BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order Reserve On: 10.03.2023

Order Pronounce On: 08.08.2023

NAME OF THE BUILDER		M/S IREO PVT. LTD.	
PROJECT NAME		Ireo Gurgaon Hills	
S. No.	Case No.	Case title	Appearance
1	CR/3431/2020	Neetu Bhalla and Ajay Bhalla V/S M/S Ireo Pvt. Ltd.	Shri Dinesh Kr. Dakoria Shri M.K Dang
2	CR/3433/2020	Manisha Arora and Rajiv Arora V/S M/S Ireo Pvt. Ltd.	Shri Dinesh Kr. Dakoria Shri M.K Dang

CORAM:

Shri Ashok Sangwan **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.

2. 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, Ireo Gurgaon Hills situated at Gwal Phari, Sector-2 Gurugram being developed by the same respondent/promoter i.e., M/s Ireo 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 refund of the amount paid along with interest.

3. 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	**"Ireo Gurugram Hills" at Gwal Phari, Sector-2 Gurugram, Haryana.**
Project area **DTCP License No.** **Name of Licensee**	11.06875 acres 36 of 2011 dated 26.04.2011 valid upto 25.04.2026 M/s Nucleus Conbuild Pvt. Ltd.
Rera Registered	Not Registered
Possession Clause: - 14.3. 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 chares, 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: 17.05.2012 **Date of environment clearance:** 26.06.2013 **Date of fire approval:** 26.12.2013	

Due date of possession: 17.11.2015
(Calculated from the date of approval of building plans)
Note: Grace Period is not allowed.

S. no.	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Unit admeasuring	Date of apartment buyer agreement	Due date of possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/3431/2020 Neetu Bhalla and Ajay Bhalla V/S M/S Ireo Pvt. Ltd. **DOF:** 16.10.2020 **Reply:** 22.03.2021	D-23_32 on 22nd Floor, Tower D (page no. 34 of complaint)	4786.83 sq. ft.	01.11.2012	17.11.2015	TSC: - Rs. 4,55,43,910/- AP: - Rs. 4,53,25,280/-	Refund
2.	CR/3433/2020 Manisha Arora and Rajiv Arora V/S M/S Ireo Pvt. Ltd.	D-21_32 on 20th Floor, Tower D (page no. 34 of complaint)	4786.83 sq. ft.	01.11.2012	17.11.2015	TSC: - Rs.4,55,43,910/- AP: Rs. 4,53,25,280/-	Refund

	DOF: 16.10.2020 **Reply:** 22.03.2021						

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 refund of the amount paid for the unit along with interest at prescribed rate.
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/3431/2020 Neetu Bhalla and Ajay Bhalla V/S M/S Ireo 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/3431/2020 Neetu Bhalla and Ajay Bhalla V/S M/S Ireo Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	"Ireo Gurgaon Hills" at Gwal Phari, sector 2, Gurugram
2.	Nature of the project	Group Housing Scheme
3.	Project area	11.06875 acres
4.	DTCP license no. and validity status	36 of 2011 dated 26.04.2011 valid upto 25.04.2026
5.	Name of licensee	M/s Nucleus Conbuild Pvt. Ltd.
6.	RERA Registered/ not registered	**Not Registered**
7.	Date of application	04.04.2012 (annexure P/1 on page no. 34 of complaint]
8.	Allotment Letter	03.07.2012 (annexure R-2 on page no. 49 of complaint)
9.	Date of apartment buyers' agreement	01.11.2012 (annexure P/1 on page no. 31 of complaint)
10.	Unit no.	D-23_32 on 22nd Floor, Tower D (annexure P/1 on page no. 34 of complaint)

