

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

Complaint no.	:	485 of 2020
First date of hearing:		20.02.2020
Date of Decision	:	20.04.2023

1. Mahesh Kumar 2. Manju Shrivastava Both R/o: 106, Ground Floor, Woodstock Floor, Nirvana Country, Sector-50, Gurugaon-122018	Complainants
Versus	
M/s Ireo Grace Realtech Private Limited Office at : - C-4, 1 st Floor, Malviya Nagar, New Delhi, South Delhi-110017	Respondent
CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Shri S Dutta (Proxy Counsel)	Complainants
Shri M.K Dang (Advocate)	Respondent

ORDER

1. The present complaint dated 31.01.2020 has been filed by the complainants/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 provisions of the Act or the rules



and regulations made thereunder 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. No.	Heads	Information
1.	Project name and location	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Licensed area	37.5125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	05 of 2013 dated 21.02.2013 valid upto 20.02.2021
	Licensee	M/s Precision Realtors Pvt. Ltd. and 5 others.
5.	RERA registered/not registered	Registered in 3 phases
6.	Unit no.	504, 5th Floor, Tower B3 (Page 32 of the complaint)
7.	Unit measuring	1726.69 sq. ft. (Page 32 of the complaint)
8.	Date of approval of building plan	23.07.2013 (annexure R-10 on page no. 60 of reply)
9.	Date of allotment	07.08.2013 (page no. 19 of complaint)
10.	Date of environment clearance	07.08.2013 (page no. 19 of complaint)
11.	Date of execution of builder buyer's agreement	31.07.2014 (as stated by complainants) (Copy of executed BBA has been



		annexed but date is not mentioned)
12.	Date of cancellation letter	17.11.2014 (annexure R-13 on page no. 71 of reply)
13.	Total consideration	Rs. 1,73,06,088/- (As per payment plan on page 22 of complaint)
14.	Total amount paid by the complainants	Rs. 33,46,486/- (As per cancellation letter on page no. 71 of reply)
15.	Due date of delivery of possession	23.01.2017 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
16.	Occupation certificate	31.05.2019 (Page 76 of reply)
17.	Offer of possession	Not offered as already cancelled

B. Facts of the complaint

The complainants have submitted as under:

3. That the complainants made an application in the project of the respondent and paid a booking amount of Rs. 16,50,000/- after which the allotment letter was issued by the respondent.
4. That the complainants therefore had made a payment of Rs. 33,46,486/- to the respondent without being in receipt of the buyer's agreement. After the payment of such amount, they issued the offer of allotment of residential apartment containing such conditions which did not allow any freedom to the complainants to make any amendment.

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5. That the complainants thereafter signed the dotted lines of the agreement on 31.07.2014 or else they would forfeit the entire amount paid by them.
6. That such unilateral agreements have already been held to be illegal and arbitrary and inapplicable while deciding the compensation for the allottees by several courts. The complainants were lay men and had no idea that the respondent company would indulge in such illegal malpractices.
7. That while in case of the complainants making the delay in payment of the instalments the respondent company was entitled to charge interest @ 20% p.a. but they were only entitled to meagre amount of Rs. 7.50/- per sq. ft. of the super area for every month of delay until the actual date fixed by the company for offering possession.
8. That the complainants observed that the construction on the site was not going according to the proposed construction and payment plan. The health condition of the complainant no. 1 was also deteriorating who was going through severe medical problems. The complainant no. 1 during the intervening period had suffered a heart attack. He was also a patient of diabetes also lost his job from the Ranbaxy (where he was director) due to the acquisition of the same by the Sun Pharma. His financial and medical conditions were forcing him to seek extension of time for payments from the respondent.
9. That neither the respondent accepted the request of the complainants, nor did ever reply to the queries of the complainants for the extension of time for payment. They continuously issued the demand letters upon complainants for payment.
10. That the complainants made several requests to the respondent citing their medical and financial problems, but they cancelled the allotment of



the unit vide letter dated 17.11.2014. Thus, they deeply aggrieved by the action of the respondent of cancelling the allotment.

11. That the respondent company not only cancelled the allotment of the complainants but also forfeited the entire amount paid by them. The respondent forfeited 20% of the sale consideration but also charged delay penalty interest and service tax on forfeiture.
12. That the respondent company no conducted itself in fair and transparent manner. The deductions made by them at time of forfeiture were not transparent in any sense.

C. Relief sought by the complainants:

13. The complainants have sought following relief(s):

(i) Direct the respondent to refund the money paid by the complainants till date i.e., Rs. 33,46,486/- along with prescribed rate of interest from the date of payment till realisation of the amount.

14. 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.

The respondent has contested the complaint on the following grounds: -

15. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The allotment of the unit allotted to the complainants was terminated prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.

16. That there is no cause of action to file the present complaint.



17. That the complainants have no locus standi to file the present complaint.
18. That the present complaint is barred by limitation.
19. That the complainants are estopped from filing the present complaint by their own acts, conducts, omissions, admissions, acquiescence and laches.
20. That this Hon'ble Authority does not have the jurisdiction to try and decide the present complaint.
21. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 35 of apartment buyers agreement.
22. That the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
23. That complainants, after checking the veracity of the project namely, 'The Corridors', Sector 67-A, Gurgaon had applied for allotment of an apartment vide their booking application form dated 22.03.2013.
24. That based on the application for booking, the respondent vide its letter dated 07.08.2013 allotted to complainants apartment no. CD-B3-05-504 having tentative super area of 1726.69 sq. ft. for a total sale consideration of Rs. 1,73,06,088.42.
25. That the respondent had sent the copies of the apartment buyer's agreement to the complainants vide its letter dated 21.03.2014. However, the same was executed between the parties on 31.07.2014 only after issuance of reminders dated 28.05.2014 and 17.07.2014 by respondent.



