

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

<b>Complaint no.</b>	<b>:</b>	<b>512 of 2022</b>
<b>Date of Decision</b>	<b>:</b>	<b>04.05.2023</b>

<b>Shivani Sholapure</b> R/o: A-4601, Ireo Victory Valley, Sector-67, Gurugram	<b>Complainant</b>
Versus	
<b>M/s Ireo Victory Valley Private Limited</b> Office at : - Ireo City, Golf Course Extension Road, Gurugram, Haryana-122002	<b>Respondent</b>
<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Kanish Bangia ( Advocate)	Complainant
Shri M.K Dang (Advocate)	Respondent

**ORDER**

1. The present complaint dated 28.02.2022 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 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 complainant, 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	"Ireo Victory Valley" at Golf Course Extension Road, Sector 67, Gurgaon, Haryana
2.	Licensed area	24.6125 acres
3.	Nature of the project	Group Housing Colony
4.	Unit no.	A4601, 45th Floor, Tower A (Page 64 of the complaint)
5.	Unit measuring	4279 sq. ft. (Page 64 of the complaint)
6.	Date of allotment	10.01.2011 (page no. 54 of complaint)
7.	Date of execution of builder buyer's agreement	05.07.2011 (page no. 62A of complaint)
8.	Total consideration	Rs.3,93,66,800/- (as per complaint)
9.	Total amount paid by the complainant	Rs.3,93,66,800/- (as per the complaint)
10.	Occupation certificate	28.09.2017 (page no. 84 of reply)
11.	Offer of possession	26.09.2018 (Page no. 86 of complaint)
12.	Conveyance Deed	10.11.2021 (page no. 94 of reply)

**B. Facts of the complaint**

The complainant has submitted as under:





3. That in 2010, the respondent issued an advertisement announcing a residential group housing project called 'The Victory Valley' Sector 67, Gurugram. The complainant paid an amount of Rs. 39,36,680/- and booked the unit.
4. That on 05.07.2011 the builder buyer agreement was executed, and the complainant had already paid an amount of Rs. 98,45,514/- in favour of respondent before the execution of BBA.
5. That the complainant against the demand notices raised by the respondent have paid a sum total of Rs. 4,26,42,670/- in favour of the respondent.
6. That the complainant had sent multiple E-mails communications during the time duration between month of the march and august intimating the respondent for the possession of the said unit. With great regret the complainant did not receive any revert from the respondent.
7. That the complainant moved an application for the interest for the delayed period as the delivery was not being offered, on 05.07.2014. During the pendency of the complaint the complainant offered the possession on 26.09.2018
8. That the complainant had visited the office of the respondent with the offer of possession dated 26.09.2018 and objected the illegal demands like BSP towards additional area amounting to Rs. 37,10,750/-, additional corresponding EDC / IDC of Rs. 8,21,051/- labour cess which is not payable by the complainant amounting to Rs. 1,59,827/-, applicable carrying cost, unheard of amounting to Rs. 2,88,912/-, VAT Liability beyond the deemed date of possession amounting to Rs. 2,91,985/-, corresponding increase in CGST / SGST of Rs. 4,71,839/-, increase in the corresponding stamp duty being asked for, which totals to Rs. 57,44,364/-.

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9. That the Authority ordered as under considering the date of offer being 26.09.2018 but ignoring the fact that the offer of possession carries many demands, which are not as per the builder buyer agreement and hence the offer of possession cannot be considered as a valid offer of possession.
10. That since the offer of possession was produced during the proceedings, the complainant could not be given an opportunity to amend the complaint at the last stage after raising objections on the illegal offer of possession, which was loaded with many demands not being a part of the builder buyer agreement.
11. That the respondent did not have the money to pay to various vendors for completion of the work to finish the apartment and make it in a habitable condition. The respondent therefore asked the complainant to pay certain cheques in the name of the vendors of the respondent amounting to Rs. 7,83,351/- and it is only after this amount was paid, they did the finishing work of the apartment.
12. That the possession of the flat was given in a habitable condition after the above work finished on 31.5.2020 as it took the various vendors to complete.
13. That as stated above, the respondent has demanded an additional sum of Rs. 57,16,306.00. However, the amount demanded by the respondent carries many demands which are not a part of the BBA and hence the demands are illegal and as per the various orders, an offer of possession is not a valid offer of possession if loaded with demands which are not a part of the builder buyer agreement.
14. Therefore the complainant hereby seeks the withdrawal of the unjustified demands from the offer of possession to make it a valid offer of possession, which have not been deleted as yet.