11.	Unit area admeasuring	4786.83 sq. ft. (annexure P/1 on page no. 34 of complaint)
12.	Date of approval of building plan	17.05.2012 (annexure R-6 on page no. 56 of reply)
13.	Date of environment clearance	26.06.2013 (annexure R-7 on page no. 59 of reply)
14.	Date of fire scheme approval	26.12.2013 (annexure R- 8 on page no. 69 of reply)
15.	Due date of possession	17.11.2015 [calculated from the date of approval of building plans] **Note:** Grace period is not allowed.
16.	Possession clause	**14.3 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 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 Rental Pool Serviced 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 there under ("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.
17.	Offer for start of interior work	20.01.2017 (page no. 72 of reply)
18.	Total sale consideration	Rs. 4,55,43,910/- [as per payment plan on page no. 79 of complaint]
19.	Amount paid by the complainants	Rs. 4,53,25,280/- [as per payment details on page no. 104 of complaint]
20.	Occupation certificate	29.06.2022 (as per additional document on record)
21.	Offer of possession	11.07.2022 (as per additional document on record)

B. Facts of the complaint

The complainants have made the following submissions in the complaint:

8. That the complainants booked the said unit on 28.03.2012 and paid a sum of Rs. 35,00,000/- as initial sale consideration of the said flat. At the time of booking, the respondents categorically assured the complainants that the buyer's agreement would be executed within a period of 15 days from the date of booking, however the respondent delayed the execution of

agreement about 7 months and after repeated request the respondent executed buyer's agreement on 01.11.2012 with the complainants.

9. That at the time of booking, the respondents promised the complainants that the project would be completed within period of 3 years in all respect, however the respondent inserted a very unreasonable and ambiguous clause in the buyer's agreement pertaining to handing over the possession and holding charges. As per clause no. 14.3 of the buyer's agreement, the possession of the apartment was to be handed over within a period of 42 month plus grace period of 180 days from the date of approval building plan and/or fulfilment of the preconditions imposed their under "Committed Period".
10. That the complainants have performed their obligation under the buyer's agreement and has paid a sum of Rs. 4,53,25,280/- to the respondent till date out of total sale consideration of Rs. 4,55,43,910/-.
11. That the aforesaid payment has been received by the respondent on the basis of misrepresentation and non-discloser of true and correct status of the project. In fact, the building construction process was not as per the schedule given in the apartment buyer agreement dated 01.11.2012. The constriction of the building is not in progress since last about 3 years and the building is lying abandoned/unattended and there is no possibility for completion of the project in near future, however the respondents raised the demand of money illegally to get wrongful gain and wrongful loss to the complainants.
12. That the complainants have become frustrated with the act and conduct and non-performance of the respondent. The said apartment was purchased by the complainants for their residence purpose, and they were

in hope to shift in this apartment, however their dream has been ruined by the builder. The complainants waited for long time to receive the possession of their apartment, but the respondent completely failed to complete the project on time and now the complainants have been waiting to get their money refund with interest from the builder since last one and half years, but the builder has been avoiding the genuine request of the complainants and it has been holding the hard-earned money of the complainants illegally.

C. Relief sought by the complainants: -

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

    i. Direct the respondent builder to refund the amount of Rs. 4,53,25,280/- paid by the complainant.

14. 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.

15. 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.

16. That there is no cause of action to file the present complaint.

17. That the complainants are estopped from filing the present complaint by their own acts, delays and laches.

18. That the complainants have no locus standi to file the present complaint.

19. That the respondents have filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.

20. 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 36 of the buyer's agreement.

21. That the complainants have 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:

22. That the complainants, after checking the veracity of the project namely, 'Ireo Gurgaon Hills' had applied for allotment of an apartment vide booking application form and agreed to be bound by the terms and conditions stipulated therein.

23. That based on the application for booking, the respondent vide its allotment letter dated 03.07.2012 allotted to the complainants apartment D23_32 in Tower D in a Bare-shell condition having tentative super area of 4786.83 square feet for a sale consideration of Rs. 4,5505,328/-. Vide letter dated 18.09.2012, respondent sent three copies of the agreement to the complainants which was signed and executed on 01.11.2012. The RERA Act, 2016 was not in force when the complainants had booked the unit with the respondents and the provisions of the same cannot be enforced retrospectively. Furthermore, the apartment was in the bare-shell

condition as provided in Recital's 'E' and 'H' of the agreement and the complainants were to carry out interior work as per specifications stated in Annexure I and Annexure V of the agreement.

