

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

Date of decision: 16.08.2023

NAME OF THE BUILDER		M/S IREO PRIVATE LIMITED	
PROJECT NAME		IREO CITY CENTRAL	
S. No.	Case No.	Case title	Appearance
1	CR/1476/2022	Kilimanjaro Estate Private Limited Vs IREO Private Limited	Sh. Garv Malhotra Sh. M.K Dang
2	CR/1466/2022	Kilimanjaro Estate Private Limited Vs IREO Private Limited	Sh. Garv Malhotra Sh. M.K Dang
3	CR/1467/2022	Kilimanjaro Estate Private Limited Vs IREO Private Limited	Sh. Garv Malhotra Sh. M.K Dang
4	CR/1465/2022	Kilimanjaro Estate Private Limited Vs IREO Private Limited	Sh. Garv Malhotra Sh. M.K Dang
5	CR/1477/2022	Kilimanjaro Estate Private Limited Vs IREO Private Limited	Sh. Garv Malhotra Sh. M.K Dang
6	CR/1521/2022	Kilimanjaro Estate Private Limited Vs IREO Private Limited	Sh. Garv Malhotra Sh. M.K Dang
7	CR/1511/2022	Kilimanjaro Estate Private Limited Vs IREO Private Limited	Sh. Garv Malhotra Sh. M.K Dang

**CORAM:**

Shri Ashok Sangwan

Member

**ORDER**

1. This order shall dispose of all the 7 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 City Central situated at Sector-59, Gurugram being developed by the same respondent/promoter i.e., M/s Ireo Private Limited. 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 allotted unit.
  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:

<b>Project Name and Location</b>	<b>"Ireo City Central" at sector 59, Gurgaon, Haryana.</b>
<b>Project area</b>	3.9375 acres
<b>DTCP License No.</b>	56 of 2010 dated 31.07.2010 valid upto 30.07.2020
<b>Name of Licensee</b>	SU Estates Pvt. Ltd.
<b>RERA Registration</b>	Registered 107 of 2017 dated 24.08.2017 upto 30.06.2020
<b>Possession Clause: 13.3 Possession and Holding Charges</b> 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 48 months from the date of	



execution of this agreement ("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.

**Occupation Certificate:** Not obtained

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement	Unit No.	Unit admeasuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/1476/2022  Kilimanjaro Estate Private Limited Vs IREO Private Limited  DOF: 19.04.2022  Reply Status: 30.11.2022	28.02.2017	R06-15, 6th Floor, Tower-R	987 sq. ft.	28.02.2021	TSC: - Rs. 1,76,50,131/-  AP: - Rs. 59,73,947/-	Refund
2.	CR/1466/2022  Kilimanjaro Estate Private	28.02.2017	R04-15, 4th Floor, Tower-R	987 sq. ft.	28.02.2021	TSC: - Rs. 1,76,50,131/-	Refund



	Limited Vs IREO Private Limited  <b>DOF:</b> 19.04.202 2  <b>Reply Status:</b> 30.11.202 2					AP: Rs. 59,73,94 7/-	
3.	CR/1467/ 2022  Kilimanja ro Estate Private Limited Vs IREO Private Limited  <b>DOF:</b> 19.04.202 2  <b>Reply Status:</b> 30.11.202 2	28.02.20 17	R05-15, 5th Floor, Tower-R	987 sq. ft.	28.02.202 1	TSC: - Rs. 1,76,50, 131/-  AP: Rs. 59,73,94 7/-	Refund
4.	CR/1465/ 2022  Kilimanja ro Estate Private Limited Vs	28.02.201 7	R03-15, 3rd Floor, Tower-R	987 sq. ft.	28.02.202 1	TSC: - Rs. 1,76,50, 131/-  AP: Rs. 59,73,94 7/-	Refund



	IREO Private Limited  DOF: 19.04.2022 2  Reply Status: 30.11.2022 2						
5.	CR/1477/2022  Kilimanjaro Estate Private Limited Vs IREO Private Limited  DOF: 19.04.2022 2  Reply Status: 30.11.2022 2	28.02.2017	R07-15, 7th Floor, Tower-R	987 sq. ft.	28.02.2021	TSC: - Rs. 1,76,50,131/-  AP: Rs. 59,73,947/-	Refund
6.	CR/1521/2022  Kilimanjaro Estate Private Limited Vs IREO Private Limited	28.02.2017	S14-03, 14th Floor, Tower-S	917 sq. ft.	28.02.2021	TSC: - Rs. 1,76,50,131/-  AP: Rs. 69,84,776/-	Refund