**C. Relief sought by the complainant:**

15. The complainant has sought following relief(s):

- (i) Direct the respondent to refund the additional amount charged for increased area and paid by the complainant.
- (ii) Direct the respondent to refund amounts collected towards EDC/IDC together with interest.
- (iii) To direct the respondent to refund additional amount collected towards replacement fund maintenance security along with interest.
- (iv) To direct the respondent to refund additional amount collected towards infra-augmentation charges along with interest.
- (v) To direct the respondent to refund additional amount collected towards applicable carrying cost along with interest.
- (vi) To direct the respondent to refund additional amount collected towards utility advances along with interest.
- (vii) To direct the respondent to refund additional amount collected towards VAT liability along with interest.
- (viii) To direct the respondent to refund additional amount collected towards CGST/SGST along with interest.
- (ix) To direct the respondent to refund additional amount collected towards stamp duty along with interest.
- (x) To direct the respondent to refund Rs. 7,83,351/-
- (xi) To direct the respondent to not charge anything which is not a part of BBA.

16. 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: -

17. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyers agreement was executed between the complainant and respondent 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.
18. That the respondent has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.
19. That this Authority does not have the jurisdiction to try and decide the present false and frivolous complaint. The project in question is exempted from registration under the Real Estate Regulation and Development Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.
20. That the present complaint has not been filed in the proper format as prescribed under RERA Act, 2016 and Haryana RERA Rules, 2017 and the complaint is liable to be dismissed on this ground alone.
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 34 of apartment buyers' agreement.
22. That regarding her grievances, the complainant had earlier filed a complaint before the Haryana Real Estate Regulatory Authority, Gurugram bearing complaint no.995 of 2018 titled 'Shivani Mangesh Sholapure Vs. Ireo Victory Valley Pvt. Ltd.' seeking refund of the amount paid by her towards the sale consideration of the unit along with interest. The respondent had filed reply in the said previous complaint; arguments were

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heard on merits on 09.01.2019 and the Hon'ble Authority vide its order dated 09.01.2019 finally decided the matter by rejecting the claim of refund but granted delayed possession interest to the complainant @ 10.75% per annum on the entire amount paid by her w.e.f. 07.10.2017 till 26.09.2018. As per the information of the respondent, the complainant did not file any appeal against the said order dated 09.01.2019 and the same attained finality.

23. That subsequently for enforcement of the order dated 09.01.2019, the complainant filed an execution petition bearing no.3479 of 2020 before the Haryana Real Estate Regulatory Authority wherein respondent paid the amount vide cheque bearing no.853821 dated 29.09.2021 amounting to Rs.7,66,875/-favouring the complainant towards the satisfaction of the decretal amount and the execution petition also stood disposed of vide order dated 30.09.2021 passed by the Hon'ble Authority. Thus, no more dispute survived between the parties. Thereafter complainant has yet again filed another complaint before the Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram bearing complaint no. 495 of 2022 titled 'Shivani Mangesh Sholapure Vs. Ireo Victory Valley Pvt. Ltd.' seeking interest on the amount paid by her towards the sale consideration of the unit.
24. That the present complaint is on the face of it barred by time and the principle of Order II Rule 2 CPC.
25. That the complainant has 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:





26. That the complainant, after checking the veracity of the project namely, 'Ireo- Victory Valley', Gurugram had applied for allotment of an apartment vide her Booking Application Form dated 04.01.2011.
27. That based on the said application, the respondent vide its allotment offer letter dated 10.01.2011 allotted to the complainant apartment no. A4601, tower no. A, having tentative super area of 4279 sq. ft. Accordingly, an apartment buyer's agreement was executed between the parties to the complaint on 05.07.2011. When the complainant had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be applied retrospectively. No objections were raised by the complainant to the terms and conditions of the agreement.
28. That the respondent raised payment demands from the complainant strictly as per the terms of the allotment and mutually agreed payment plan. However, the complainant defaulted in making timely payments towards some of the installment demands. It is submitted that respondent had raised the payment demand towards the seventh installment vide payment request dated 12.08.2013. However, the due amount was credited from the complainant only after reminder dated 07.09.2013 was issued by respondent.
29. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 13.3 of the buyer's agreement and clause 35 of schedule-1 of the booking application form states that '...subject to the allottee having complied with all formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of

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36 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder (Commitment Period). The allottee further agrees and understands that the company shall be additionally be entitled to a period of 180 days (Grace Period)...". Furthermore, the complainant had further agreed for an extended delay period of 12 months from the date of expiry of the grace period.

