

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

Complaint no.	:	728 of 2021
Date of filing complaint:		04.02.2021
First date of hearing:		19.03.2021
Date of decision		26.05.2023

1. Neelima Arora 2. Jayant Kumar Arora Both R/O B-102, Corona Gracieux, Darbaripur Road, Sector 76, Kherki Daula, Gurugram-122004	Complainants
Versus	
M/S Corona Buildcon Private Limited Regd. Office: 504, DLF City Court, M G Road, Sikanderpur, Gurugram, Haryana -122002	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sanjeev Dhingra (Advocate)	Complainants
Sh. Parmanand Yadav (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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 of the project	"Corona Gracieux", Sector-76, Gurugram
2.	Nature of the project	Group Housing colony
3.	DTCP license no.	16 of 2010 dated 16.02.2010 Renewal of license dated 16.11.2021 Valid till 15.02.2025
4.	Name of licensee	SH. Suraj Mal, Sh Amrit Lal
5.	Registered/not	Not registered
6.	Tripartite Agreement	10.07.2018 (Annexure C-4 page 36 of complaint)
7.	Unit No.	B-0102 on 1 st floor, tower-B [Annexure C2 on page no. 16 of the complaint]
8.	Super area	1325 sq. ft. [Annexure C2 on page no. 16 of the complaint]
9.	Date of allotment	20.05.2017 [Annexure C1 on page no. 13 of the complaint]
10.	Date of builder buyer agreement	20.05.2017 [Annexure C2 on page no. 14 of the complaint]
11.	Possession clause	23. POSSESSION OF THE SAID APARTMENT Subject to Force Majeure circumstances and timely payment of instalments by the



Allottee and based on the present stage of the construction at site both the parties have discussed and agreed that the construction of the flat shall be complete **on or before 31.12.2018 further with a grace period of 6 months.** The Developer on obtaining certificate for occupation and use for the competent authorities shall hand over the apartment to the Allottee for his occupation and use and subject to the Allottee having complied with all the terms and conditions of the Apartment Buyers Agreement. In the event of his failure to take over and/or occupy and use the apartment provisional and/or finally allotted within thirty (30) days from the date of intimation in writing by the Developer, then the same shall lie at his/her risk and cost and the Allottee(s) shall be liable to pay to the Developer the holding charges @ Rs.5/- per sq. ft. of the super area per month for the entire period of such delay subject to his / her timely payments/ payments with delayed interest. If the Developer fails to complete the construction of the said building/apartment as aforesaid, then the Developer shall pay to the Allottee(s) compensation @ Rs.5/- per sq. ft. of the super area per month for the period of such delay. The adjustment of holding charges or compensation shall be done at the time of Conveyance of the apartment and not earlier. The holding charges shall be a distinct charge in addition to maintenance charges, and not related to any other charges as provided in the application and Apartment Buyers Agreement.

		(Emphasis supplied)
12.	Due date of possession	30.06.2019
13.	Total sale consideration	Rs. 69,25,000/- [As per statement of account on page 35 of complaint]
14.	Amount paid	Rs. 69,25,000/- [As alleged by the complainant at page 6 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	17.06.2018 [Not valid as the same has been made without obtaining OC] [Annexure C3 on page 34 of complaint]
17.	Grace period utilization	The authority allows the grace period keeping in view the fact that this grace period of 6 months is unqualified/ unconditional and is sought for handing over of possession.
18.	Possession letter issued by the respondent in favour of the complainants	Annexure C5 at page 46 of complaint

B. Facts of the complaint:

3. That on 20.05.2017 respondent issued the allotment letter to Mr. Vijay Gupta in relation of booking of Unit bearing No. B-0102, measuring 1325 sq. ft. In the project Corona Gracieux situated at Sector 76, District Gurgaon, Haryana and on the same day Mr. Vijay Gupta entered into an apartment buyer agreement with the respondent and as per Annexure-A of agreement dated 20.05.2017 the total sale consideration price was Rs. 65,30,000/-. As per clause 23 of the said agreement, respondent is liable to handover the

possession of the said unit on or before 31.12.2018 further with grace period of 6 months.

