

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

Complaint no. : 816 of 2021
Date of complaint : 10.02.2021
Date of decision : 15.11.2023

Sunita Agarwal,
R/o: - D-1009, New Friends Colony,
New Delhi-110065.

Complainant

Versus

M/s International Land Developers Pvt. Ltd.
Office: B-418, New Friends Colony,
New Delhi-110065.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Chandra Shekhar Yadav (Advocate)
Rishabh Gupta (Advocate)

Complainant
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 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 Village Dhunela, Sector-33, Sohna, Gurgaon, Haryana
2.	Nature of the project	Residential group housing project
3.	Project area	11.6125 acres
4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid upto 03.06.2019
5.	Name of licensee	M/s international land Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Registered vide no. 06 of 2019 issued on 08.02.2019 valid up to 02.07.2022
7.	Apartment no.	B-2004, 19 th Floor, Tower B (page no. 15 of CRA complaint)
8.	Unit area admeasuring	1785 sq. ft. (page no. 15 of CRA complaint)
9.	Date of builder buyer agreement	28.09.2015 (page no. 12 of CRA complaint)
10.	Date of MOU	30.09.2015 (page no. 74 of CRA complaint)
11.	Legal Notice for refund	04.02.2019 (page no. 87 of CAO complaint)
12.	Due date of possession	28.03.2020 (calculated from the date of agreement including grace period of 6 months)
13.	Possession clause	10.1 Possession of Apartment <i>Subject to the timely grant of all approvals (including revision thereof), permissions certificates, NOCs, permission to operate, full /part occupation certificate etc. and further subject to the buyer having</i>



		<p><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 and taxes or increase in levies and 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 endeavour to complete the construction of the said apartment within 48 months from the date of execution of this agreement and further extension/grace period of 6 months.</i></p>
14.	Buyback clause	<p><i>Clause 3. In case the Allottee wishes to cancel the Allotment and surrender the apartment, then he can do so at the start of 35th month but before the commencement of 36th month from the date of this MOU and the Company agrees to accept the cancellation and surrender of the Apartment and agrees to pay a appreciation calculated @ Rs. 1642.54/- per sq. ft. of 1785 Super Area of the said Apartment amounting to Rs. 20,94,241/- in addition to the principal amounts paid by the Allottee as stated in clause 2.</i></p>
15.	Total sale consideration	<p>Rs.1,01,40,805/- [as per payment plan on page no. 69 of CRA complaint]</p>
16.	Amount paid by the complainant	<p>Rs.42,72,192/- [as admitted by respondent on page 8 of reply]</p>
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That, the complainant was allotted a flat bearing no. B-2004, Tower-B, Floor-19 by the respondent in its project named "Arete" at Sector-33, Tehsil-Sohna, District-Gurgaon vide allotment letter dated 28.09.2015 for a total sale consideration of Rs.1,01,40,805/- against which she has paid a sum of Rs.42,72,192/- in all. Thereafter, an apartment buyer's agreement dated 28.09.2015 was executed between the parties, wherein as per clause 10.1 of the agreement it was agreed that the respondents would complete the construction work of the said apartment within 48 months with the grace period of 6 months from the date of the agreement. However, the respondent failed to carry out the construction at the site and therefore, the construction work at site is at halt. Accordingly, no further payment was demanded from the respondent.
- II. That thereafter, an Memorandum of Understanding for 'Special Buy Back scheme' dated 30.09.2015 was executed between the parties, wherein as per clause 3 of the said MOU, the respondent agreed to refund the amount received by it from the complainant alongwith the appreciation calculated @Rs.1642.54/- per sq.ft. of the super area admeasuring 1785 sq. ft. However, the complainant did not exhaust her remedy of buy back under the said MOU.
- III. That the complainant vide legal notice dated 04.02.2019 demanded a refund of the total amount paid by her alongwith interest, but the respondent neither gave reply to the said notice nor made refund as demanded.
- IV. That the complainant has been constantly following-up with the respondent about the status of the said complex, but to the dismay of

the complainant no positive response is forthcoming from it about the same.

- V. That the respondent has miserably failed and defaulted in completion of the project and handing-over the possession of the plot on time and hence, have committed breach of contract. Accordingly, the complainant is left with no other option except to approach this Authority by filing the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- (i) Direct the respondent to refund the paid-up amount along with interest at prescribed rate.

D. Reply by respondent/promoter:

5. The respondent vide reply dated 15.09.2022 contested the complaint on the following grounds:
- i. That the complaint filed by the complainant is untenable in the eyes of law and liable to be rejected as the same complaint is already pending before the Hon'ble National Consumer Dispute Redressal Commission, New Delhi having complaint no. CC/1091/2018. Further, the complainant in 2019 has filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 being complaint no. IB/849(ND)/2019 before the Hon'ble National Company Law Tribunal, New Delhi and the same is pending adjudication before it. Therefore, the present complaint is not maintainable under Section 10 of the Code of Civil Procedure.
- ii. That the complainant has made several visit to the office of respondent and enquired about every approvals of project named 'Arete' at Sector-33, Tehsil Sohna, Gurugram and has shown deep and immense interest to invest in the subject project of respondent. Accordingly, a unit



bearing no. B-2004, Tower-B, 19th Floor, having super area (tentative) 1785 sq. ft. was allotted in her favour vide allotment letter dated 28.09.2015. Thereafter, an apartment buyer agreement dated 28.09.2015 was executed between the parties for a total sale consideration of Rs.1,01,40,805/-.

