

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

Complaint no. :	4765 of 2022
Date of filing complaint:	08.07.2022
Order Reserve On:	06.07.2023
Order Pronounced On:	24.08.2023

Priyanka Dinkar Rao Borde Sankalp Singh R/O: D-401, Sispal Vihar, Sector-49, Sohna Road, Gurugram	Complainants
Versus	
M/s International Land Developers Pvt. Ltd. Office: B-418, New Friends Colony, New Delhi	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
None	Complainants
Shri Rishab Gupta	Respondent

ORDER

1. The present complaint has been filed by the complainants/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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name 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.	704, 7 th floor, Tower D (page no. 53 of complaint)
8.	Unit area admeasuring (super area)	1275 sq. ft. (page no. 53 of complaint)
9.	Date of builder buyer agreement	11.06.2014 (page no. 51 of complaint)
10.	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</i>

		<i>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>
11.	Due date of possession	11.12.2018 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
12.	Total sale consideration	Rs. 71,05,775/- (page no. 108 of complaint)
13.	Amount paid by the complainants	Rs. 48,13,629/- (as alleged by complainants)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

A



3. That the respondent company advertised with different means and channels about their upcoming residential project namely "Arete Luxury Park Residences" at Village Dhunela, sector-33, Sohna, Gurgaon, Haryana.
4. That complainants who was interested to purchase an apartment for their own residential purposes, visited at the office and lured by the respondent company to book a flat in the said project by misleading advertisements and wrongful representation via the brochure of the project while emphasizing upon the high- lighting and key features of their said project including "timely possession" and usage of monolithic aluminium form work technology along with using of building information model(BIM)" for construction. It was their own pro-claimed statement that the said project is comparatively better than the other residential project offered by other competitor builders since respondents were: "offering of construction by using monolithic aluminium form work technology along with using of building information model (BIM)".
5. That the complainants while relying upon their said projection regarding the usage of afore-said technology of construction which is much better than conventional technology and further more on their projection & assurance of the respondent regarding handing-over the possession of the said flat within 48 months from the date of execution of buyers agreement with additional grace period of 6 months; booked one residential 2BHK Flat with tentative super area 1275 sq. ft. on payment of initial booking amount of Rs.3,00,000/- through cheque dated-30.11.2013.
6. That the complainants as per agreed terms of booking the said flat deposited a further sum of Rs.2,11,349/- through cheque dated



7.2.2014 drawn at State Bank of India, in-addition to Rs.3,00,000/- on dated 13.3.2014 via transfer/adjustment of amount deposited by Mrs. Jaipali Singh & Maj. Gen. Mahavir Singh and Rs.4,00,000/- via Cheque no. 831243 dated 28.3.2014 drawn at Citi Bank Branch.

7. That on receipt of aforementioned aggregate amount of Rs.12,11,349/- (exclusive of TDS amount), the respondent issued allotment letter dated 30.04.2014 whereby allotted one residential unit bearing no. 704, 7th floor, tower-D, with super area approximate 1275 sq. ft.
8. That thereafter parties of the case entered into apartment buyer agreement dated-11.6.2014. As per buyer's agreement the possession of the unit will be handed over within 48 months of execution of the apartment buyer agreement with a grace period of 6 months.
9. That the complainants opted for construction linked payment plan and in consonance thereof, the complainants have made further payment of Rs.36,02,280 against various demand letters/invoices raised by the respondent time to time and accordingly the complainants have deposited a total sum of Rs.48,13,629/- as on dated 17.11.2016
10. That though there was apparent delay in construction and handing over the unit in the stipulated time, however, on the false assurances of the respondent of increasing the pace of construction and payment of delay penalty, the complainants did not initiate any recourse of legal action against the respondent. But thereafter there is no construction in-progress at the site. The complainants repeatedly approached the Respondent personally as well as via email communication requested them to increase the pace of work and handover the booked flat in stipulated time. But apart of frivolous assurances, nothing constructive

A



was yield out, causing lots of immense mental agony, physical harassment & financial loss to the complainants.

11. That the complainants were in dire need of flat for their own accommodation, the complainants even proposed to give an alternate flat in respondent's another project, however, even the said proposal could not be shaped up because of malafide and fraudulent intentions of the respondent to usurp the hard earned money of the complainants. Henceforth, in the constrained circumstances as explained herein above, the complainants served legal notice dated 18/6/2022 via post as well as on the authorized email IDs of the respondent and thereby called upon the respondent to refund entire deposited amount of Rs.48,13,629/- along with interest from the respective date of deposits.
12. That the respondent has utterly failed to perform according to the terms and conditions of said apartment buyer's agreement duly executed. However, the pace of construction in the entire project was utterly slow and after raising part of the structure building, there is no further construction at the site in recent years and practically, the respondent has abandoned the tower site
13. That under the provisions of Section 18 of RERA, the respondent is bound and the complainants are entitled for refund of amount paid by them to the respondent and also entitled to interest on the amount from the respondent along with the litigation charges.

C. Relief sought by the complainants:

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

(i) Direct the respondent to refund the entire amount paid by the complainants along with interest at prescribe rate of interest



calculated from the date of receipt of amount till the date amount is refunded.

15. The reply on behalf of the respondent has not been received. On the last date of hearing the counsel of the respondent appeared and one last opportunity was given to file the written submission but neither reply nor written submissions was filed by them even after multiple opportunities. Therefore, the authority assumes/observes that the respondent has nothing to say in the present matter and accordingly, the authority proceeding with the facts of the complaint and the defence of the respondent stands struck off.

D. Jurisdiction of the authority:

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

D. I Territorial jurisdiction

17. 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.

D. II Subject matter jurisdiction

18. 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.

19. 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.
20. 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."

21. 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.

E. Entitlement of the complainants for refund:

- (i) Direct the respondent to refund the entire amount paid by the complainants along with interest at prescribe rate of interest calculated from the date of receipt of amount till the date amount is refunded.
22. In the present complaint, the complainants 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)

23. 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."

24. The complainants booked a unit in the respondent's project and was allotted unit no. 704, 7th floor in tower D. The BBA was executed between the parties on 11.06.2014. 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 11.12.2018.
25. 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....."

26. 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 as under:

"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."

27. 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) of the Act. 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.



28. 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.

29. **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]

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."

30. 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.

31. 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., 24.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

32. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 48,13,629/- 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 Rules ibid..

H. Directions of the Authority:

33. 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/promoter is directed to refund the entire amount of Rs. 48,13,629/- paid by the complainants 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.

34. Complaint stands disposed of.

35. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.08.2023