24. That respondent kept on raising payment demands from the complainants in accordance with the agreed terms and conditions of the allotment as well as the payment plan. However, the respondent had raised the third installment demand on 06.09.2013 for the net payable amount of Rs. 48,36,941/-. However, the complete amount was credited only after reminder dated 02.10.2013 was sent by respondent.

25. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. As that clause 14.4 of the buyer's agreement and clause 54 of the schedule - I of the booking application form states that subject to force majeure, as defined herein and further 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)...'. The complainants vide clause 14.6 of the buyer's agreement and clause 55 of the schedule – I of the booking application form had further agreed to the 'extended delay period' of 12 months from the end of grace period. 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 has been specified

in sub- clause (v) of clause 17 of the approval of building plan dated 17.05.2012 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 26.06.2013. Furthermore, in clause 22 of Part-A of the environment clearance dated 26.06.2013 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.

26. That the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 26.12.2013 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, would have expired only on 26.12.2018. However, the said period is subject to the occurrence of any force majeure condition which is beyond the reasonable control of the respondents and the complainants complying with their contractual obligations.

27. That respondent had intimated the construction status to the complainants and as per clause 13 of the apartment buyer's agreement invited the complainants, vide its letter dated 20.01.2017 to start the interior works of the unit allotted to them by taking physical measurements along with the architects and by doing design management. However, the complainants failed to adhere to their obligations.

28. That the complainants failed to adhere to their contractual obligations of completing the interior design management and the respondents could not have waited endlessly and accordingly it applied for the grant of the occupation certificate on 24.09.2018.

29. That the DTCP, Haryana vide its letter dated 14.02.2019 intimated to the respondents that the building was not completed as per the approved building plans and that it shall not have any objection to getting the fitments and fixtures/remaining interior works of the flat completed either by the colonizer or through the allottees. the obligation of completing the interior works and design management was of the complainants and not of the respondents. However, the respondent being a customer-oriented developer, completed the construction of the unit as per Section 7.15 of the Haryana Building Code, 2017 which deals with the minimum provisions with regard to the dwelling unit, although the same was the liability of the complainants as per the terms of the buyer's agreement and the respondents again applied for the grant of the occupation certificate vide letter dated 13.08.2019.

30. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent, and which have affected the materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

31. Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization: The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the Central Government issued

notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of central government.

32. There are also studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.

33. Thus, in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should deemed to be extended for 6 months on account of the above.

34. Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The

pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of the respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.

35. In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of respondent and the said period is also required to be added for calculating the delivery date of possession.

36. Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.

37. Inclement Weather Conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

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. I 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 Appellant 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.

F.III Objections regarding force majeure

54. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainants are situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction during 2015-2016-2017-2018, dispute with contractor, non-payment of instalment by allottees and demonetization. The plea of the respondent regarding various orders of the NGT and demonetisation and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit. Further, any contract and dispute between contractor and the builder cannot be considered as a ground for delayed completion of project as the allottee was not a party to any such contract. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. 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.

55. 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

> *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*

56. 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).

G. Entitlement of the complainants for refund:

i. Direct the respondent builder to refund the amount of Rs. 4,53,25,280/- paid by the complainant.

57. In the present complaint, the complainants intend 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)*

58. Clause 14 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

> *14.3*
> *Schedule for possession of the said unit*
> *"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 Rental Pool Serviced 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 there under ("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."*

59. The complainants have booked the residential apartment in the project named as 'Ireo Gurgaon Hills' situated at Gwal Phari, sector 2, Gurugram for a total sale consideration of Rs. 4,55,43,910/- out of which it has made payment of Rs. 4,53,25,280/-. The complainants were allotted the above-mentioned unit vide allotment letter dated 03.07.2012. The apartment buyer agreement was executed between the parties on 01.11.2012.

60. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.

61. Further, in the present case, it is submitted by the respondent promoter that the due date of possession should be calculated from the date of fire scheme approval which was obtained on 26.12.2013, as it is the last of the statutory approvals which forms a part of the preconditions. The authority in the present case observes that, the respondent has not kept the reasonable balance between his own rights and the rights of the complainants/allottees. The respondent has acted in a pre-determined and preordained manner. The respondent has acted in a highly discriminatory and arbitrary manner. The unit in question was booked by the complainants on 04.04.2012 and the apartment buyer's agreement was executed between parties on 01.11.2012. The date of approval of building plan was 17.05.2012. It will lead to a logical conclusion that the respondent would have certainly started the construction of the project. On a bare reading of the clause 14.3 of the agreement reproduced above, it becomes clear that the possession in the present case is linked to the "fulfilment of the preconditions" which is so vague and ambiguous in itself. Nowhere in

the agreement it has been defined that fulfilment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject apartment. According to the established principles of law and the natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one sided and totally against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken as the date for determining the due date of possession of the unit in question to the complainants.

62. Here, the authority is diverging from its earlier view i.e., earlier the authority was calculating/assessing the due date of possession from date approval of firefighting scheme (as it the last of the statutory approval which forms a part of the pre-conditions) i.e., 27.11.2014 and the same was also considered/observed by the Hon'ble Supreme Court in Civil Appeal no. 5785 of 2019 titled as '***IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.***' by observing as under: -

"With the respect to the same project, an apartment buyer filed a complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (RERA Act) read with rule 28 of the Haryana Real Estate (Regulation & Development) rules, 2017 before the Haryana Real Estate Regulatory Authority, Gurugram (RERA). In this case, the authority vide order dated 12.03.2019 held that since the environment clearance for the project contained a pre-condition for obtaining fire safety plan duly approved by the fire department before the starting construction, the due date of possession would be required to be computed from the date of fire approval granted on 27.11.2014, which would come to 27.11.2018. Since the developer had failed to fulfil the obligation under Section 11(4)(a) of this Act, the developer was liable under proviso to Section 18 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant, upto the date when the possession was offered. However, keeping in view the status of the project, and the interest of other allottees, the authority was of the view that refund cannot be allowed at this stage. The developer was directed to handover the possession of the apartment by 30.06.2020 as per the registration certificate for the project."

63. On 23.07.2013, the building plans of the project were sanctioned by the Directorate of Town and Country Planning, Haryana. Clause 3 of the sanctioned plan stipulated that an NOC/ clearance from the fire authority shall be submitted within 90 days from the of issuance of the sanctioned building plans. Also, under section 15(2) and (3) of the Haryana Fire Service Act, 2009, it is the duty of the authority to grant a provisional NOC within a period of 60 days from the date submission of the application. The delay/failure of the authority to grant a provisional NOC cannot be attributed to the developers. But here the sanction building plans stipulated that the NOC for fire safety (provisional) was required to be obtained within a period of 90 days from the date of approval of the building plans, which expired on 23.10.2013. It is pertinent to mention here that the developers applied for the provisional fire approval on 24.10.2013 (as contented by the respondent herein the matter of Civil Appeal no. 5785

of 2019 titled as '***IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors***.) after the expiry of the mandatory 90 days period got over. The application filed was deficient and casual and did not provide the requisite. The respondent submitted the corrected sets of drawings as per the NBC-2005 fire scheme only on 13.10.2014 (as contented by the respondent herein the matter of Civil Appeal no. 5785 of 2019 titled as ***'IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.)***, which reflected the laxity of the developers in obtaining the fire NOC. The approval of the fire safety scheme took more than 16 months from the date of the building plan approval i.e., from 23.07.2013 to 27.11.2014. The builders failed to give any explanation for the inordinate delay in obtaining the fire NOC. So, the complainants/allottees should not bear the burden of mistakes/ laxity or the irresponsible behaviour of the developer/respondent and seeing the fact that the developer/respondent did not even apply for the fire NOC within the mentioned time. It is a well settled law that no one can take benefit out of his own wrong. In light of the above-mentioned facts the respondent/ promoter should not be allowed to take benefit out of his own mistake just because of a clause mentioned i.e., fulfilment of the preconditions even when they did not even apply for the same in the mentioned time frame.