- iii. That as per clause 10.1 of the buyer's agreement, it was agreed that the possession of the allotted unit will be handed over to the complainant by 27.03.2020. However, the respondent faced various unforeseen circumstances which caused huge obstruction in the handing over of possession of allotted unit to the complainant.
- iv. That the complainant is a habitual defaulter and has not complied with the payment plan as issued by respondent and so far she has only made a total payment of Rs.42,72,192/- against the total sale consideration amount which also cause a great obstruction in the schedule development of the subject project of respondent.
- v. That a Memorandum of Understanding (MoU) was executed between the parties on 30.09.2015 vide which the respondent has offered a special buy-back scheme to the complainant and the same was applicable before the commencement of 36 months from the date of MoU. However, the complainant had raised her voice to cancel the allotted unit vide legal notice dated 04.02.2019. Therefore, as per clause 3 of the MoU, the complainant should raise the cancellation demand on or before 30.08.2018 in order to avail with the offer of respondent.
- vi. That the entire case of the complaint is nothing but a web of lies. Hence, the present complaint filed by the complainant deserves to be dismissed with heavy costs.



6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

7. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. 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

9. 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.

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

F.I Objection regarding the delay in payments.

11. The objection raised by the respondent regarding delay in payments by the allottee is totally invalid as she has already paid an amount of Rs.42,72,192/- as per the payment plan annexed with the buyer's agreement and the rest of the amount is payable at the time of offer of possession. The fact cannot be ignored that there might be certain group of allottees who defaulted in making payments. But upon perusal of documents on record, it is observed that no default have been made by the complainant in the instant case. Hence, the plea advanced by the respondent is rejected.

F.I Objection regarding maintainability of complaint.

12. The counsel for the respondent contended that the present complaint is not maintainable and barred under section 10 of the Code of Civil Procedure, 1908 as the same complaint is already pending before the Hon'ble National Consumer Dispute Redressal Commission, New Delhi having complaint no. CC/1091/2018. Further, the complainant in 2019 has also filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 being complaint no. IB/849(ND)/2019 before



the Hon'ble National Company Law Tribunal, New Delhi and the same is pending adjudication before it. However, the respondent has failed to place on record any documents or orders corroborating the aforesaid filing of the complaint by the complainant before the Hon'ble NCDRC and NCLT. The legal branch of the Authority was asked to check the status of the aforesaid complaints on the official websites of Hon'ble NCDRC and NCLT and it was reported that the above-said complaints are titled as "Dr. Neelabh Verma Vs. M/s Supertech Limited. It is evident that the aforesaid complaints pertains to different parties litigating under different title and is not related to the matter in issue in the present complaint. In view of the above, the objections raised by the respondent regarding the present complaint being barred by res-sub judice stands rejected.

G. Findings on the relief sought by the complainant.

G.I To refund the entire paid-up amount along with prescribed rate of interest.

13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her 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."

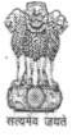
(Emphasis supplied)

14. 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."***

15. The complainant booked a unit in the respondent's project and was allotted an apartment bearing no. B-2004, Tower-B, Floor-19, vide allotment letter 28.09.2015. A builder buyer agreement of the said apartment was executed between the parties on 28.09.2015. Thereafter, the memorandum of understanding was signed on 30.09.2015 for a special buy-back scheme. It is submitted by the complainant that in terms of clause 3 of MOU, it was agreed that in case if the allottee wishes to surrender the apartment under buy-back scheme, the respondent is obligated to refund the amount received from the complainant along with appreciation calculated @Rs.1642.54/- per sq. ft. of the super area admeasuring 1785 sq.ft. of the said apartment amounting to



Rs.20,94,241/- in addition to the principal amounts paid by the complainant-allottee. The authority is of the view that as per clause 3 of the MOU, the buy-back scheme of the allotted unit was applicable at the start of 35th month but before the commencement of 36th month from the date of MOU i.e., from 30.08.2018 but before 30.09.2018. However, the complainant has expressed her desire to withdraw from the project only on 04.02.2019 and has not exercised her right of buy back within the said period.

16. 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 28.03.2020. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. However, the complainant has already withdrawn from the project by sending a legal notice dated 04.02.2019 and sought refund of the paid-up amount with interest before the due date of possession i.e., 28.03.2020. So, in such a situation, the complainant withdrew from the project even prior to the due date. So, she is not entitled to refund of the complete amount but only after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under: -

"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"

17. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.42,72,192/- after deducting 10% of the sale consideration of Rs.86,57,250/- being earnest money along with an interest @10.75% p.a. (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 on the refundable amount, from the date of surrender i.e., 04.02.2019 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority:

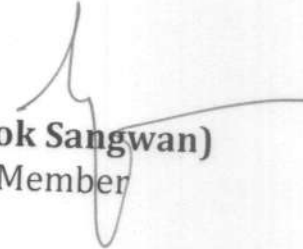
18. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent/builder is directed to refund the paid-up amount of Rs.42,72,192/- after deducting 10% of the sale consideration of Rs.86,57,250/- being earnest money along with an interest @10.75% p.a. on the refundable amount, from the date of surrender i.e., 04.02.2019 till its realization.
 - 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.



HARERA
GURUGRAM

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19. Complaint stands disposed of.
20. File be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.11.2023



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