



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

Complaint no. :	4642 of 2021
Date of filing complaint:	16.12.2021
Order Reserve On:	24.03.2023
Order Pronounced On:	21.07.2023

<b>Deepak Narang</b> R/O: 406, 1 <sup>st</sup> Floor, Defence Colony, New Delhi-110024	<b>Complainant</b>
Versus	
M/s Ireo Pvt. Ltd. <b>Regd. office:</b> C-4, 1 <sup>st</sup> Floor, Malviya Nagar, New Delhi-110017	<b>Respondent</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
None	Complainant
Sh. M.K Dang (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	"Ireo City Central" at Sector 59, Gurugram
2.	Nature of the project	Commercial Colony
3.	Project area	3.9375 acres
4.	DTCP license no.	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	102 of 2017 dated 24.08.2017 Up to 30.06.2020
7.	Unit no.	FC-02A, Lower Ground (page no. 23 of reply)
8.	Unit area admeasuring (super area)	640.91 sq. ft. (page no. 23 of reply)
9.	Date of builder buyer agreement	29.08.2016 (page no. 21 of reply)
10.	Possession clause	<b>13.3 Possession and Holding Charges</b> <i>Subject to Force Majeure, as defined herein and further subject to the Allotte 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</i>



		<p>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 Commercial Unit to the Allottee within a period of <b>48 months from the date of execution of this Agreement ("Commitment Period")</b>. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company..</p>
11.	Due date of possession	<p>29.08.2020</p> <p>(Calculated as 4 years from execution of BBA)</p> <p><b>Note:</b> Grace period is not allowed.</p>
12.	Total sale consideration	<p>Rs. 1,66,44,984/-</p> <p>(As per schedule of payments on page 60 of reply)</p>
13.	Amount paid by the complainant	<p>Rs. 79,45,162/-</p> <p>(as per statement of account on page no. 53 of complaint)</p>
14.	Occupation certificate	<p>28.08.2019 ✓</p> <p>(page 62 of reply)</p>
15.	Offer of possession	<p>20.09.2019 ✓</p> <p>(page 51 of complaint)</p>

**B. Facts of the complaint:**



3. That the respondent/promoter advertised their real estate project named as 'Ireo City Central', sector-59, Gurugram, through various mass media means. Upon representations and promises made by the promoter, the complainant applied for allotment of commercial unit vide a booking application form dated 26<sup>th</sup> July 2016 and deposited the booking amount of Rs.10,00,000/- towards the purchase of the same.
4. That the basic sale price of the booked unit was agreed @Rs.24,560/- per sq. ft. of super area i.e., total of Rs.1,57,40,750/-. The size of the booked shop was having tentative super area of 640.91 sq. ft.
5. That besides the basic sale price the complainant was also required to pay development charges, renovation charges and IFMS which amounts to total cost of Rs. 1,66,44,984/- out of which the complainant has made payment of Rs. 79,45,162/-.
6. That clause 12 of the application for booking of commercial unit details as under:
  12. *I/We understand and agree that the concept of Super Area of the said Commercial Unit as used herein, is a mechanism only for the purpose of deriving the consideration payable for the said Commercial Unit and it is not a physical area or a measurable component. In fact what will be transferred pursuant to the Buyer's Agreement will only be the Specific Area of the said Commercial Unit, which shall be 55% of the Super Area.*
7. That the respondent/promoter sent a communication dated 20.09.2019 offering possession of the shop premises and called upon the complainant to make the balance payments and complete the formalities detailed in the said communication.
8. That the respondent/promoter further sent two identical communications dated 19.01.2019 and 15.01.2020, requesting the complainant to make the balance payment and to sign 2 copies of the addendum agreement of the shop unit. Through the said addendum





- agreement, the respondent/promoter desired to change/ alter/ modify clause 12 of the application for booking of commercial unit, in which 55% of the super area is mentioned to 23.7% of super area.
9. That the complainant sent a legal notice dated 03<sup>rd</sup> February 2020 calling upon the respondent/promoter to withdraw the communications dated 19.12.2019 and 15.01.2020 as also the addendum agreement and to execute and register the conveyance deed of the shop unit having at least built-up unit area of 55% of the Super area of 640.91.
  10. That however, in abject defiance of the above said legal notice the respondent / promoter sent 2 more reminders dated 28.02.2020 and 12.03.2020 requesting the complainant to make the balance payment and to sign 2 copies of the addendum agreement of the shop unit.
  11. That the complainant vide his communication dated 19.03.2020 reiterated calling upon the respondent/promoter to withdraw the communications dated 19.12.2019 and 15.01.2020 as also the addendum agreement, but to no effect.
  12. That the complainant was forced to get issued a legal notice dated 07.12.2020 under clause 21 of the buyer's agreement for commercial unit. The said notice was duly replied by the respondent/promoter vide their reply dated 08.01.2021 detailed false and frivolous facts and submissions and called upon the complainant to withdraw the said notice.
  13. That the complainant is constantly following up with the respondent/promoter most importantly regarding the issue that the specific area of the commercial shop unit should be 55% of the super area, as was agreed at the time of booking, but to no effect.





