

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

Complaint no. :	1921 of 2022
Date of filing complaint:	27.04.2022
Order Reserve On:	15.03.2023
Order Pronounced On:	31.05.2023

Deepa Sharma Ravindra Kumar Sharma Both R/O: H.no. 591, First Floor, Sector-9, Gurugram	Complainants
Versus	
1. M/s International Land Developers Pvt. Ltd. Office: 9 th Floor, ILD Trade Centre, Sector-47, Sohna Road, Gurugram-122018 2. LIC Housing Finance Ltd. Office: Bombay Life Building, 2 nd Floor, 45/47, Veer Nariman Road, Mumbai-400020	Respondents

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Bhriugu Dhami (Advocate)	Complainants
None	Respondent no. 1
None	Respondent no. 2

ORDER

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

S. N.	Particulars	Details
1.	Name and location of the project	"Arete" at Sector 33, Sohna Gurugram
2.	Nature of the project	Group Housing Colony
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	International Land Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 06 of 2019 valid up to 02.07.2022
7.	Unit no.	302, 3rd Floor, Tower-C (page no. 31 of complaint)
8.	Unit area admeasuring (super area)	1275 sq. ft. (page no. 31 of complaint)
9.	Date of builder buyer agreement	20.01.2015 (page no. 30 of complaint)



10.	Tripartite agreement	17.02.2015 (page no. 86 of complaint)
11.	Request for withdrawal	10.11.2016 (page no. 92 of complaint)
12.	Possession clause	10 Possession of apartment <i>10.1 Subject to timely grant of all approvals (including revisions thereof). permissions. certificates. NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the Project making timely payments including but not limited to the timely payment of the Total Sale Consideration. stamp duty and other charges, fees, IAC. Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavor to complete the construction of the Said Apartment within 48(Forty Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months.</i>
13.	Due date of possession	20.07.2019 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
14.	Total sale consideration	Rs. 76,25,975/-

		[as per payment plan on page no. 82 of complaint]
15.	Amount paid by the complainants	Rs. 27,15,933/- [as alleged by complainants]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not obtained

B. Facts of the complaint:

3. That the respondent no.1 i.e. M/s International Land Developers Ltd. is a private limited company formulated under the Companies Act, 1954 having its registered office at B-418, New Friends Colony, New Delhi- 110 025 and its Corporate Office at ILD Trade Centre, Sector 47, Sohna Road, Gurugram- 122018.
4. That in the year 2013, ILD launched its flagship residential housing project by the name of "Arete" situated at Village Dhunela, sector-33, tehsil sohna, District Gurugram, Haryana. Having been impressed by the advertisements and the promotional offers at play at the said time, the complainants in hope of owning their own home decided to agree to buy a property in the said project.
5. That, after completing their due-diligence regarding the company as well as reviewing the master plan layout as projected by the officials of ILD, the complainants approached the developer vide application dated 28.12.2013, wherein the complainants decided to book the apartment no. C-302 in the project having approximate super area admeasuring 1275 sq. ft. on the third floor of tower C. In pursuance of the same, the



complainants deposited a sum of Rs. 3,00,000/- as booking amount for the said apartment.

6. That the parties entered into an apartment buyer agreement dated 20.01.2015, thereby formalizing their relationship with respect to the apartment in question unto a written notarized agreement.
7. That to purchase the unit the complainants had to avail a home loan facility as well. The developers ILD themselves recommended a home loan financing plan, whereby the complainants, along with the developers ILD entered into a tripartite agreement with LIC Housing Finance Limited dated 17.02.2015 for a term loan of Rs. 38,00,000/-.
8. That a sum of Rs. 13,30,000/- was disbursed by the bank and the same was deposited with the developers i.e. ILD on 28.02.2015. Further sum of Rs. 2,14,270/- was deposited on 03.08.2015.
9. That for the period pertaining to March 2015 to February 2018, the complainants had been depositing their monthly installments pertaining to the loan agreement. However, due to unforeseen financial troubles, they started facing a severe shortage pertaining to cash flow due to irregular income.
10. That the complainants lost their job and was thereby unable to service the monthly installments, the factum of which was notified to both the bank as well as the officials at ILD. In fact, owing to the severe financial instability being faced by them, the complainants visited the office of respondent as well to request them to cancel their booking and refund their money as they were not in a financial position to service their home loan and would thus, like to back out of the project in question.

