



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

Complaint no. :	1108 of 2022
Date of filing complaint:	25.03.2022
Order Reserve On:	06.07.2023
Order Pronounced On:	24.08.2023

Kiranmeet Saran R/O: H. no. 195, 2nd Floor, Sector-30, Near Shivam Hospital, Gurugram	Complainant
Versus	
M/s International Land Developers Pvt. Ltd. Office: 9th Floor, ILD Trade Centre, Sector-47, Sohna Road, Gurugram-122018	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Shri Sukhbir Yadav (Advocate)	Complainant
Shri Rishabh Gupta (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.



A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Arete" at Sector 33, Sohna Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	11.6125 acres
4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid up to 03.06.2019
5.	Name of licensee	International Land Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 06 of 2019 valid up to 02.07.2022
7.	Unit no.	1402, 13th Floor, Tower-E (page no. 51 of complaint)
8.	Unit area admeasuring (super area)	1275 sq. ft. (page no. 51 of complaint)
9.	Date of builder buyer agreement	21.04.2015 (page no. 47 of complaint)
10.	Tripartite agreement	29.07.2015 (page no. 107 of complaint)
11.	Request letter by complainant for refund	01.05.2019 (page no. 143 of complaint)

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12.	Possession clause	10 Possession of apartment <i>10.1 Subject to timely grant of all approvals (including revisions thereof). permissions. certificates. NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the Project making timely payments including but not limited to the timely payment of the Total Sale Consideration. stamp duty and other charges, fees, IAC. Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavor to complete the construction of the Said Apartment within 48(Forty-Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months.</i>
13.	Due date of possession	21.10.2019 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
14.	Total sale consideration	Rs. 69,83,375/- [as per payment plan on page no. 101 of complaint]
15.	Amount paid by the complainant	Rs. 26,32,157/- [as alleged by complainant]



16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. That believing on representation and assurance of the respondent, on 19.11.2013, Ms. Kiranmeet Saran (complainant) signed a pre-printed expression of interest form for booking in the project and deposited a sum of Rs.3,00,000/- vide cheque. On demand the complainant again paid an amount of Rs.7,00,000/- vide two cheques.
4. That after receiving a sum of Rs.10,00,000/- respondent allotted the flat no. E-1402 in block-E, on 13th floor at ILD Arete, Sector-33, Sohna, Gurugram, measuring 1275 sq. ft. The flat was booked under the construction link plan was of a total cost of Rs.71,66,975/-. The respondent had fixed the price at Rs.4656/- per sq. feet, however, the complainant objected to the same and made a note that the business associate of the respondent at the time of booking had assured that the rate will be Rs.4512/- per sq. feet and a note in this regard was also made in the application form which was submitted on 11.03.2014. It was represented by the office bearer/marketing staff of the respondent at the time of receiving of application money, that flat will be handover within 48 months from the date of booking.
5. That on the demand raised by respondent the complainant again paid an amount of Rs.1,74,251/- and Rs. 11,861/- respectively vide cheques on 05.05.2014 which was duly encashed.



6. That after a long follow-up on 21.04.2015 a pre-printed, arbitrary, and unilateral builder buyer agreement which was executed inter-se parties for a total sale consideration of Rs.69,83,375/-. As per clause no. 10.1 of the flat buyer agreement, the respondent would hand over the possession of flat within 48 Months from executing this agreement, therefore, the due date of possession was on or before 21.04.2019.
7. That the complainant availed a home loan of Rs. 25,00,000/- from HDFC Ltd. against the allotted flat and the respondent issued permission to mortgage in favour of HDFC Ltd. and also executed a tripartite agreement.
8. That on-demand raised by the respondent, the banker of the complainant released an amount of Rs.6,08,601/- to the respondent Again on 19.05.2017 respondent no.1 raised demand and the banker of the complainant released an amount of Rs.8,37,444/- vide cheque.
9. That thereafter the complainant continue to pay the remaining instalment as per the payment schedule of the builder buyer agreement and had already paid the Rs.26,32,157/- i.e. 37.69% of total cost till June 2017.
10. That even after paying the above-said amount, the respondent was negligent and had not even started the construction at the site and the complainant observed that there is no progress in the construction of the subject flat for a long time, she was forced to raise her grievance to the respondent. The complainant had been paying the monthly instalments to the loaner bank and is unnecessarily burdened with the interest and the developer despite being under obligation and over the property way back in the year 2018, showed no compassion either to complete the project or to provide financial assistance to the

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complainant for a delayed project. The complainant who is a working woman needed the property in question for her own accommodation and as the respondent failed to provide the said unit within time, the respondent has no option but to stay in rented accommodation paying a huge rental amount of Rs.20,000/- approx. per month which increases yearly.