26. That the respondent raised payment demands from the complainants in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and they made some payments in time and then started delaying and committing defaults. The respondent had raised the third instalment demand on 18.03.2014 for the net payable amount of Rs. 19,96,928/-. However, they failed to do so despite issuance of reminders dated 13.04.2014, 04.05.2014 and final notice dated 29.08.2014.
27. That timely payment of installments within the agreed time schedule was the essence of allotment. The complainants are real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, their calculations went wrong on account of slump in the real estate market, and they were not possessed with sufficient funds to honour commitments. The complainants were never ready and willing to abide by contractual obligations.
28. That as per clause 13.3 of the apartment buyers agreement and clause 43 of schedule- I of the booking application form, the respondent was to offer the possession to the complainants within a period of 42 months + 180 days grace period from the date of approval of the Building Plans and/or fulfilment of the preconditions imposed thereunder. Furthermore, complainants had undertaken in clause 44 of schedule- I of the booking application form for an extended delay period of 12 months from the date of expiry of the grace period. From the aforesaid terms of the booking application form, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub- clause (iv) of clause 17 of the memo of approval of building plan dated 23.07.2013 of the said project



that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. It is submitted that the environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan duly was to be duly approved by the fire department before the start of any construction work at site. The fire scheme approval was granted on 27.11.2014 and the time period for offering the possession, according to the agreed terms of the booking application form, would have expired only on 27.11.2019. There could not be any delay till 27.11.2019.

29. That on account of non-fulfilment of the contractual obligations by complainants and despite several opportunities extended by the respondent, their allotment of the unit was cancelled, and the earnest money was forfeited vide cancellation letter dated 17.11.2014 in accordance with clause 21 read with clause 21.3 of the apartment buyer's agreement. The respondent has applied for the grant of occupation certificate vide application dated 06.07.2017 and the occupation certificate was granted on 31.05.2019.
30. Copies of all the relevant documents have been filed and placed on the 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

31. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The

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

E. I Territorial jurisdiction

32. 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

33. 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.

34. 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.

35. 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.*** SCC Online SC 1044 decided on 11.11.2021 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 '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."

F. Findings on the objections raised by the respondent.

F.I Objection regarding complainants are in breach of agreement for non-invocation of arbitration

36. The respondent submitted that the complaint is not maintainable for the reason that the buyer's agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"35. Dispute Resolution by Arbitration



"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".

37. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the application form as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.



38. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

F.II Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

39. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyer's agreement was executed between the complainants and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

40. The authority is of the view 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. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules.



The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers.

41. Further, 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."

42. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer 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 and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

G. Findings regarding relief sought by the complainants.

A

- (i) Direct the respondent to refund the money paid by the complainants till date i.e., Rs. 33,46,486/- along with prescribed rate of interest from the date of payment till realisation of the amount.
43. The complainants-allottees booked a residential apartment in the project of the respondent named as "Corridors" situated at sector 67-A, Gurgaon, Haryana for a total sale consideration of Rs. 1,73,06,088/-. The allotment of the unit was made on 07.08.2013. Thereafter on 31.07.2014 the builder buyer agreement was executed between the parties.
44. As per the payment plan the respondent started raising payments from the complainants but they defaulted to make the payments. The complainants-allottees in total has made a payment of Rs. 33,46,486/-. The respondent vide letter dated 18.03.2014 raised the demand towards third instalment and due to non-payment from the complainants it sent reminders on 13.04.2014 and 04.05.2014 and final notice on 29.08.2014. Further due to non-payment respondent cancelled the allotment of the unit of complainants on 17.11.2014. The occupation certificate of the tower where the allotted unit is situated has been received on 31.05.2019.
45. The respondent-builder took a plea that after the cancellation of allotted unit on 17.11.2014, the complainants filed the present complaint on 31.01.2020 i.e., after more than 5 years and thus, is barred by the limitation. The authority observes that the case of the complainants is not against the cancellation letter issued way back as on 17.11.2014 as the same cannot be agitated as complaint was filed after more than 5 years well beyond the limitation period. But the promoter was required to refund the balance amount as per applicable cancellation clause of the buyer's agreement.



46. The cancellation of the unit was held before the Act was in force. So, the deduction should be made as per the relevant clause of the buyer's agreement. Clause 6 of earnest money is reproduced hereunder:

The Company and the Allottee hereby agree that 20% of the Sale consideration of the Apartment shall be deemed to constitute the Earnest Money."

47. Keeping in view the above-mentioned facts the promoter was to return the paid-up amount after retaining 20% of the sale consideration and that amount should have been paid on the date of cancellation itself. However, in the present matter the complainants have paid only Rs. 33,46,486/- against the total sale consideration of Rs. 1,73,06,088/- which is less than 20%. The authority is of the view that deductions of earnest money has been made as per builder buyer agreement and the complaint is barred by limitation and hence, no case for refund of any amount is made out.
48. Complaint stands disposed of.
49. File be consigned to the registry.

HARERA
GURUGRAM
V.I. - [Signature]
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.04.2023