30. That from the aforesaid terms of the agreement, it is evident that time was to be computed from the date of receipt of all requisite approvals. It is pertinent to mention herein that it has been specified in sub-clause (v) of clause 17 of the approval of building plan dated 29.10.2010 that the clearance issued by Ministry of Environment in forest, Government of India has to be obtained before starting the construction of the project. The environment clearance for the construction of the project was granted on 25.11.2010. Furthermore, in Clause (v) of part B of the Environment Clearance dated 25.10.2010, it was stated that the approval from fire department was necessary prior to the construction of the project.
31. That the last of the statutory approvals which forms a part of the preconditions was the fire scheme approval which was granted by the concerned authorities on 28.10.2013 and the time period for offering the possession accordingly to the agreed terms of the agreement expired only on 28.04.2018. The respondent received the occupation certificate on 28.09.2017.
32. That the respondent offered the possession of the unit to the complainant vide notice of possession dated 26.09.2018 and intimated her to make the payment towards balance amount of Rs. 57,16,306/-. However, the complainant failed to make the payment despite reminders dated 15.03.2019, 08.04.2019 and final notice dated 24.04.2019.

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33. That the complainant instead of making payment towards the due amount filed a complaint bearing no. 995/2018 before the Haryana Real Estate Regulatory Authority, Gurugram. The Hon'ble Authority vide its order dated 09.01.2019 granted delayed possession charges at the prescribed rate of interest i.e., 10.75% per annum w.e.f. 07.10.2017 till 26.09.2018. As per the information of the respondent, the complainant did not file any appeal against the said order dated 09.01.2019 and the same attained finality.
34. That the complainant for the enforcement of the order dated 09.01.2019 filed an execution petition bearing no. 3479 of 2020 before the Haryana Real Estate Regulatory Authority wherein an amount of Rs. 41,17,268/- was calculated as the delayed interest payable after adjustment of the balance amount due and payable by the complainant to the respondent as per notice of possession dated 26.09.2018 to the complainant by respondent by Ld. C.A. of the Hon'ble Authority. The respondent paid the balance amount of Rs. 7,66,875/- vide cheque bearing no. 853821 dated 29.09.2021 favouring the complainant towards the satisfaction of the decretal amount and the execution petition also stood disposed of vide order dated 30.09.2021 passed by the Hon'ble Authority. Thus, no dispute survived between the parties.
35. That the complainant after the execution proceedings, have taken the possession of the unit vide possession letter dated 04.11.2019 and has even executed a conveyance deed dated 10.11.2021.
36. That however, despite having already got the matter decided and even having the execution decided in her favour, the complainant has now as an afterthought to obtain wrongful gain has approached this Hon'ble





Authority again seeking refund on the amount paid by her and got adjusted at time of execution.

37. That the complainant has no right to maintain the present complaint as the claim for refund has already been adjudicated upon finally in the earlier complaint filed by the complainant before the Haryana Real Estate Regulatory Authority, Gurugram. If the complainant was aggrieved by any part of the said order, her remedy was to have approached the superior court and not this Hon'ble Authority. Furthermore, the complainant has concealed the fact that the aforesaid execution petition was filed by her before this Hon'ble Authority and the same was disposed of when the respondent handed over a cheque towards the satisfaction of the decree in favour of the complainant in the registry of the authority. It is clear that the complainant has filed the present complaint with mala fide intentions. It is settled law that a litigant cannot be allowed to split his claims against a party. The complainant has no right to vex the respondent in multiple litigation. Moreover, the complainant is in the habit of forum hunting. She cannot avail different remedies before different courts/forums in respect of the same property when the matter has already been adjudicated. The instant subsequent complaint is an abuse of the process of law and is liable to be dismissed.

38. 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**

39. 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**

40. 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**

41. 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.*

42. 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

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decided by the adjudicating officer if pursued by the complainant at a later stage.