64. **Admissibility of grace period:** The respondent promoter had proposed to hand over the possession of the apartment within 42 months from the date of sanction of building plan and/or fulfilment of the preconditions imposed thereunder which comes out to be 17.11.2015. The respondent promoter has sought further extension for a period of 180 days after the expiry of 42 months for unforeseen delays in respect of the said project. The respondent raised the contention that the construction of the project

was delayed due to *force majeure* conditions including demonetization and the order dated 07.04.2015 passed by the Hon'ble NGT including others.

(i) **Demonetization:** It was observed that due date of possession as per the agreement was 17.11.2015 wherein the event of demonetization occurred in November 2016. By this time, major construction of the respondents' project must have been completed as per timeline mentioned in the agreement executed between the parties. Therefore, it is apparent that demonetization could not have hampered the construction activities of the respondents' project that could lead to the delay of more than 2 years. Thus, the contentions raised by the respondent in this regard are rejected.

(ii) **Order dated 07.04.2015 passed by the Hon'ble NGT:** The order dated 07.04.2015 relied upon by the respondent promoter states that

> *"In these circumstances we hereby direct state of U.P., Noida and Greater NOIDA Authority, HUDA, State of Haryana and NCT, Delhi to immediately direct stoppage of construction activities of all the buildings shown in the report as well as at other sites wherever, construction is being carried on in violation to the direction of NGT as well as the MoEF guideline of 2010."*

A bare perusal of the above makes it apparent that the above-said order was for the construction activities which were in violation of the NGT direction and MoEF guideline of 2010, thereby, making it evident that if the construction of the respondent' project was stopped then it was due to the fault of the respondent themselves and they cannot be allowed to take advantage of their own wrongs/faults/deficiencies. Also, the allottees should not be allowed to suffer due to the fault of the respondent promoter. It may be stated that asking for extension of time in completing the construction is not a statutory right nor has it been provided in the rules. This is a concept which has been evolved by the promoter themselves and now it has become a very common practice to enter such a clause in the

agreement executed between the promoter and the allotee. It needs to be emphasized that for availing further period for completing the construction the promoter must make out or establish some compelling circumstances which were in fact beyond his control while carrying out the construction due to which the completion of the construction of the project or tower or a block could not be completed within the stipulated time. Now, turning to the facts of the present case the respondent promoter has not assigned such compelling reasons as to why and how it is be entitled for further extension of time 180 days in delivering the possession of the unit. Accordingly, this grace period of 180 days cannot be allowed to the promoter at this stage.

65. **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."*

66. 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.

67. 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., 08.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

68. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

69. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

70. The complainants booked a unit in the project of respondent known as Ireo Gurgaon hills on 04.04.2012 for a sum of Rs. 4,55,43,910/- under construction linked payment plan. The allotment of the unit was made in

favour of complainants by the respondent on 03.07.2012. The buyer's agreement was executed between the parties on 01.11.2012. It is the case of complainants that on the basis of allotment and buyers' agreement they started depositing various amounts and paid a total sum of Rs. 4,53,25,280/-. But despite paying that amount, the respondent/builder failed to offer possession and delayed the same on the one pretext and other. But the case of respondent/ builder is that though the complainants are its allottees and paid different amounts, but they were allotted the subject unit in a bare shell condition. The allottees failed to adhere the schedule of payment and committed default in the same, leading to issuance of reminder dated 22.08.2019. It was also pleaded that as per clause 'E' of the buyer's agreement the allotment of the residential unit was made in a bare shell condition/ unfurnished residential apartment.

