants and the respondent qua the unit at "COBAN RESIDENCES" on 10.01.2014.

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- g. That after execution of the said apartment buyer agreement complainants stopped making payment as per the demand raised by the respondent. That on 10.01.2014 respondent issued a demand letter whereby an amount of Rs. 10,16,665/- was demanded against the stage of start of excavation. That it was requested in the said demand letter that the payment should be made on or before 15.10.2014, However complainants failed to pay the said amount on the due date. Thus, the respondent was constrained to issue first reminder to the demand raised by the respondent on 12.11.2014 wherein it was requested to clear the amount. That thereafter another reminder number 2 was issued to the complainants on 11.12.2014 and again it was requested to clear the amount at the earliest. That even thereafter when the complainants failed to clear their dues, the respondents again issued a reminder number 3 & 2 January 2015. That even after issuing of three reminders the complainants failed to pay the amount legally demanded by the respondent.
- h. That thereafter complainants contacted the respondent and requested that since they were not in a condition to pay the amount demanded by the respondent, thus they requested to merge the amount paid by them against the unit at "COBAN RESIDENCES" with the unit in the other project. That at that point of time since the apartment buyer agreement was already executed between the parties, the respondent could have forfeited the amount paid by the complainants against the unit "COBAN RESIDENCES" but to build a healthy builder buyer relation said request of the complainants were accepted and approval note was issued on 12.06.2015 in this regard. That as per said approval note the amount which was paid by the complainants were

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adjusted in their unit in "Elite Residences". That the complainants also issued a consent letter to the respondent against merger.

- i. That the apartment buyer agreement for the unit bearing number A-602 was executed between the parties on 17.04.2014. That the complainants were also in default in making payment against the demand raised by the respondent against the said unit as well. That after execution of apartment buyer agreement on 17.04.2014 respondent issued several demand letters and reminders but the complainants failed to pay them on time. That timely payment was the most important condition of the apartment buyer agreement and all other conditions are subject to timely payment by the complainants. It was specifically mentioned in clause 1.2(ii) of the agreement that " the flat Allottee will be required to pay the charges pro rata per square feet or as determined or demanded by the developer" however in the present case the complainants miserably failed to pay the demand as and when raised by the respondent. When the complainants themselves are at wrong and they cannot put blame of their own wrong on the respondent. That after execution of apartment buyer agreement demand letters as well as the reminders were raised by the respondent on 12.05.2014, 01.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 08.11.2014, 01.12.2014, 17.12.2014, 09.01.2015, 26.02.2015 and 09.03.2015. That after issuance of above stated demand letters the respondent on the request of complainants temporarily adjusted the amount paid against another unit at "Coban Residences" in the unit at "Elite Residences" and sent a mail in this regard to the complainants. That after merger the complainants paid an amount of Rs. 32,06,602/- on 12.06.2015.

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- j. That thereafter on 12.10.2015 another demand letter was issued by the respondent whereby an amount of Rs. 20,90,163/- was demanded against the completion of top floor roof slab and requested to pay the same on or before 02.11.2015. However the complainants again failed to pay the same on time and again after the delay of more than one month only an amount of Rs. 16,97,493/- was paid by the complainants. On 16.09.2016 respondent issued another demand letter whereby an amount of Rs 20,43,005/- was demanded against completion of brick work and internal plaster. That even a mail was sent to the complainants in this regard. That even at this time the complainants did not pay the total amount demanded and only an amount of Rs. 18,62,203/- was paid.
- k. That from the aforesaid facts and circumstances it is crystal clear that the complainants are habitual defaulters and they kept on making the defaults in making payment since the very beginning. That as already discussed above the construction is subject to timely payment by the allottees including the present one and from the aforesaid facts it is quite clear that the complainants never paid the amount as and when demanded. That without the prejudice to the rights of respondent it is submitted that no plausible explanation was provided by the complainants as to how they can demand possession without paying due amounts on time. It is submitted that as per clause 3.1 and 5.1 of the agreement the builder shall **under normal conditions** shall complete the construction within 4 years 6 months and as per clause 15 the respondent is entitled to extension of time period since non-payment of the demands raised are beyond the control of the respondent and it is quite clear that without appropriate funds it is not possible to complete the project. That even as per clause 1.3 of the

agreement the flat allottee shall make all payments in time without any reminders from the developer. However in the present case the respondent issued several reminders in order to get the payment from complainants. That since the complainants themselves were violating the terms and conditions of the agreement since its execution they are not entitled for any relief. That as far as the delivery of possession is concerned, the same is governed by clause 3.2 of the agreement. That as per the clause 3.2 the possession shall only be delivered only after grant of occupation certificate. Thus the stage of offer of possession is yet to arrive.

7. 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 by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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 complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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10. 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.

11. 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.
12. 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 (Civil), 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

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'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."

13. 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 relief sought by the complainant.

F.1 Direct the respondent to refund the money of Rs. 1,02,37,706/- paid by the complainants for allotment in the project along with interest from the date of respective deposits till its actual realizations.

14. The complainants initially booked a unit other project of the respondent namely "Coban Residences" first and additionally booked the unit in dispute in project namely "The Elite Residences" merged from the "Coban Residences" "The Elite Residences" which was approved and accepted by the respondent vide confirmation letter dated 04.06.2015. The complainants allotted unit bearing no. A-602, 6th floor admeasuring 2150 sq. ft. vide allotment letter dated 09.05.2013. The buyer's agreement was executed between the parties on 17.04.2014 with a basic sale price of Rs. 1,22,00,175/-. As per buyer's agreement, the respondent should handover of possession of the said unit within 4 years from the date of start of construction or execution of agreement whichever is later. Hence, the due

date of possession comes out to be 17.04.2018 (calculated from the date of execution of agreement). The complainant were paid an amount of Rs. 1,02,37,706/- against the sale consideration. Despite taking the 70% amount of the total sale consideration from the complainants the respondent failed to offer of possession to the complainants of the subject unit.

15. 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.
16. The due date of possession as per agreement for sale as mentioned in the table above is **17.04.2018** and there is delay of almost **1 years 7 months 24 days** on the date of filing of the complaint.
17. 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....."

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18. 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,"

19. 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.

20. The authority hereby directs the promoter to return the amount received by him i.e., Rs.1,02,37,706/- with interest at the rate of 10.35% (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*.

F.II To pay the compensation of Rs. 10,00,000/- for causing mental agony, harassment.

F. III To pay the legal cost of Rs. 1,00,000/- for the legal costs.

21. The complainants are also seeking relief w.r.t litigation expenses & 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.* (supra), 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 complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

G. Directions of the authority

22. 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 is directed to return the amount received by him i.e., Rs.1,02,37,706/- with interest at the rate of 10.35% (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.

- 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 is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainants.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.12.2022

HARERA
GURUGRAM