	<b>DOF:</b> 19.04.202 2						
	<b>Reply Status:</b> 30.11.202 2						
7.	CR/1511/ 2022  Kilimanjaro Estate Private Limited Vs IREO Private Limited  <b>DOF:</b> 19.04.202 2  <b>Reply Status:</b> 30.11.202 2	28.02.20 17	R-11-15, 11th Floor, Tower-R	987 sq. ft.	28.02.202 1	TSC: - Rs. 1,76,50, 131/-  AP: Rs. 69,84,77 6/-	Refund
<p>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)</p>							

- 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 refund of the total paid up amount.
- 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/1476/2022 Kilimanjaro Estate Private Limited Vs Ireo Private Limited** 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/1476/2022 Kilimanjaro Estate Private Limited Vs Ireo Private Limited**

S. N.	Particulars	Details
1.	Name of the project	"Ireo City Central", Sector 59, Gurgaon
2.	Nature of the project	Commercial Colony
3.	Project area	3.9375 acres
4.	DTCP license no. and validity status	56 of 2010 dated 31.07.2010 valid upto 30.07.2020
5.	Name of licensee	SU Estates Pvt. Ltd.
6.	RERA Registered/ not registered	Registered

		107 of 2017 dated 24.08.2017 upto 30.06.2020
7.	Unit no.	R06-15, 6th Floor, Tower-R, Type Studio (Page 30 of complaint)
8.	Unit area admeasuring	987 sq. ft. (Page 30 of complaint)
9.	Allotment Letter	05.12.2016 (Page 16 of complaint)
10.	Date of builder buyer agreement	28.02.2017 (Page 24 of complaint)
11.	Possession Clause	<p><b>13.3 Possession and Holding Charges</b></p> <p>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 48 months from the date of execution of this agreement ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to</p>



		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.
12.	Due date of possession	28.02.2021 (Calculated as 48 months from date of execution of agreement)
13.	Total sale consideration	Rs. 1,76,50,131/- (as per the statement of account on page no. 123 of complaint)
14.	Amount paid by the complainant	Rs. 59,73,947/- (as per SOA dated 28.01.2022 on page no. 123 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

### B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

8. That the complainant company and the director Vijay Bhushan Bhardwaj had initially booked three units in the project 'Ireo corridors' launched by the promoter-builder. The units were reallocated by them. Thereafter, they issued an illegal cancellation/ termination letter on the ground of non-payment.
9. That thereafter, the complainant had no option but to transfer the units in another project namely Ascott Ireo City Central, Gurgaon and the amount from the earlier three unit was adjusted in seven units. Thus, the amount

is to be refunded from date of actual payment till date of realization with interest on pro rata basis.

10. That on 05.12.2016, complainant received an allotment offer letter of a managed serviced apartments in Ascott Ireo City Central, Gurgaon and paid an amount of Rs. 30,00,000/-. The project was a construction and time linked plan. The total consideration of the unit was Rs. 1,76,50,131/- including development charges and working capital etc. The builder buyer agreement was executed on 28.02.2017.
11. That the complainant has paid an amount of Rs. 59,73,947/-. The respondent recently visited the premises and took the photographs of the project, and the project is still under construction and far from completion.
12. That the aforementioned acts of the respondent builder were just a mere pressure tactic and a well thought out strategy by respondent builder to illegally demand and extort more money from the complainant and to illegally forfeit all the money paid till date.
13. That the complainant had approached the respondent time and again seeking the information about status of the project and date of offer of possession of the said premises. After repeated reminders the respondent assured that they will handover of possession soon, yet no such offer has been made till now. Therefore, seeking refund of the paid-up amount.

**C. Relief sought by the complainant: -**

14. The complainant has sought following relief(s):
  - I. Direct the respondent to refund an amount of Rs. 59,73,947/-with interest for every month of delay from the actual date of deposit of

each payment till date of realization of the entire money on pro rata basis.

15. 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.

16. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
17. That there is no cause of action to file the present complaint.
18. That the complainant has no locus standi to file the present complaint.
19. That the complainant is estopped from filing the present complaint by their own acts, conduct, admissions, acquiescence and laches.
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 32 of the buyer's agreement.
21. That the complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts. The present complaint has been filed by it 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 complainant is real estate investor who after checking the veracity of the project had applied for allotment of an "Managed Service Apartment-Rental Pool" in 'Ireo City Central', project Sector 59, Gurugram vide its booking application form dated 02.12.2016.

23. That based on the said application, the respondent vide its allotment offer letter dated 05.12.2016 allotted to the complainant apartment no. ICC-MSA-R06-15 having tentative super area of 987 sq.ft. for a sale consideration of Rs 1,76,50,131/-. Accordingly, the buyer's agreement was executed between the parties to the complaint on 28.02.2017.
24. That the complainant initially booked 2 units in its project 'The Corridor'. The complainant started committing several defaults from the very inception in making timely payments towards the total sale consideration of the units allotted to it. The complainant entered into a tripartite agreement with the respondent wherein it had requested to cancel its earlier units allotted to it. The respondent being customer-oriented company had acceded to the request of the complainant for surrender of the allotment of the units and adjusted the payment made by it with the unit in question.
25. That the respondent raised payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as of the payment plan. The complainant has only made part-payment out of the total sale consideration. However, it is submitted that the complainant is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.
26. 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. The clause 13.3 of the buyer's agreement and clause 14 of the booking application form states that the '...subject to force majeure conditions and 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 48 months from the date of execution of the buyer's agreement (Commitment Period). The allottee further agrees and understands that the company shall be additionally be entitled to a period of 180 days (Grace Period)...

27. That in terms of the buyer's agreement the proposed time for handing over of possession has to be computed from 28.02.2017. Moreover, as per clause 13.5 of the buyer's agreement, 'extended delay period' of 12 months from the end of grace period is also required to be granted to the respondent. The due date to handover the possession was to elapse on 27.08.2022. However, it is submitted that the said due period was subject to the occurrence of the force majeure conditions and the complainant complying with the terms of the allotment. The complainant had admitted and acknowledged in clause 13.6 of the buyer's agreement that in case the completion of the apartment is delayed due to the force majeure then the commitment period and/or the grace period and/or the extended delay period shall stand extended automatically to the extent of the delay caused under the force majeure conditions and that the complainant shall not be entitled to any compensation whatsoever.
28. That on account of certain force majeure circumstances such as construction ban, due to Court Order/ Governmental Authority guidelines, the implementation of the project was affected.
29. Furthermore, the outbreak of the deadly Covid-19 virus resulted in implementation of the project being affected. The outbreak resulted in not only disruption of the supply chain of the necessary materials but also in shortage of the labour at the construction sites as several labourers have



migrated to their respective hometowns. The Covid-19 outbreak which has been classified as 'pandemic' is an Act of God and the same was thus beyond the reasonable apprehension of respondent. The time period covered by the above-mentioned force majeure events is required to be added to the time frame mentioned above. The respondent cannot be held responsible for the circumstances which were beyond its control. It is pertinent to mention herein that even this Hon'ble Authority had vide its order no. 9/3-2020 HARERA/GGM(Admin) dated 26.05.2020 had extended the registration and completion date automatically by 6 months due to the outbreak of Covid-19. Even this Hon'ble Authority had agreed vide the said order that due to the force majeure condition, the regular development work of the real estate projects have been getting affected.

30. That further due to outbreak of Covid-19 and its various waves has adversely affected the functioning of various Govt. as well as private Offices and has caused delay in completion of the project in which unit of the complainant is situated. The Hon'ble Apex Court has also taken into consideration the situation due to various waves of Covid-19 and has granted relief in terms of extension of limitation w.e.f. 15.03.2020 to 28.02.2022 to file various documents before various courts/authorities. Accordingly, this period w.e.f. 15.03.2020 to 28.02.2022 should be counted under force majeure while calculating the due date of possession as per the buyer's agreement.
31. That despite the above-mentioned scenario, the respondent has already completed the construction of the tower in which the unit allotted to the complainant is located and it shall soon apply for the grant of the occupation certificate. Only finishing work in the said tower in question is left and is being undertaken by the respondent currently.

32. That although the tower in which the unit allotted to the complainant is located is complete, the implementation of the said project has been hampered due to non-payment of installments 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:

- 1) **Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization:**  
[Only happened second time in 71 years of Independence hence beyond control and could not be foreseen]. 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.