**G. Findings regarding relief sought by the complainant.**

- (i) Direct the respondent to refund the additional amount charged for increased area and paid by the complainant.
  - (ii) Direct the respondent to refund amounts collected towards EDC/IDC together with interest.
  - (iii) Direct the respondent to refund additional amount collected towards replacement fund maintenance security along with interest.
  - (iv) Direct the respondent to refund additional amount collected towards infra-augmentation charges along with interest.
  - (v) Direct the respondent to refund additional amount collected towards applicable carrying cost along with interest.
  - (vi) Direct the respondent to refund additional amount collected towards utility advances along with interest.
  - (vii) Direct the respondent to refund additional amount collected towards VAT liability along with interest.
  - (viii) Direct the respondent to refund additional amount collected towards CGST/SGST along with interest.
  - (ix) Direct the respondent to refund additional amount collected towards stamp duty along with interest.
  - (x) Direct the respondent to refund Rs. 7,83,351/-
  - (xi) Direct the respondent to not charge anything which is not a part of BBA.
43. The complainant-allottee booked a residential apartment in the project of the respondent named as "Ireo Victory Valley" situated at Golf Course Extension Road, sector 67, Gurgaon, Haryana.





44. The complainant on 18.09.2018 filed a complaint numbered as complaint no. 995 of 2018 before the authority for the same unit seeking refund of the paid-up amount along with interest. The authority vide its order dated 09.01.2019 decided the matter by rejecting the claim of refund and granted delayed possession interest to the complainant @ 10.75% p.a. on the entire amount paid by her w.e.f. 07.10.2017 till 26.09.2018.
45. That subsequently for the enforcement of the order dated 09.01.2019 complainant filed an execution petition bearing no. 3479 of 2020 wherein the respondent has paid an amount of Rs. 7,66,875/- towards the decretal amount and the said application was stand disposed of.
46. The authority observes that the occupation certificate for the project was received on 28.09.2017 and thereafter the possession of the unit was offered on 26.09.2018. Even the conveyance deed was executed between the parties on 10.11.2021. The cause of action for claiming the other reliefs against the respondent/builder arisen while filing the previous complaint. It is not the case of complainant that the cause of action to file the present complaint arose after the decision of the earlier complaint on 09.01.2019. Even the order dated 09.01.2019 attained finality because neither the complainant nor the respondent challenged the same before the appellate tribunal. In fact, the execution petition was also filed by the complainant wherein the decretal amount was also given by the respondent and the said petition stands disposed of. It is a basic principle of law that all claims have to be raised by the litigant in the same round of litigation. Thus, the present complaint is barred by the order II rule 2 of the Civil Procedure Code, 1908. The relevant clause is produced as under:

**2. Suit to include the whole claim**

*(1) every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a*

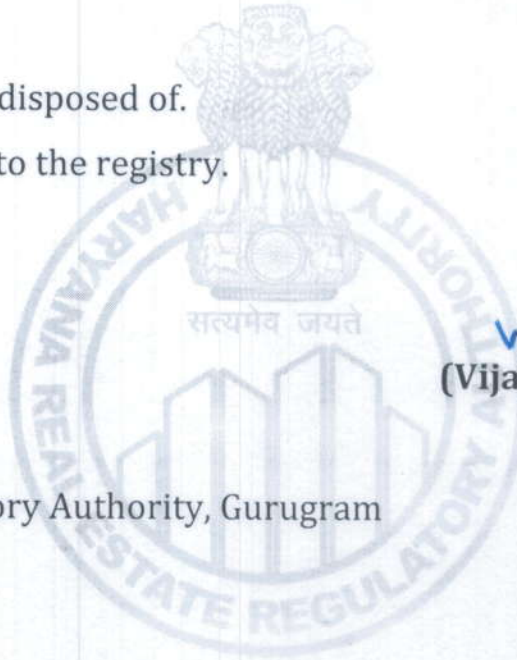




*plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.*

**(2) Relinquishment of part of claim-** *Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

47. Keeping in view the above-mentioned facts, it is to be noted that the present complaint is barred by order II rule 2 which provides for the suit to include whole claim. Therefore, the present complaint is not maintainable.
48. Complaint stands disposed of.
49. File be consigned to the registry.



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(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 04.05.2023

HARERA  
GURUGRAM