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11. That the complainants by written notice dated 10.11.2016 requested the respondent to cancel/ terminate their allotment and to refund their money due to the severe financial situation faced by them.
12. That, despite numerous visits to the office of respondent to seek refund of their money, no response had been forthcoming. On 30.08.2018, the complainants had written an email to the officials at ILD, wherein he has narrated his financial situation and the reasons for his inability to continue with the project, thereby requesting a refund of the money already deposited by him.
13. That in an email dated 05.09.2018 the officials at ILD acknowledge the delay that has taken place with respect to the project and further admitted to the fact that till date the management is still "in process" and has failed to register the project under RERA.
14. That clause 10.1 of the buyer agreement contemplates the time period for possession of the project to be 48 months from the signing of the builder buyer agreement in addition to a grace period of further 6 months. In light of the same, the developers were to provide the possession by June 2019, however no construction has been forthcoming from the developers and the projects remains languishing without any progress at the moment.
15. Further again in an email dated 10.01.2019, the complainants again reiterated his financial situation and his inability to continue with the project. This was followed by further two emails dated 15.01.2019 and 25.01.2019 requesting the respondent no.1 to refund his money. However, the respondent no.1 failed to do the same.

16. That it has been over two and a half years that the complainants have been trying to seek refund of their hard-earned money from respondent no. 1, however to no avail.
17. That the above actions of the respondent reek of a sense of entitlement and have resulted in serious mental and financial stress to the complainants. The respondent is liable to pay penalty, legal cost and compensation to the complainants for its actions which have resulted in the present litigation.

C. Relief sought by the complainants:

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

- (i) Direct the respondent to refund an amount of Rs. 27,15,933/- as deposited by the complainants in pursuance of the builder buyer agreement along with interest @ 9.30% p.a., from the date of issuance of cancellation letter till the date of actual refund of amount.

D. Reply by respondent/promoter:

The respondent/promoter by way of written reply made following submissions:

19. That at the outset each and every averment, statement, allegation, contention of the complainants which is contradictory and inconsistent with the reply submitted by the respondent/promoter is hereby denied and no averment, statement, allegation, contention of the complainants shall deem to be admitted save as those specifically admitted being true and correct. It is respectfully submitted that the same be treated as a specific denial of the complaint. The respondent/promoter is a leading real estate company aiming to provide state of art housing solutions to



its customers and have achieved a reputation of excellence for itself in the real estate market.

20. That the present complaint, filed by the complainants, is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds.
21. That the complainants herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
22. At the outset in 2013, the complainants herein, learned about the project launched by the respondent/promoter titled as 'Arete' (herein referred to as 'Project') and approached the respondent/promoter repeatedly to know the details of the said project. The complainants further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
23. That after having keen interest in the project constructed by the respondent/promoter the complainants herein vide application dtd 27.11.2013 booked a flat unit admeasuring 1250 Sq. ft. in the project of respondent at Gurgaon, Haryana fand also paid an amount of Rs. 3,00,000/-.
24. That on 04.04.2014, an allotment letter was given to the complainants wherein provisionally allotting the apartment no. C-302, in the project of the respondent subject to terms and conditions of application form and allotment letter and apartment byer agreement to be executed between the parties.

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25. That on 20.01.2015, an apartment buyer agreement (herein referred to as 'agreement') was executed between the complainants and the respondent/promoter wherein the Apartment C-302, tower C, on 3rd floor, measuring 1275 sq. ft. in the project of the respondent Arete, Sector-33, Tehsil Sohna, Gurugram, was allotted to the complainants for total sale consideration of Rs. 76,25,975/-.
26. That time was essence in respect to the allottees obligation for making the respective payment. And, as per the agreement so signed and acknowledged the allottee was bound to make the payment of installment as and when demanded by the respondent/promoter. The relevant clause 8 of the said agreement.
27. That the project of the respondent/promoter got delayed due to reasons beyond control of the respondent. It was further submitted that major reason for delay for the construction and possession of project is lack of infrastructure in the said area. The twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, the respondent faces many hurdles to complete the project. For completion of road, the respondent the Govt. Department/machinery and the problem is beyond the control of the respondent/promoter. The aforementioned road has been recently constructed.
28. That the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21/09/2015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to this reason the project got delayed.