14. That the respondent/promoter have committed breach of trust and the application for booking of commercial unit dated 26th July 2016, and are forcing, pressurizing and compelling the complainant to accept the change definition and intent of super area and specific area, and under the garb of the same offering only 23.7% of the super area instead of the agreed 55% of the super area.
15. That the respondent/promoter is in breach and in violation of "RERA ACT" by unilaterally reducing the specific area of the commercial shop unit sold to the complainant, by offering 23.7% of the super area instead of the agreed 55% of the super area. The respondent/promoter has caused irreparable loss and damages to the complainant as the complainant has been deprived of the possession of the said commercial unit shop.

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

16. The complainant has sought following relief(s):
- (i) The respondent/promoter be prosecuted for furnishing false information regarding super area of the commercial shop unit and the resultant specific area.
  - (ii) The complainant be handed over the peaceful possession of the commercial unit shop bearing no. ICC-R-LG-FC-02A having the specific area of the commercial shop @55% of the super area of 640.91 sq. ft., and the Car Parking Bay No. R-163 (Basement-3) at Ireo City Central, Sector-59, Golf Course Extension Road, Gurgaon.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:





17. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The buyer's agreement was executed between the complainant and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
18. That the respondent has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.
19. That the complainant is estopped from filing the present complaint by his acts, omissions, admissions, acquiescence and laches.
20. That there is no cause of action to file the present complaint.
21. That the complainant has no locus standi to file the present complaint.
22. That the 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 33 of the buyer's agreement.
23. That the complainant, after checking the veracity of the project namely 'Ireo City Central' sector 59, Gurugram had applied for an allotment of a commercial unit vide booking application form dated 26.07.2016. based on the said application, the respondent vide its provisional allotment letter dated 29.07.2016 allotted to the complainant unit no. ICC-R-LG-FC-02A having tentative super area of 640.91 sq. ft. for a sale consideration of Rs. 1,66,44,984/- (net of taxes). The complainant was aware from the very inception that the super area of the commercial unit allotted to the complainant was tentative and was subject to the change as per statutory requirements. Moreover, the sale consideration as stated was exclusive of the registration charges, stamp duty, service





tax and other charges payable by the complainant to the respondent and the same was known to the complainant. Accordingly, the buyer's agreement was executed between the parties on 29.08.2016. The complainant agreed to be bound by the terms stipulated in the buyer's agreement. The complainant had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be applied retrospectively.

24. That as per the agreed terms payment was to be made according to possession link payment plan and the said schedule was in three stages. First stage of payment was to be made at the time of booking was 10% BSP, then within 30 days from Booking that is 35% of BSP + 100% of DC and then on possession that is 55% of BSP + Renovation Fund + RFMS + Other charges. 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 till date only made part- payment out of the total sale consideration and the present complaint is nothing but a malafide tactic adopted by the complainant to somehow pressurize, blackmail and harass the respondent to submit to his unreasonable and untenable demands. 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.
25. That the possession of the unit is supposed to be offered to complainant in accordance with the agreed terms and conditions of the buyer's agreement. it is submitted that clause 13.3 of the buyer's agreement and clause 14 of the schedule - i of the booking applicant form states that the '... 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 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 commercial unit 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 additionally be entitled to a period of 180 days ("Grace Period")... From the aforesaid terms of the buyer's agreement, it is evident that the time was to be computed from the date of execution of the buyer's agreement. 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 respondent. Therefore, 66 months from 29.08.2016 (including the 180 days grace period), shall expire only on 28.02.2022. The complainant has filed the present complaint with wholly malafide motive by making baseless, false and frivolous averments.

26. That the respondent after completing the construction of the tower in which unit of the complainant is located applied for the occupation certificate on 04.05.2017 and the same was granted by the concerned authorities on 28.08.2019. The respondent accordingly issued notice of possession on 20<sup>th</sup> September 2019 to complainant much prior to the lapse of the due date of possession and requested complainant to pay balance amount of Rs. 1,16,16,795/- and also to finish all necessary formalities which could enable the respondent to proceed for handing





over of possession and execution of conveyance deed. Further in this regard, two reminders dated 28<sup>th</sup> Feb 2020 and 12<sup>th</sup> March, 2020 and final notice dated 05.01.2021 were also sent to the complainant but the complainant never responded back. The complainant is bound to take the possession of the unit after making payment of the due amount and completing the documentation formalities as the holding charges are being accrued as per the terms of the buyer's agreement and the same is known to the complainant as is evident from a bare perusal of the notice of possession.

