

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

Order Reserve On: 20.01.2023

Order Pronounce On: 31.03.2023

NAME OF THE BUILDER		M/S IREO GRACE REALTECH PVT. LTD.	
PROJECT NAME		THE CORRIDORS	
S. No.	Case No.	Case title	Appearance
1	CR/3800/2019	M/s Murli Infratech LLP V/S M/S Ireo Grace Realtech Pvt. Ltd.	Shri Riju Mani Shri M.K Dang
2	CR/3802/2019	M/s Murli Infratech LLP V/S M/S Ireo Grace Realtech Pvt. Ltd.	Shri Riju Mani Shri M.K Dang

CORAM:Shri Ashok Sangwan
Shri Sanjeev Kumar Arora**Member**
Member**ORDER**

1. This order shall dispose of all the two complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Corridors situated at Sector-67-A, Gurugram being developed by the same respondent/promoter i.e., M/s Ireo Grace Realtech Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.
- The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"The Corridors" at sector 67A, Gurgaon, Haryana.
Project area	37.5125 acres
DTCP License No.	05 of 2013 dated 21.02.2013 valid upto 20.02.2021
Name of Licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
Rera Registered	Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017 (Phase 1)
Validity Status	Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3) 30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
Details of phases	Phase I: Tower A6 to A 10, B1 to B4 and C3 to C7 Phase II: Tower A1to A5, B5-B8, C8-C11, C1 and convenient shopping Phase III: Tower D1 to D5
Details of Occupation Certificate	31.05.2019 for phase 1 27.01.2022 for phase 2 Not obtained for phase 3
Possession Clause: - 13. Possession and Holding Charges Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration	

charges, stamp duty and other charges and also subject to the allottee having complied with all the 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 42 months from the date of approval of building plans and/or fulfillment of the preconditions imposed thereunder (Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.

Date of approval of building plans: 23.07.2013

Date of environment clearance: 12.12.2013

Date of fire scheme approval: 27.11.2014

Due date of possession: 23.01.2017

(Calculated from the date of approval of building plans)

Note: Grace Period is not allowed.

S. no.	Complain t No., Case Title, and Date of filing of complain t	Unit No.	Unit admeasuring	Date of apartme nt buyer agreeme nt	Restora tion of unit	Total Sale Considera tion / Total Amount paid by the complainant	Relief Sought
1.	CR/3800 / 2019 M/s Murli Infratech LLP V/S M/S Ireo Grace Realtech Pvt. Ltd. DOF: 04.09.2019	001, Ground Floor, Tower C8 (page no. 70 of complain t)	1305.96 sq. ft.	11.08.2014	30.05.2017	TSC: - Rs. 1,44,50,891/- AP: - Rs. 44,56,005/-	Direct the responde nt to refund the amount of Rs. 44,56,005/- to the complain ant along with 18% interest from the

	Reply: 01.10.20 19						date of payment made by the complain ant till the date of its refund .
2.	CR/3802 / 2019 M/s Murli Infratech LLP V/S M/S Ireo Grace Realtech Pvt. Ltd. DOF: 04.09.20 19 Reply: 01.10.20 19	101, First Floor, Tower C8 (page no. 60 of complain nt)	1312.5 0 sq. ft.	Not executed	30.05.2 017	TSC: - Rs. 1,45,22,00 6/- AP: Rs. 1,54,70,48 3/-	Direct the responde nt to refund the amount of Rs. 1,54,70,4 83/- to the complain ant along with 18% interest from the date of payment made by the complain ant till the date of its refund. .

Note: In the table referred above certain abbreviations have been used.

They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case *CR/3800/2019 M/s Murli Infratech LLP V/S M/S Ireo Grace Realtech Pvt. Ltd.* are being taken into consideration for determining the rights of the allottee(s).
- A. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/3800/2019 M/s Murli Infratech LLP V/S M/S Ireo Grace Realtech Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	"The Corridors" situated at Sector-67A, Gurgaon.

2.	Nature of the project	Group Housing Colony
3.	Project area	37.5125 acres
4.	DTCP license no. and validity status	05 of 2013 valid up to 20.02.2021
5.	Name of licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
6.	RERA Registered/ not registered	Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017(Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3)
	Validity Status	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
7.	Allotment Letter	07.08.2013 (annexure R-2 on page 54 of the complaint)
8.	Date of apartment buyers' agreement	11.08.2014 (annexure R-6 on page no. 64 of complaint)
9.	Unit no.	001, Ground Floor, Tower C8 (annexure R-6 on page no. 70 of complaint)
10.	Unit area admeasuring	1305.96 sq. ft. (annexure R-6 on page no. 70 of complaint)

11. Date of approval of building plan	23.07.2013 (as per project details)
12. Date of environment clearance	12.12.2013 (as per project details)
13. Date of fire scheme approval	27.11.2014 (as per project details)
14. Due date of possession	23.01.2017 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
15. Possession clause	<p>13.3 Possession and Holding Charges</p> <p>The company proposes to offer the possession of the said residence unit to the allottee within a period of 42 months from the date of approval of building plans and/or fulfillment of the preconditions imposed thereunder (Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.</p> <p>(Emphasis supplied)</p>
16. Reminders for payment	<p>For Third Instalment: 13.04.2014, 04.05.2014</p> <p>For Fourth Instalment: 29.03.2015, 23.04.2015</p> <p>For Fifth Instalment: 29.02.2016, 28.03.2016</p>