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29. That in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
30. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after lifting of ban by the Hon'ble court the construction activity could not resume at full throttle due to such acute shortage.
31. It was submitted that the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.
32. In past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L- 49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to



05.11.2019 by EPCA vide its notification bearing no. R/2019/L- 53 dated 01.11.2019.

33. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
34. The demonetization and new tax law i.e., GST, affected the development work of the project. In the view of the facts stated above it is submitted that the respondent/promoter has intention to complete the project soon for which they are making every possible effort in the interest of allottees of the project.
35. Even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and such period shall not be added while computing the delay.
36. The Covid-19 pandemic has resulted in serious challenges for the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020- DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a



completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

37. After such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the World wide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances.
38. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. That on 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM- I (A) recognized that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. Subsequently, the Ministry of Home Affairs, GOI further extended the lockdown from time



to time and till date the same continues in some or the other form to curb the pandemic. It is to note, various State Governments, including the Government of Haryana have also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.

39. The respondent/promoter herein had been running behind the complainants for the timely payment of instalment due towards the respective unit in question. That in spite being aware of the payment schedule the complainants herein has failed to pay the instalment on time.
40. That the respondent/promoter is committed to complete the development of the project at the earliest for which every necessary action is being taken by the respondent/promoter. It is further submitted that as the development of the project was delayed due to the reasons beyond the control of the respondent/promoter, the complainants are not entitled for compensation in any which way and the same was agreed into between the complainants and the respondent/promoter under clause 10.1, 10.2, 10.3, 10.4, and clause 18. Therefore, the complainants are not entitled for compensation for delay.
41. That, it is evident that the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations made against the respondent/promoter are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainants deserves to be dismissed with heavy costs. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.



42. All other averments made in the complaint were denied in toto.
43. 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 those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

44. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

45. 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

46. 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.

47. 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.

F. Findings on the objections raised by the respondent/promoter:

F.I Objections regarding delay due to force majeure:

48. The respondent-promoter raised the contention that the construction of the project was delayed due to conditions beyond the control of the respondent/promoter such as non-construction of sector road by Government, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016 along with demonetization and new tax law i.e., GST, affected the development work of the project. First of all, the orders of High Court in the year 2012 does not have any impact on the project as the same was passed even before the Apartment Buyer's Agreement was executed between the parties. Further, the orders banning construction and extraction of ground water were imposed for a very short duration and thus, a delay of such a long duration cannot be justified by the same. The plea regarding delay due to GST and demonetisation is also devoid of merit and thus, all the pleas stand



rejected. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainants for refund:

- (i) Direct the respondent to refund an amount of Rs. 27,15,933/- as deposited by the complainants in pursuance of the builder buyer agreement along with interest @ 9.30% p.a., from the date of issuance of cancellation letter till the date of actual refund of amount.
49. The complainants booked a unit in the project of the respondent detailed above. The builder buyer's agreement for the said unit was executed on 20.01.2015. The possession of the subject unit was to be offered within 48 months from date of execution of agreement and further extension of grace period of 6 months. The due date of completion of project and offering possession of the unit comes out 20.07.2019 including the grace period of 6 months as the same is unqualified. The complainants made their request for withdrawal from the project on 10.11.2016 which is evident from page no. 92 of complaint and the same is before due date of handing over of possession seeking refund against the allotted unit. The authority is of considered opinion that the promoter should have refund the balance amount after deducting 10% of the sale consideration.
50. The Hon'ble Apex Court of land in cases *of Maula Bux Vs. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2016) 4 SCC 136*, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provision of the section 74 of the Contract Act,



1872 are attracted and the party so forfeiting must prove actual damage.

51. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the land, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 provided as under-

"AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"

52. It is evident from the above mentions facts that the complainants paid a sum of Rs. 27,15,933/- against total sale consideration of Rs. 76,25,975/- of the unit. The respondent was bound to act and respond to the pleas for surrender/withdrawal and refund of the paid-up amount accordingly.
53. Thus, keeping in view the aforesaid factual and legal provisions, the respondent/builder cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the same in view of the agreement to sell for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit and shall return the balance amount along with interest at the rate of 10.70% (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 surrender i.e., 10.11.2016 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority:

54. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent-builder is directed to refund the amount of Rs. 27,15,933/- after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @10.70 % p.a. on the refundable amount, from the date of surrender i.e., 10.11.2016 till the date of payment.
 - 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.
55. Complaint stands disposed of.
56. File be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2023