4. That on 27.04.2018 unit booking was transferred by Mr. Vijay Gupta to the complainants. The complainants paid the all amount to Mr. Vijay Gupta which was paid by Mr. Vijay Gupta to respondent against the above said unit.
5. That on 17.06.2018 respondent issued the letter of offer of possession in which it is clearly mentioned that occupation certificate has also been applied with the respective department and unit is ready for possession. The respondent issued the letter of offer of possession along with final demand of Rs. 5,725,000/-.
6. That on 10.07.2018 complainants obtained the loan from the bank/financial institution and for the same complainants entered into a Tri-Party agreement with the bank/financial institution namely Piramal Capital and Housing Finance Limited. After that complainant paid the amount of Rs. 5,725,000/- to respondents against the final demand.
7. That vide letter dated 08.08.2018 respondent handover the vacant and peaceful possession of the property to complainants after taken the entire sale consideration amount of Rs. 69,25,000/- from the complainants. The at the time of taking of possession of the unit by the complainants, respondent promised to complainant that shortly respondent will execute the sale deed/conveyance deed in favor of complainant but respondent failed to do so.
8. That on 14.10.2019 the bank/financial institution namely Piramal Capital and Housing Finance Limited issued letter to complainants for submitting of

original possession letter and sale deed/conveyance deed and for the same complainants many times approached to the respondent for execution of sale deed/conveyance in favor of complainants, but the respondent did not give any response to the complainants. It is submitted that respondent is paying higher rate of interest on loan due to not submitting of document by the complainants.

9. That the complainants approached to the respondent many times and also wrote an email on 19.08.2020 to the respondent regarding execution of sale deed/conveyance in favor of complainants and for the status of occupation certificate but again respondent did not give any response to the complainants.
10. That present complaint before this Hon'ble Authority arises out of the consistent and persistent non-compliance of the respondent herein with regard to the flat buyer agreement executed between the parties.
11. That it is submitted that acts of the respondent here in have caused severe harassment both physically and mentally and that respondent has duped the complainants of the hard-earned money invested by the complainants here in by its act of not executing the sale deed/ conveyance deed in favour of complainant.
12. That the complainant stated that the bank rejected the loan of the complainants stating that the project is not RERA registered leading to filing this complaint seeking refund of the deposited amount along with other relief.

C. Relief sought by the complainants:

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

- i. Direct the respondent to execute the sale deed/conveyance in favour of the complainants.

D. Reply by respondent:

The respondent by way of written reply made following submissions: -

14. That the Licence bearing No.16 of 2010 pertaining to land measuring 16.819 acres situated in revenue estate of Kherki Daula, Gurgaon-Manesar Urban Complex, comprised in Sector 76 Gurugram had been granted by the Directorate of Town and Country Planning, Haryana, Chandigarh to the respondent number 2 and certain other landowners i.e Mr. Suraj Mal and others.
15. That respondent number 2 i.e Ninex developers had entered into agreement dated 16.06. 2010 with respondent number 1 i.e Corona Buildcon (hereinafter referred to as "Said Agreement"). The aforesaid License had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh for development of a residential group housing project over the Said Land. By virtue of the Said agreement, respondent number 1 and 2 had entered into transaction in respect of land measuring 4 acres forming part of the licensed land. Actual physical possession of land measuring 4 acres had been delivered by respondent number 2 to respondent number 1.
16. That by virtue of the said agreement, duly sanctioned FSI against land measuring 4 acres had been purchased by respondent number 1 from respondent number 2 after payment of substantial consideration mutually agreed between the parties. In furtherance of said agreement, irrevocable

general power of attorney dated 20.09.2011 had been executed and got registered by respondent number 2 in favour of respondent number 1, so as to enable respondent number 1 to undertake conceptualization, promotion, construction and development of residential group housing project over land measuring 4 acres, subject matter of the Said agreement. The Said Agreement and aforesaid General Power of Attorney are valid and subsisting till date.

17. That after execution of the said agreement, respondent number 1 had undertaken the development, construction and implementation of a residential group housing project over the parcel of land measuring 4 acres purchased by it from respondent number 2. The present complainant had purchased the apartment from Mr. Vijay Gupta vide agreement to sell dt.20th March 2018, who had entered into apartment buyer agreement dated 20.05.2017 with respondent number 1 in respect of apartment bearing number B-0102 admeasuring 1325 square feet, comprised in the project known as "Corona Gracieux" Sector 76, Gurugram.

18. That after raising of construction, letter dated 14.12. 2016 had been sent by respondent number 1 to respondent number 2 to submit application for grant of part occupation certificate to Directorate of Town and Country Planning, Haryana, Chandigarh. This letter was addressed to respondent number 2 as the licence had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh in favour of respondent number 2. Even thereafter request letter dated 02.03.2017 had been sent by

respondent number 1 to respondent number 2 for submission of application for issuance of part occupation certificate.