		For Sixth Instalment: 19.04.2016, 11.05.2016 For Seventh Instalment: 24.05.2016, 17.06.2016 For Eight Instalment: 29.06.2016, 22.07.2016 Final Notice: 28.07.2016
17.	Date of cancellation letter	01.09.2016 (page no. 145 of reply)
18.	Restoration of unit	30.05.2017 (vide email on annexure R-29 of reply)
19.	Total sale consideration	Rs. 1,44,50,891/- (as per payment plan on page no. 40 of complaint)
20.	Amount paid by the complainants	Rs. 44,56,005/- (as alleged by complainant no document placed on record)
21.	Occupation certificate	27.01.2022
22.	Offer of possession	16.02.2022

B. Facts of the complaint

The complainant has made the following submissions in the complaint:

8. That the complainant being lured by the representations made by the respondent decided to make application for the booking in the project namely, Ireo Corridors situated at sector-67 A, Gurugram and paid a booking amount of Rs. 13,00,000/-.
9. That believing the assurances of the respondent, the complainant further made the payment of Rs 11,89,624/-. Upon such payments, the respondent

issued the offer of allotment letter to the complainant along with their standard draft of the apartment buyer agreement.

10. That upon perusing the offer of allotment letter and its terms and conditions, the complainant was shocked in dismay.
11. That the complainant after perusal of the draft of agreement were further shocked as there was no scope for the complainant to seek compensation for the delay, but on the other hand the respondent had entitled itself to charge huge rate of interest @ 20% p.a.
12. That even as per the clause 13.3 of proposed flat buyers' agreement the delivery of the flat would be done within 42 months from the date of approval of the building plan. Clause 13.3 of the flat buyers agreement is reproduced hereunder:

"subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this agreement and not having defaulted under any provision(s) of this agreement including but not limited to the timely payment of all dues and charges including the total sale consideration, registration charges, stamp duty and other charges and also 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 42 (Forty Two) months from the date of approval of building plans and/ or fulfilment of the preconditions imposed thereunder ('Commitment Period'). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."

13. That the building plans for the project were approved on 23.07.2013 by the Directorate of Town & Country Planning, Haryana Sector-18, Chandigarh. The respondent was supposed to deliver the possession of the apartment latest by January 2017 if we calculate this period from the date of approval of the building plan i.e., 23.07.2013. The Hon'ble National

Consumer Commission in the case of Vishal Dua versus Ireo Grace Realtech Pvt. Ltd. CC/2498/2017 also upheld this contention of the allottees.

14. That the respondent was supposed to deliver the possession of the apartment within a period of 3 years, which is the reasonable time period for the delivery of the apartment. That even if three years are calculated from the date of offer of allotment, the time period for the delivery would come out to be 07.08.2016. That in neither scenario, the respondent company has delivered the possession of the apartment.
15. The complainant firm has made more payment than the total proposed consideration of the apartment but despite this, the respondent company had failed to deliver the apartment, either within the proposed and assured time period or within the reasonable time period.
16. That the respondent company has proposed to complete the possession not before June 2021 which it has proposed in several other cases pending before this Hon'ble Authority. The circumstances of the complainant firm do not permit the company to continue with the booking in the project of the respondent company and therefore it is only appropriate that the money paid by the complainant firm be refunded along with 18% interest p.a.

C. Relief sought by the complainant: -

17. The complainant has sought following relief(s):
 - i. **Direct the respondent to refund the amount to the tune of Rs. 44,56,005/- to the complainant along with 18% interest from the date of payment made by the complainant till the date of refund.**

- ii. **Direct the respondent to pay a sum of Rs. 50,000/- as litigation expenses to the complainant.**

18. 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.

19. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the parties 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.
20. That there is no cause of action to file the present complaint.
21. That the complainant has no locus standi to file the present complaint.
22. 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.
23. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 35 of the buyers agreement.
24. That the complainant has not approached this authority with clean hands and have intentionally suppressed and concealed the material facts. The present complaint has been filed 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:

25. That the complainant, after checking the veracity of the project namely, 'Corridor; sector 67-A, Gurugram applied for allotment of an apartment vide booking application form and agreed to be bound by the terms and conditions stipulated therein.
26. That based on the application for booking, the respondent vide its letter dated 07.08.2013 allotted to the complainant apartment no. CD-C8-00-001 having tentative super area of 1305.96 sq. ft for a total sale consideration of Rs. 1,44,50,891/-. Vide letter dated 20.03.2014, the respondent sent 3 copies of the apartment buyer's agreement to the complainant. However, the complainant executed the same only on 11.08.2014 after reminders dated 28.05.2014 and 17.07.2014 were issued by the respondent.
27. That vide payment request dated 18.03.2014, the respondent had raised the demand towards third installment demand for net payable amount of Rs. 19,21,686/-. However, the complainant remitted the due amount only after reminders dated 13.04.2014, and 04.05.2014, were issued by the respondent.
28. That vide payment request dated 03.03.2015, the respondent had raised the demand towards the fourth installment for net payable amount of Rs. 19,06,837/-. However, despite reminders dated 29.03.2015 and 23.04.2015, the complainant failed to remit the due amount and the same was adjusted in the next instalment demand as arrears.
29. That vide payment request dated 03.02.2016, towards the fifth installment demand for net payable amount of Rs. 36,07,687/-. However, the complainant yet again failed to remit the due amount despite reminders dated 29.02.2016 and 28.03.2016 and the due amount and the same was adjusted in the next instalment demand.