11. That the respondent has not started any construction with respect to Tower E F G H and no work of the promised amenities like swimming pool, library, parks, community center, etc. which are to be provided as per agreement have started till date. On approach the respondent, respondent assured that the construction will begin very soon in respect of the above-said towers and the work will be completed at a brisk pace. The complainant again raised a grievance with the respondent alleging abandoned construction work on-site since Feb 2018 (from her last visit or even before this period) and further raised her grievance that due to delayed possession she is suffering from financial loss by paying rent as well as interest for a home loan and thereafter the complainant demanded interest for delayed possession commencing from the due date of possession i.e., 21.04.2019 (as per agreement).
12. That on 01.05.2019, the complainant issued a letter seeking a refund of the amount paid by the complainant as the respondent had shown no activity of raising construction on the site, various photographs of the site are annexed herewith which falsify the claim of the respondent that the respondent will raise the construction within the stipulated time mentioned in RERA registration. Despite the above-said letter no action has been taken by the respondents nor the respondent raised any

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construction over the site in question and it seems that the respondent has abandoned the project and has no inclination to complete the same. The complainant because of the act and conduct of the respondent, has been unnecessarily burdened with interest on the loan amount and the hard-earned money of the complainant is lying wasted with the respondent. Feeling aggrieved by the act and conduct of the respondents, the complainant again issued a letter dated 28.09.2020 requesting the respondent to pay the money back along with interest paid by the complainant towards the loan and to clear the loan amount as it is the respondent who has failed to honor its commitment. The complainant further requested for paying damages towards the cost of rent which the complainant is forced to pay from the date of possession till realization.

13. That the complainant had invested her hard-earned money in the said flat with the intention that after receiving possession of the flat, she will live in her own flat. It was promised by the respondents at the time of receiving payment for the flat that the possession of fully constructed flat along like landscaped lawns, club/ pool, etc. as shown in the brochure at the time of sale, would be handed over to the complainant as soon as construction work is complete i.e., by June 2018.
14. That it is more than 09 years from the date of booking and construction has not yet started, it clearly shows the negligence of the builder/ developer/ respondents. As per project site conditions, it seems that the project has been abandoned and the respondents are having no willingness to complete the project.
15. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency in service on the part of



the respondent and as such, they are liable to be penalized and compensate the complainant accordingly.

16. That due to the above acts of the respondents and of the terms and conditions of the builder buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
17. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent and much more it seems that the respondent has played fraud with the complainant and others which is prima facie clear as per act and conduct on the part of the respondent which makes him liable to answer this hon'ble authority.

C. Relief sought by the complainant:

18. The complainant has sought following relief(s):

- (i) Direct the respondent to refund the paid amount with interest from the date of each payment till the realization of money.

D. Reply by respondent/promoter:

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

19. That at the outset each and every averment, statement, allegation, contention of the complainant which is contradictory and inconsistent with the reply submitted by the respondent/promoter is hereby denied and no averment, statement, allegation, contention of the complainant shall deem to be admitted save as those specifically admitted being true and correct. It is respectfully submitted that the same be treated as a



specific denial of the complaint. The respondent/promoter is a leading real estate company aiming to provide state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.

20. That the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds.
21. That the complainant herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
22. At the outset in 2013, the complainant herein, learned about the project launched by the respondent/promoter titled as 'Arete' (herein referred to as 'Project') and approached the respondent/promoter repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
23. That after having keen interest in the project constructed by the respondent/promoter the complainant herein booked a flat unit E-1402, floor-13th, tower E, admeasuring 1275 sq. ft. in the project Arete, Sector-33, Sohna Haryana.
24. That on 21.04.2015, a builder buyer agreement (herein referred to agreement') was executed between the complainant and the respondent wherein the unit no. E-1402, floor-13th, tower E, admeasuring 1275 sq. ft. in the project of the respondent Arete, Sector-33, Tehsil Sohna, Gurugram.

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25. That time was essence in respect to the allottees obligation for making the respective payment. And, as per the agreement so signed and acknowledged the allottee was bound to make the payment of installment as and when demanded by the respondent/promoter. The relevant clause 8 of the said agreement.
26. That the project of the respondent/promoter got delayed due to reasons beyond control of the respondent. It was further submitted that major reason for delay for the construction and possession of project is lack of infrastructure in the said area. The twenty-four- meter sector road was not completed on time. Due to non- construction of the sector road, the respondent faces many hurdles to complete the project. For completion of road, the respondent the Govt. Department/machinery and the problem is beyond the control of the respondent/promoter. The aforementioned road has been recently constructed.
27. That the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21/09/2015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to this reason the project got delayed.
28. That in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.



29. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after lifting of ban by the Hon'ble court the construction activity could not resume at full throttle due to such acute shortage.
30. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.
31. In past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L- 49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L- 53 dated 01.11.2019.
32. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019



and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.