27. That the complainant is a real estate investor who had booked the unit/shop in question with a view to earn quick profit in a short period. However, it appears that his calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to harass and pressurize the respondent to submit to his unreasonable demands on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed. The complainant furthermore is also liable to make payment towards the holding charges on account of the delay in taking over the possession as per the terms of the allotment and complete the documentation formalities instead of filing such present baseless and false complaint.
28. That the complainant is trying to raise disputes which are in contravention to the terms of the buyer's agreement and application form. The complainant bought this unit for making profit by way of speculation by reselling the property. Complainant's conduct of raising false and frivolous issues and also finding excuses to wriggle out of the agreed terms by sending frivolous notice shows his intention which was to resell the unit at a higher price in the market before the completion of construction and make profit out of it. Hence, he is desperately





attempting to find faults with the respondent and giving untenable reasons to wriggle out of his obligations.

29. 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 these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

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

**E. I Territorial jurisdiction**

31. 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**

32. 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.*

33. 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.

**F. Objections raised by respondent**

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

34. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyers agreement was executed between the complainants and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
35. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force



of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017** which provides as under:

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

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

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

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

37. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the





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

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

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:

***“35. Dispute Resolution by Arbitration***

*“All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or*





*any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".*

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 Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

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

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.

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

- (i) The respondent/promoter be prosecuted for furnishing false information regarding super area of the commercial shop unit and the resultant specific area.
- (ii) The complainant be handed over the peaceful possession of the commercial unit shop bearing no. ICC-R-LG-FC-02A having the specific area of the commercial shop @55% of the super area of 640.91 sq. ft., and the Car Parking Bay No. R-163 (Basement-3) at Ireo City Central, Sector-59, Golf Course Extension Road, Gurgaon.
43. In the present complaint, the complainant intends to continue with the project and seeking possession of the commercial unit as provided under the section 11(4)(a) of the Act which reads as under:





*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;*

44. The complainant booked a unit in the project of the respondent namely 'Ireo City Central' situated at sector-59, Gurugram. The builder buyer agreement was executed between the parties on 29.08.2016. As per clause 13.3 of the buyer's agreement the possession of the unit was to be handed over within 48 months from the date of execution of agreement. The due date for handing over of possession comes out to be 29.08.2020. The occupation certificate for the project was received on 28.08.2019 and the possession of the unit was offered on 20.09.2019.
45. The complainant in his complaint has stated that as per clause 12 of the application form and as per clause L of the buyer's agreement the specific area of the commercial unit shall be 55% of the super area. He further stated that the respondent thereafter sent an addendum agreement for signing to the complainant wherein the specific area of the unit was mentioned as 23.7% of the super area but the complainant did not execute the same.
46. The authority observed that the complainant/allottee made a booking in the project of the respondent and buyer's agreement for the unit was executed on 29.08.2016. As per clause 12 of the application form and clause L of the buyer's agreement the specific area of the commercial unit shall be 55% of the super area. The said clause is reproduced hereunder for ready reference:

*12. I/We understand and agree that the concept of Super Area of the said Commercial Unit as used herein, is a mechanism only*





*for the purpose of deriving the consideration payable for the said Commercial Unit and it is not a physical area or a measurable component. In fact, what will be transferred pursuant to the Buyer's Agreement will only be Specific Area of the said Commercial Unit, which shall be 55% of the Super Area.*

*L. It is clarified and the Allottee has agreed that the concept of Super Area of the said Commercial Unit (Super Area) as used herein, is a mechanism only for the purpose of deriving the consideration payable for the said Commercial Unit and it is not a physical area or measurable component. In fact, what will be transferred pursuant to this Agreement will only be the Specific area of the said Commercial Unit, which shall be 55% of the Super Area.*

47. On bare perusal of the clauses mentioned above the authority is of the view that the addendum agreement which was subsequently sent by the respondent was not executed by the complainant and therefore the terms of the buyer's agreement dated 29.08.2016 will prevail. As per clause 12 of application form and clause L of the buyer's agreement, the specific area of the unit will be 55% of the super area. In view of the above, the respondent-promoter is directed to handover the possession of the subject unit to the complainant-allottee within 90 days of this order after payment of outstanding dues, if any.

**H. Directions of the Authority:**

48. 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 handover the possession of the unit with a specific area of 55% of super area within 90 days of this order after payment of outstanding dues, if any.
- ii) If the respondent promoter fails to deliver the subject unit in terms of aforesaid directions, the complainant shall be entitled to refund of the entire amount paid by the complainant along with prescribed





**HARERA**  
**GURUGRAM**

Complaint No. 4642 of 2021

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

49. Complaint stands disposed of.
50. File be consigned to the registry.



*(Signature)*  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 21.07.2023**

**HARERA**  
**GURUGRAM**