19. That application dated 27.04.2017 received on 11.05.2017 was submitted by respondent number 2 on behalf of respondent number 1 with Directorate of Town and Country Planning, Haryana, for grant of part Occupation Certificate in respect of Towers 'A1', 'B1', 'C1', 'D1', and 'E1'. That even thereafter, letters dated 09.09.2017, 24.01.2018, 12.07.2018 and 08.02.2019 were sent by respondent number 1 to respondent number 2 calling upon respondent number 2 to fulfill its obligations as a license holder in terms of the said agreement so that the part occupation certificate so applied could be expeditiously obtained from Directorate of Town and Country Planning, Haryana, Chandigarh.
20. That proceedings titled "BDR Finvest Private Limited Vs. Ninex Developers Limited" under section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the "Code of 2016") were instituted before the National Company Law Tribunal, Principal Bench, New Delhi. Order dated 25.07.2019 was passed by the National Company Law Tribunal, Principal Bench, New Delhi whereby Mr. Vekas Kumar Garg was appointed as Interim Resolution Professional. It was further observed in the aforesaid order that all requirements contemplated under section 7 of the Code of 2016 stood fulfilled.
21. That the National Company Law Tribunal, Principal Bench, New Delhi was pleased to declare moratorium in terms of Section 14 of the Code of 2016. Paragraph number 8 of order dated 25th of July, 2019 reads as under: -

"We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."

22. That application under Section 60(5) of the Code of 2016 read with Rule 11 of the National Company Tribunal Rules, 2016 had been submitted by respondent number 1 before the National Company Law Tribunal, Principal Bench, New Delhi vide IA-2809/2021 seeking the following relief:-

- "In light of above facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:*
- (1) Direct the Respondent to comply with the terms and conditions of the agreement dated 16.06.2010.*
 - (2) Direct the Respondent herein to adhere with the all compliances of the DTCP, Haryana and get License No.16/2010 renewed and keep the same alive till the grant of occupation and completion certificates to the extent of the share of the Applicant herein with immediate effect.*
 - (3) To Direct the respondent to pay all statutory dues to the appropriate authorities including departments such as electricity department as well as other statutory bodies in relation to license no.16 of 2010.*

- (4) *Direct the Respondent herein to clear the dues, compliances up to date with DTCP, Haryana w.r.t License No.122/2012 issued in the name of the corporate debtor.*
- (5) *In the interest of justice, grant stay of proceeding in all the cases pending before Real Estate Regulation Authority, Gurugram (Haryana) initiated by the homebuyers/allottees against the applicant herein w.r.t. the project developed in the project land under the License No.16/2010.*
- (6) *Also grant stay of any proceedings initiated herein against the applicant before any other judicial/ quasi-judicial authority due to default of the Respondent w.r.t. the project developed in the project land under the License No.16/2010.*
- (7) *Pass any order/direction as this Hon'ble Tribunal deems fit in the interests of justice."*

23. That it had been highlighted by respondent number 1 in the aforesaid application that there was no lapse attributable to respondent number 1 in so far as non-issuance of occupation certificate by Directorate of Town and Country Planning, Haryana, Chandigarh was concerned. The commencement of proceedings under Section 7 of the Code of 2016, appointment of Interim Resolution Professional and Declaration of Moratorium is proving a stumbling block/hindrane in the endeavor of respondent number 1 to obtain occupation certificate. Moreover, respondent number 2 has failed to fulfill various obligations towards Town and Country Planning Department/ State of Haryana on account of which the license as on date has expired. Also, in light of facts narrated above, respondent number 1 is not in a position to initiate any legal action against

respondent number 2 on account of declaration of moratorium and appointment of Interim Resolution Professional.

24. That letter dated 25.02.2020 Code of 2016 had been submitted by respondent number 1 to Mr. Vekas Kumar Garg, Resolution Professional to pursue the matter with Directorate of Town and Country Planning, Haryana, Chandigarh for grant of occupation certificate. Thereafter, many letters / reminders had been sent by respondent number 1 to Mr. Vekas Kumar Garg, Resolution Professional for the pursuance of aforesaid work. It was further brought to the attention of Mr. Vekas Kumar Garg, Resolution Professional by respondent no.1 that various complaints are/ have been filed against respondent number 1 due to default/ non-action of Respondent No. 2 mentioned above, still no action was taken to redress the grievance of respondent number 1.

25. That the respondent number 1 is being victimized and harassed without there being any fault whatsoever on its part. Under these compelling circumstances, an application for amendment of Memo of Parties and for impleading this Hon'ble Authority through its Registrar as party in the ongoing proceedings before the National Company Law Tribunal, Principal Bench, New Delhi has been filed by respondent number 1.

26. That the facts succinctly stated above comprehensively establish that as on date the prosecution of present proceedings constitute gross misuse of process of law. It is extremely relevant to mention that physical possession has already been obtained by the complainant. As highlighted above, the moratorium in terms of Section 14 of the Code has been declared. This

effectively means that the institution of suits or continuation of pending suits or proceedings against the corporate debtor (the respondent in the present case) including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority is prohibited under law.

