

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

Complaint no. :	2048/2019
Date of filing complaint:	08.05.2019
First date of hearing:	03.12.2019
Date of decision :	25.01.2023

Mrs. Manju Gupta R/O: K-204, Second Floor, South City-I, Gurugram.	Complainant
Versus	
M/s Earth Infrastructures Ltd R/o: 1501-1503, 15 th Floor, Tower-A, Signature Tower Gurgaon, Haryana.	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Vinayak Gupta Advocate	Complainant
None	Respondent

ORDER

- The present complaint 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 29 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 provisions 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Earth Iconic" Sector 71, Badshahpur, Gurugram-Manesar Urban complex, Haryana
2.	Project area	13595.79 Sq. Mtrs.
3.	Nature of the project	Commercial Space
4.	DTCP License	Not Available
5.	Name of the licensee	Not Available
6.	RERA Registered/ not registered	Unregistered
7.	Unit location	Ground Floor (Tentative) (Annexure C-7 Page no. 43 of complaint)
8.	Unit measuring (carpet area)	170 sq. ft. (Annexure C-7 Page no. 43 of complaint)
9.	Date of Booking	01.10.2011 (Annexure C-2 Page No. 25 of complaint)
10.	Date of allotment	14.07.2012 (Annexure C-7 Page No. 42 of complaint)
11.	Date of execution of MoU	14.07.2012 (Annexure C-7 Page No. 42 of complaint)
12.	Possession clause	No Mention.
13.	Due date of possession	No Mention.

14.	Assured Return	Clause 3 of MOU <i>The Company hereby undertakes to make the fixed payment of Rs 21,000/- (Rupees Twenty One Thousand Only) (Referred to as Commitment Amount) every calendar month to the Intending Allottee(s) w.e.f May 2012 till June 2015 or till the date of offer of possession whichever is later, which the intending Allottee(s) duly accepts. The Intending Allottee(s) agrees that the Commitment Amount payable by the Company is subject to the timely payment of the balance due amount to be made by the Intending Allottee(s) to the Company on or before the due date as agreed by the Intending Allottee(s) to pay.</i>
15.	Total sale consideration	Rs.35,97,580/- (Annexure C-7 on page no. 43 of complaint)
16.	Total amount paid by the complainant	Rs. 35,00,000/- (Annexure C-8 on page no. 48 of complaint)
17.	Occupation Certificate	Not received
18.	Offer of possession	Not offered

B. Facts of the complaint:

- That the complainant in the year 2011 came across a Project called "Iconic Shoppe" located in Sector 71, Village Badshahpur, Gurgaon-Manesar Urban Complex, Haryana.
- In October-September 2011, the complainant booked commercial space for ATM admeasuring 170 Sq. ft. She made initial booking by payment of Rs. 4,00,000/- (Rupees Four Lakhs only) vide Cheque No. 54851 dated 28.09.2011 of UCO Bank against the abovementioned commercial space/Unit/ATM for which the respondent issued Receipt No. 0080 dated 30.09.2011. The respondent vide letter dated 01.10.2011 confirmed the

complainant of receiving booking details of commercial space for ATM in their project "Iconic Shoppee"

5. Subsequently, a Memorandum of Understanding dated 14.07.2012 was executed by the complainant for a Commercial Space for total cost of the of Rs. 35,97,580/-. Further, Clause 3 of Memorandum of Understanding suggests that the respondent undertook to make fixed payment of Rs. 21,000/- per month w.e.f. May 2012 till June 2015 or till date of possession whichever is later. Moreover, as per Clause 4.1 of Memorandum of Understanding it was undertaken by the respondent company to execute a conveyance deed in favour of the complainant.
6. That the assured return has been paid by the respondent from May 2012 to March 2014 only, and after which it was abruptly stopped.
7. The Complainant/allottee has till date paid a total amount of Rs. 35,00,000/- to the respondent against the said unit. But despite almost entire payment and the same being affirmed by respondent in various communications neither the documents regarding the Unit have been prepared nor possession has been offered to the complainant

C. Relief sought by the complainant:

8. The complainant has sought the following relief(s):
 1. To refund amount of Rs. 35,00,000/- paid by complainant along with interest to the respondent towards Commercial Space/Unit/ATM Space in question since 30.09.2011.

- II. To direct the respondent to pay the complainant assured return of Rs. 21,000/- from April 2014 to till date of actual physical possession along with interest;
 - III. To direct the respondent to Pay Rs. 10,00,000/- as damages to the complainant on account of mental agony, torture and harassment.
 - IV. To direct the respondent to Pay Rs. 10,00,000/- as compensation to the complainant as deficiency of service;
 - V. To direct the respondent to refund of all legal cost of Rs. 2,00,000/- (Two Lakh Only) incurred by the complainant;
9. The respondent neither put in appearance and nor filed any written reply despite due service and giving several opportunities. So, the authority was left with no option but to proceed against it ex-parte and hear on the basis of averments given in the complaint and the documents placed on the file.

D. Jurisdiction of the authority:

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

D.1 Territorial jurisdiction

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.

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.

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. Though the Authority in complaint bearing no. 744/2018 decided on 25.08.2022 took a view that it has jurisdiction to decide the complaint against the respondent for non-compliance of obligations by the developer but it has come to its notice that in CA-920/2019 filed under section 30(6) of the IBC, 2016 in CP(IB)-1768(ND) 2018, titled as "Sanjay Malik & Ors. Vs Celestial Estate Pvt Ltd." the National Company Law Tribunal, New Delhi vide its order dated

15.03.2021 approved a Resolution plan of the project "Earth Iconic" Sector-71, Gurugram, which commenced in CP No. IB-401(ND)2017 on 06.06.2018 appointing Shri Surender Kumar as the Interim Resolution professional and creating moratorium with regard to institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority. So in view of moratorium created by NCLT, New Delhi against the project as well as the respondent, no orders for refund or any other relief can be passed by the Authority and the complainant can move before that forum for the desired relief if the law so permits.

E. Findings on the relief sought by the complainant:

E.1 Direct the respondent to refund the amount of Rs. 35,00,000/- along with interest.

12. In view of observations of the Authority recorded in the preceding para, no order with regard to refund of the paid-up amount with interest can be passed.

E.2 1. Direct the respondent to Pay Rs. 10,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment.

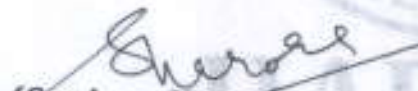
2. Direct the respondent to Pay Rs. 10,00,000/- as compensation to the complainant as part of deficiency of service on their part;

3. Direct the respondent to refund of all legal cost of Rs. 2,00,000/- (Two Lakh Only) incurred by the complainant.

13. In view of observations of the Authority in the preceding para, no order with regard to compensation and cost of litigation can be passed.

F. Directions issued the Authority:

14. Hence, in view of the observations made by the Authority and moratorium with regard to institution of proceeding with the suits against the respondent, the complaint filed is not maintainable and the same is hereby ordered to be adjourned sine-die with liberty to complainant to file an application for revival of complaint after moratorium imposed by NCLT is removed/lifted by the competent authority. However, the pendency of the complaint before the Authority would not be a bar for the complainant to file a claim before IRP if the law so permits.
15. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.01.2023