71. It was further provided under clause 13.1 of the agreement that the company would permit the allottee to carry out the interior work in the said apartment prior to handing over its possession and such permission would not be construed as and in no way entitle the allottee to have any right/ interest or title whatsoever in respect of the said apartment.

72. It was further agreed upon between the parties as per clause 13.3 of the agreement, the allottee would complete the interior work of the said apartment within a period of 9 months from the date of grant of permission for interior works and that period could be extended up to 12 months failing which the allotment of the apartment was liable to be cancelled. A period of 42 months with a grace period of 180 days for completion of the project and handing over possession of the allotted unit was agreed to be given to the builder as evident from clause 14.3 of the agreement. The specifications of the works of interiors were also agreed upon between the

parties as per annexure – I of the BBA. In pursuant to provisions of buyer's agreement, the respondent builder sent an intimation to the complainants for interiors of allotted unit vide letter dated 20.01.2017 [annexure R-9 on page no. 72 of reply] besides directing them to clear the dues. So, in such a situation the allottees have failed to fulfil their obligations as per terms and conditions of agreement and commitments with regard to getting interiors done of the allotted unit.

73. As per clause 14.3 of the agreement the due date of possession of the unit comes to 17.11.2015 but while executing buyers' agreement on 01.11.2012 it was mentioned to the allottees that they would be given the apartment in a bare shell /unfurnished condition (clause E of the agreement). Similarly, as per clauses 13.1 and 13.3 of the agreement the allottees were to be permitted to carry out interior work prior to handing over of possession and the time agreed upon in this regard was 9-12 months. No doubt, there was delay in sending an intimation with regard to interiors to the claimants as due date has already expired on 17.11.2015 but can the allottees be given benefit of their own wrong and wriggle out their commitments as per the terms and conditions embodied in the buyer's agreement. The answer is in negative. After completion of the construction, the respondent/builder applied for occupation certificate on 24.09.2018 with subsequent reminders dated 03.12.2018, 09.01.2019, 10.06.2019, 14.06.2019 and 03.10.2019 respectively and vide orders dated 02.08.2021 passed by DTCP, the following observations were made: -

> *(v) The case for grant of occupation certificate be put up without any further loss of time.*
> *(vi) The occupation certificate shall be released on the fulfilment of the following conditions:*
> *(d) Renewal of Licenses.*

(e) Revalidation of building plans.
(f) Submission of report from HVPNL within a period of 60 days from the date of grant of occupation certificate as no such condition was imposed while approval of building plans.
(vii) The occupation certificate is being granted in order to give possession to the allottees to complete internal works as per the approved building plans.
(viii) No deviation from approved building plans is allowed as the same may effect the structural safety aspects, however, the department shall not have any objection if any internal wall is not construed.

74. Further the occupation certificate for the allotted unit was granted by the competent authority on 29.06.2022. The authority is of the considered view as per clauses 13.1 and 13.3 of the agreement the allottees were to carry out interior work prior to handing over of possession within the agreed time and the allottee has failed to do so and hereby seeking full refund of the paid-up amount. The allottees cannot be given benefit of their own wrong and hence refund will be allowed after deduction of the amount paid.

75. 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.

76. 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"

77. Keeping in view the aforesaid legal provisions, the respondent/promoter is directed to refund the deposited amount i.e., Rs. 4,53,25,280/- after deducting 10% of the basic sale price of the unit within a period of 90 days from the date of this order along with interest @ 10.75% p.a. on the refundable amount from the date of filing of complaint i.e., 06.10.2020 till the date of its payment.

H. Directions of the authority

78. 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 deposited amount in both cases after deducting 10% of the basic sale price of the unit along with interest @ 10.75% p.a. on the refundable amount from the date of filing i.e., 16.10.2020 till the date of its 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.

ii. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

79. The complaints stand disposed of.

80. Files be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.08.2023