Further there are 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.

The Reserve Bank of India has published reports on impact of demonetization. In the report- macroeconomic impact of demonetization, it has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.

Furthermore, there have been several studies on the said subject matter and all the studies record the conclusion that during the period of demonetization the migrant labour went to their native places due to shortage of cash payments and construction and real estate industry suffered a lot and the pace of construction came to halt/ or became very slow due to non-availability of labour. Some newspaper/print media reports by reuters etc. also reported the negative impact of demonetization on real estate and construction sector.

That 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.

ii) **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.

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 the respondent and the said period is also required to be added for calculating the delivery date of possession.

(III) That in the year 2017, there was a dispute between the respondent and the contractor of the project on account of which the construction work of project came to a halt and this fact was intimated to the complainant as well. On account of the stoppage of work by the contractor of the project in question, valuable time to complete the construction was lost and the same is covered under the ambit of the definition of 'force majeure' as defined in clause 1 of the buyer's agreement.

(IV) **Non-Payment of Instalments by Allottees:** Several allottees, including the complainant, 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..

(IV) **Inclement Weather Conditions viz. Gurugram**: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable 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.

M That Section 51 of the Indian Contract Act, 1872 provides that promisor is not bound to perform, unless reciprocal promisee is ready and willing to perform. Section 52 of the Indian Contract Act, 1872 provides for Order of performance of reciprocal promises wherein it is stated that the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order.

In the instant case, the complainant failed to perform its obligation under the contract for timely payment of installments. However, the respondent still fulfilled its obligations. No claim is maintainable by the complainant against the respondent.

N That the complainant is a real estate investor who had made the booking with the respondent with the sole intention of earning quick profit in a short span of time. However, on account of slump in the real estate market, his calculations went wrong and it has now filed the present baseless, false and frivolous complaint in order to unnecessarily harass, pressurize and blackmail the respondent to submit to his unreasonable and untenable demands. The complaint is liable to be dismissed with heavy costs payable

to the respondent. Such malafide tactics of the complainant cannot be allowed to succeed.

33. 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**

34. 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**

35. As per notification no. *1/92/2017-ITCP 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**

36. 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.*

37. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objection raised by respondent**

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

38. 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:

***"32. 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".*

39. 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.

40. 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."*

41. 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."*

42. 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.II Objections regarding force majeure**

43. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as various orders of the NGT, demonetization and non-payment by allottees. The plea of the respondent are devoid of merit. First of all, the possession of the unit in question was to be offered by 28.02.2021. The events alleged by the

respondent do not have any impact on the project being developed by the respondent as the NGT orders were of very short duration of time which doesn't adversely affect the development of the project. Though some allottee may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottee. 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.

44. 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*

45. 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. Findings on the relief sought by the complainant**



- I. Direct the respondent to refund an amount of Rs. 59,73,947/-with interest for every month of delay from the actual date of deposit of each payment till date of realization of the entire money on pro rata basis.

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

***"Section 18: - Return of amount and compensation***

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

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

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

*(Emphasis supplied)*

47. Clause 13.3 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

***13.3 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 48 months from the date of execution of this agreement ("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."*

48. That the complainant booked a unit in the project of the respondent namely, "Ireo Corridors" and thereafter the unit of the complainant was transferred from corridors project to 'Ireo City Central' situated at sector-59, Gurugram. The unit bearing no. R06-15, 6<sup>th</sup> Floor, R tower was allotted vide allotment letter dated 05.12.2016. Thereafter, a BBA was executed between the parties on 28.02.2017.
49. As per possession clause 13.3 of the apartment buyer's agreement the possession of the unit was to be handed over within 48 months from the date of agreement. Further 180 days grace period was also demanded by respondent for unforeseen delays which is declined due to reasons mentioned above. Therefore, the due date for handing over of possession comes out to be 28.02.2021.
50. 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.
51. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has

paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*“... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”*

52. 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*** and observed that:

*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*

53. 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.

54. 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.
55. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 1,76,50,131/- with interest at the rate of 10.75% (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**

56. 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 complainants in all the above-mentioned cases along with prescribed rate of interest @ 10.75% 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.
57. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
58. The complaints stand disposed of.
59. Files be consigned to registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2023



(Ashok Sangwan)  
**Member**

**HARERA**  
**GURUGRAM**