33. The demonetization and new tax law i.e., GST, affected the development work of the project. In the view of the facts stated above it is submitted that the respondent/promoter has intention to complete the project soon for which they are making every possible effort in the interest of allottees of the project.
34. Even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and such period shall not be added while computing the delay.
35. The Covid-19 pandemic has resulted in serious challenges for the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020- DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25,2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict



measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

36. After such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the World wide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances.
37. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. That on 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM- I (A) recognized that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. Subsequently, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. It is to note, various State Governments, including the Government of Haryana have also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.

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38. The respondent/promoter herein had been running behind the complainant for the timely payment of instalment due towards the respective unit in question. That in spite being aware of the payment schedule the complainant herein has failed to pay the instalment on time.
39. That the respondent/promoter is committed to complete the development of the project at the earliest for which every necessary action is being taken by the respondent/promoter. It is further submitted that as the development of the project was delayed due to the reasons beyond the control of the respondent/promoter, the complainant is not entitled for compensation in any which way and the same was agreed into between the complainant and the respondent/promoter under clause 10.1, 10.2, 10.3, 10.4, and clause 18. Therefore, the complainant is not entitled for compensation for delay.
40. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent/promoter are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainant deserves to be dismissed with heavy costs. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
41. All other averments made in the complaint were denied in toto.
42. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written

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submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

43. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

44. 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

45. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.



46. 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.
47. 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 (Civil), 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."

48. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the



jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent/promoter:

F.I Objections regarding delay due to force majeure:

49. The respondent-promoter raised the contention that the construction of the project was delayed due to conditions beyond the control of the respondent/promoter such as non-construction of sector road by Government, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016 along with demonetization and new tax law i.e., GST, affected the development work of the project. First of all, the orders of High Court in the year 2012 does not have any impact on the project as the same was passed even before the apartment buyer's agreement was executed between the parties. Further, the orders banning construction and extraction of ground water were imposed for a very short duration and thus, a delay of such a long duration cannot be justified by the same. The plea regarding delay due to GST and demonetisation is also devoid of merit and thus, all the pleas stand rejected. 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.

G. Entitlement of the complainant for refund:

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- (i) Direct the respondent to refund the paid amount with interest from the date of each payment till the realization of money.



49. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him 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)

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

10. Possession of apartment

"10.1 Subject to timely grant of all approvals (including revisions thereof). permissions. certificates. NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the Project making timely payments including but not limited to the timely payment of the Total Sale Consideration. stamp duty and other charges, fees, IAC. Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavor to complete the construction of the Said Apartment within 48 (Forty-Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months."

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51. The complainant booked a unit in the respondent's project and was allotted unit no. 1402, 13th floor in tower E. The BBA was executed between the parties on 21.04.2015. As per clause 10 of the said BBA, the possession of the unit was to be given within a period of 48 (forty-eight) months from date of execution of the agreement along with a grace period of 6 months. Given the fact that the grace period was unqualified, the due date of possession comes out to be 21.10.2019.
52. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. The due date of possession as per buyer's agreement was 21.10.2019. It is observed that the complainant vide letter dated 01.05.2019 requested the respondent to refund the entire amount paid by her which is before the due date of possession. So, she is entitled to get refund of the paid-up amount but only after deduction.
53. The issue w.r.t. deduction of earnest money arose before the hon'ble Apex Court of the land in cases of *MaulaBux V/s Union of India (1970)1 SCR 928* and *Sirdar KB Ramchandra Raj Urs V/s Sarah C Urs (2015) 4SCC 136* and followed by NCDRC in cases of *Ramesh Malhotra V/s EMAAR MGF Land Limited and Mr. Saurav Sanyal V/s M/s IREO Pvt. Ltd.* decided on 12.04.2022 and wherein it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of "earnest money".
54. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

"5. 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."

55. Keeping in view the aforesaid legal provisions, the respondent is directed to refund the paid-up amount after deducting 10% of the sale consideration of the unit being earnest money within 90 days along with an interest @ 10.75% p.a. on the refundable amount, from the date of surrender i.e., 01.05.2019 till the date of its payment.

H. Directions of the Authority:

56. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/builder is directed to refund the paid-up amount of Rs. 26,32,157/- after deducting 10% of the sale consideration being earnest money along with an interest @10.75% p.a. on the refundable amount from the date of surrender i.e., 01.05.2019 till date of its payment.
- ii) The respondent is further directed that the outstanding loan amount paid by the financial institution be refunded to the concerned financial institution.

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- iii) The balance amount with the respondent builder after paying to the financial institution be refunded to the complainant along with interest at the prescribed rate.
- iv) 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. Complaint stands disposed of.
58. File be consigned to the registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.08.2023



V.1-3
(Vijay Kumar Goyal)
Member

HARERA
GURUGRAM