30. That vide payment request dated 23.03.2016, towards the sixth installment demand for net payable amount of Rs. 53,08,537/-. However, the complainant yet again failed to remit the due amount despite reminder dated 19.04.2016 and 11.05.2016 and the due amount and the same was adjusted in the next instalment demand.
31. That vide payment request dated 26.04.2016, the respondent raised the demand towards seventh installment demand for net payable amount of Rs. 67,05,409/-. However, despite reminders dated 24.05.2016 and 17.06.2016 the complainant failed to remit the due amount and the same was adjusted in the next instalment demand as arrears.
32. That vide payment request dated 02.06.2016, the respondent raised the demand towards eighth installment demand for net payable amount of Rs. 79,60,959/-. However, despite reminders dated 29.06.2016 and 22.07.2016 and final notice dated 28.08.2016 the complainant failed to remit the due amount and the same was adjusted in the next instalment demand.
33. That vide payment request dated 08.08.2016, the respondent raised the demand towards ninth installment demand for net payable amount of Rs. 92,16,509/-. However, the complainant yet again failed to remit the due amount.
34. That the complainant is a real estate investor company that had booked the unit in question with a view to earn quick profit in a short period. However, its calculations went wrong on account of slump in the real estate market and the complainant did not possess sufficient funds to honour its commitments. On account of non-fulfilment of the contractual obligations by the complainant despite several opportunities extended by the respondent, the allotment of the complainant was cancelled, and the

earnest money was forfeited vide cancellation letter dated 01.09.2016 in accordance with clause 21 read with clause 7.4 of the apartment buyer agreement. However, on the request of the complainant, the respondent being a customer-oriented company has restored the allotment of the unit, subject to certain conditions and the same was intimated to the complainant vide the email dated 30.05.2017.

35. 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 43 of the schedule - I 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 42 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 as per Clause 13.5 of the apartment buyer's agreement.

36. That from the aforesaid terms of the buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub- clause (iv) of clause 17 of the approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be

obtained before starting the construction of the project. The environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan was to be duly approved by the fire department before the start of any construction work at site.

37. That the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, will expired only on 27.11.2019. Furthermore, the revised date of offering the possession as submitted before this Hon'ble Authority at the time of registration of the project is 30.06.2020.

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 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

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) The promoter shall-

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

43. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR(C)357* and 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 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

44. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Objections raised by respondent

F.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

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

46. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act

nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017** which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

47. Further, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

48. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

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

49. The respondent submitted 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 and the same is reproduced below for the ready reference:

"35. Dispute Resolution by Arbitration

"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the

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

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

the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

51. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

*...
56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

52. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as

M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

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

G. Entitlement of the complainant for refund:

- i. **Direct the respondent to refund the amount to the tune of Rs. 44,56,005/- to the complainant along with 18% interest from the date of payment made by the complainant till the date of refund.**
54. The complainant has booked the residential apartment in the project named as 'The Corridors' situated at sector 67 A for a total sale consideration of Rs. 1,44,50,891/- out of which it has made payment of Rs. 44,56,005/-. The complainant was allotted the above-mentioned unit vide allotment letter dated 07.08.2013. The apartment buyer agreement was executed between the parties on 11.08.2014.
55. As per possession clause 13 of the builder buyer agreement the possession of the unit was to be handed over within 42 months from the date of approval of building plans or fulfilment of preconditions imposed thereunder. The due date for handing over of possession comes out to be 23.01.2017 calculated from the date of approval of building plans.
56. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
57. The due date of possession as per agreement for sale as mentioned in the table above is 23.01.2017 and there is delay of 2 years 7 months 12 days on the date of filing of the complaint.
58. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is

received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate. 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.

59. 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. (supra) 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

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.

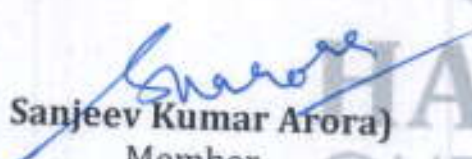
60. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession 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.
61. 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 section 71 read with section 31(1) of the Act of 2016.
62. The authority hereby directs the promoter to return the amount received by him i.e. Rs. 44,56,005/- 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 Haryana Rules 2017 *ibid*.


H. Directions of the authority

63. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount paid by the complainant (in the two complaints) 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.
 - iii. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
64. The complaints stand disposed of.
65. Files be consigned to registry.


Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.03.2023