

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

Complaint no. :	1504 of 2021
Date of filing complaint:	18.03.2021
Order Reserve On:	29.03.2023
Order Pronounced On:	31.05.2023

Neeru Grover Shekhar Grover Both R/O: D-801, Alaknanda Housing Society, Sector-56, Gurgaon-122011	Complainants
Versus	
M/s International Land Developers Pvt. Ltd. Office: B-418, New Friends Colony, New Delhi- 110025	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Anuj Kumar	Complainants
None	Respondent

ORDER

1. 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.	901, 9th Floor, Tower E (page no. 23 of complaint)
8.	Unit area admeasuring (super area)	1325 sq. ft. (page no. 23 of complaint)
9.	Allotment Letter	17.04.2014 (page no. 16 of complaint)
10.	Date of builder buyer agreement	30.03.2015 (page no. 21 of complaint)
11.	Possession clause	10 Possession of apartment <i>10.1 Subject to timely grant of all approvals (including revisions thereof). permissions.</i>



		<p><i>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></p>
12.	Due date of possession	30.09.2019 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
13.	Total sale consideration	Rs. 77,84,850/- [as per payment plan on page no. 76 of complaint]
14.	Amount paid by the complainants	Rs. 30,00,072/- [as alleged by both parties]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

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B. Facts of the complaint:

3. That the complainants were looking for a flat for his residential purpose in Delhi and NCR. On the persuasion of the respondent through its marketing executives/ agents, the complainants decided to book the flat in the said project of the respondent.
4. That subsequently, an apartment of 2BHK bearing no. E-901 having an approximately 1325 sq. ft of super area on the 9th floor in block E in the said project was allotted by the respondent vide provisional allotment letter dated 17.04.2014.
5. That an apartment buyer agreement was also entered and executed between the complainants and respondent on 30.03.2015. The total consideration was of Rs. 77,84,850/- excluding service charge.
6. That the complainants at the time of the booking of the abovementioned apartment had duly paid the initial down payment of Rs. 3,00,000/- on 26.12.2013 drawn on IDBI to the respondent. The complainants had started making the payment for the flat from January 2014 and had made a total payment of Rs. 2,191,562/- till 16.06.2017. The complainants had made the payment on every occasion when demand raise by the respondent.
7. That the respondent did not complete the project by March 2019 as assured by them hence delay in handing over possession started to creep. The complainants had invested a huge amount of money including his savings. On repetitive requests the respondent agreed and assured to give possession of said apartment in March, 2019 but no possession is given to the complainants till date and the fact is that no progress is also noticed in the project.

(Handwritten mark)



8. That complainants and his relatives gave regular visits to the office of the respondent and to the project site, when they realized that the respondent is not in any circumstances is willing to complete the said project and has in fact abandoned the project. The complainants contacted other aggrieved co-buyers who also confirmed that that the respondent is not interested to complete the project and the said project is in dilemma.
9. That the complainants suffered shock after knowing about alleged scam/ fraud done by the respondent. The project is yet to be completed by the respondent. There is a massive delay in handing over the possession to the complainants. The complainants have paid to the respondent having trust in the project but the respondent through their directors and officers have committed breach of trust with the complainants.
10. That the project seems to be abandoned. The respondent / builder has failed and neglected to give possession of the said flat due to malafide intention and negligent approach. The respondent is unable to provide delivery schedule of apartment in question to the complainants.
11. That the complainants on the whole situation finally realized and decided that they have been cheated by the respondent. They have hobnobbed and colluded to sell flat to the complainants. Due to lapse in process which may be intentional or unintentional from respondent's side, why the complainants are made responsible for the fiasco. The respondent has failed to deliver possession of apartment to the complainants and have neither refunded the cost of the apartment to the complainants.

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12. That acts of the respondent indicates that the complainants have been intentionally cheated to gain unlawfully. The respondent's acts amounts to deficiency as well as unfair trade practice. because of this act of the respondent the complainants have lost financially, mentally and psychologically.

C. Relief sought by the complainants:

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

(i) Direct the respondent to refund a sum of Rs. 30,00,072/-.

D. Reply by respondent/promoter:

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

14. That the present complaint, filed by the complainants, are bundle of lies and hence liable to be dismissed as it is filed without cause of action.

15. That the project of the respondent was delayed due to the reasons beyond the control of the respondent and due to the non-payment of installments on time by the allottees of the project including complainants. The present project is registered project under RERA as per which the construction of the phase of the project shall be completed by July 2022 and the construction of the whole project shall be completed by July 2024. Therefore, the construction work of the project is well within time and the present complaint is premature. It is submitted that the complainants are not entitled to seek refund of the amount paid.

16. That after reading of the complaint, it appears the complainants are attempting to hide the reality of his non-payments during the course of agreed construction of the project and simultaneously, complaint



founds to be silent after the details about the entire amount of 30,00,072/-. Such things specify that the complainants didn't make the payment as per the sequence mentioned in the agreement and it creates the suspicion in the rational mind, and it discloses there mala fide intention to extract the said amount of money through the means of their complaint

17. That the complainants never adhered the payment schedule and never made payment on time. The payments which were made by the complainants were after the termination of stipulated time.
18. That the present complaint has been filed under the Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 seeking the relief of refund of the entire amount paid along with interest.
19. That the present complaint is filed with the oblique motive of harassing the respondent company and to extort illegitimate money while making absolutely false and baseless allegations against the respondent.
20. 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:

21. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has territorial as well as subject matter



jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

22. 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

23. 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.

24. 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

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which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Entitlement of the complainants for refund:

(i) Direct the respondent to refund a sum of Rs. 30,00,072/-.

25. In the present complaint, the complainants intends to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building:-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case 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 that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

26. Clause 10 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

10. Possession of apartment

"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.**"*

27. The complainants booked a unit in the respondent's project and was allotted unit no. 901, 9th floor in tower E vide allotment letter 17.04.2014. The BBA was executed between the parties on 30.03.2015. As per clause 10 of the said BBA, the possession of the unit was to be given within a period of 48 (forty-eight) months from date of execution of the agreement along with a grace period of 6 months. Given the fact that the grace period was unqualified, the due date of possession comes out to be 30.09.2019.
28. 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....."

29. 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. 2021-2022(1) RCR (c), 357** 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 as under:

“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.”

30. 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) of the Act. 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.
31. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
32. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case



the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules.

Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

33. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
34. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 31.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
35. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 30,00,072/- 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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

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H. Directions of the Authority:

36. 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/promoter is directed to refund the entire amount of Rs. 30,00,072/- paid by the complainants along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.
- 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.

37. Complaint stands disposed of.

38. File be consigned to the registry.

HARERA
GURUGRAM

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2023