27. That in order to facilitate the process of insolvency resolution, an Insolvency Resolution Professional (hereinafter referred to as "IRP") has also been appointed. According to the provisions of the Code, the erstwhile management of the debtor is divested of its powers and the same is then vested in an IRP. The IRP then continues the business of the corporate body as a going concern until a resolution plan is drawn up, which enables the corporate body to pay back its debts. The IRP is duty-bound to monitor the assets of the debtor and claims made against it and constitute a committee of creditors. In fact, the control and custody of the assets of the debtor may also be taken over by the IRP.

28. That in light of the same, the continuation of any kind of proceeding in this Hon'ble Authority against the respondent will be in contempt of the moratorium declared under Section 14 of the Code. Moreover, the erstwhile authorised representatives of the respondent company and even the present employees have been stripped of their powers to act on behalf of the company till the period of moratorium does not expire and will not be able to come forward and provide any help in their official capacity to this Hon'ble Authority.

29. That it has been unanimously held by various courts that in view of the

moratorium declared under Section 14 of the Insolvency & Bankruptcy Code, 2016 no pending suits or proceedings shall continue in any court of law, tribunal, arbitration panel or other authority.

30. That the moment an insolvency petition is admitted, moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings. . In fact, it has even been held by courts of law that procedural continuation of proceedings in such cases like permitting the filing of written statement or applications is violative of the moratorium and constitute misconstruing the scope and import of Section 14(1)(a) of the Code of 2016. In the present case license had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh and the same is an intangible asset and therefore, the same is immune from any proceeding under Section 14 of the Insolvency & Bankruptcy Code, 2016. Thus, the continuation of proceedings has been interpreted to mean that every step therein is encompassed which includes not only adjudicatory steps but also procedural ones.

31. All other averments made in the complaint were denied in toto.

32. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

34. 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

35. 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. Entitlement of the complainants for conveyance deed:

F.I Direct the respondent to execute the sale deed/conveyance in favour of the complainants.

36. In the present case in hand the complainants are a subsequent allottee. The subject unit was transferred in the favour of the complainants on 27.04.2018. The due date as per the possession clause 23 of the buyer's agreement comes out to be 30.06.2019 . Thereafter the respondent offered the letter of possession on 17.06.2018 and handed over the the vacant and peaceful possession to the complainants on 08.08.2018.

37. At this stage, the authority would express its views regarding the concept of 'valid offer of possession'. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate.
- ii. The subject unit should be in habitable condition.
- iii. Possession should not be accompanied by unreasonable additional demands.

38. In the present case in hand the license bearing no. 16 of 2010 was granted by Directorate of town and country planning , Haryana , Chandigarh to Ninex developers limited. The respondent i.e Corona Buildcon and Ninex Developers had entered into an agreement on 01.06.2010 in respect of land measuring 4 acres forming part of the licensed land and the actual physical

possession of the land had been delivered by the Ninex developers to the respondent i.e Corona Buildcon.

39. That Ninex developers executed an agreement with the present respondent whereby all the rights, interest in the construction and development of permissible FAR corresponding to the subject land was transferred in the name of Ninex developers Limited. But Ninex developers is the subject of litigation before the NCLT, principal Bench, New Delhi in case titled as BDR Finest Private Limited Vs. Ninex developers Limited wherein IRP has been appointed.


40. That vide orders dated 25.07.2019 passed by the NCLT, the Resolution Professional had been appointed for Ninex Developers by the NCLT and a moratorium had been declared in accordance with the provisions of section 14 of I & B Code and also stated that since the Corporate Debtor is Undergoing CIRP, the IRP is taking effective steps for revival of license no.16 of 2010. The IRP is duty bound to monitor the assets of the debtor and claims made against it and constitute a committee of creditors.

41. There was lapse attributable to the present respondent i.e Corona Buildcon private Limited. Both the developers are jointly and severally liable. The Commencement of proceedings under section 7 of the Code of 2016, appointment of Interim Resolution Professional and Declaration of Moratorium is proving a stumbling block / hindrance in the endeavour of the present respondent to obtain the occupation certificate. The present respondent had already stated that they had applied for the occupation certificate in 2017 but the same is still pending due to default on the part of

M/s Ninex Developers Limited. Conveyance deed is executed once the occupation certificate has been obtained by the developer/ licensee. The licensee company is in NCLT who has to apply for obtaining occupation certificate from the competent authority, Hence the authority cannot intervene till the moratorium is going on that company. Hence, no direction to this effect can be given.

42. Complaint stands disposed of.

43. File be consigned to the registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.05.2023

HARERA
GURUGRAM