

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

Complaint no. : 909 of 2022
Date of filing complaint: 07.03.2022
Date of decision: 26.10.2023

1. Virendra Kumar Gandhi
2. Sanjay Gandhi

Both RR/o: - Flat No. 2/7, Hamelia Street, Vatika Street,
Vatika City, Sector- 49, Sohna Road, Gurugram- 122018

Complainants

Versus

M/s International Land Developers Pvt. Ltd.
Regd. office: ILD Trade Centre, 9th Floor, Sector-47,
Sohna Road, Gurugram-122018

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sanjeev Sharma (Advocate)

Complainants

Shri Rishabh Gupta (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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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	Residential 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 dated 08.02.2019 valid up to 02.07.2022
7.	Unit no.	1601, 15 th floor, Tower-C (Page no. 24 of the complaint)
8.	Unit area admeasuring (super area)	1325 sq. ft. (Page no. 24 of the complaint)
9.	Allotment letter	29.01.2015 (Page no. 22 of the reply)
10.	Date of builder buyer agreement	06.04.2015 (Page no. 17 of the complaint)
11.	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</i>

		<i>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>
12.	Due date of possession	06.10.2019 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
13.	Total sale consideration	Rs.78,49,425/- [as per payment plan on page no. 78 of complaint]
14.	Amount paid by the complainants	Rs.28,14,128/- [As per alleged by the complaint at page no. 10 of the complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint: -

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- i. That the respondent company advertised for construction of world class residential group housing project be known as "**ARETE**" in Sector 33, Gurgaon, Haryana, having license no. 44 of 2013 dated 04.06.2013 on a parcel of land measuring 11.6125 acres along with the clearance from the State Environmental Impact Assessment Authority vide SEIAA/HR/2014/585 dated 15.04.2014.
- ii. That the complainant purchased a residential apartment bearing unit no. C-1601, 15th floor, tower-C, admeasuring super area of 1325 sq. ft., for a total consideration of Rs.78,49,425/- along with one covered car parking, at the time of application for booking was made on 13.11.2014 by making a payment of Rs.5,00,000/-
- iii. That after both the parties entered into the builder buyer agreement on 06.05.2015 and as per the buyer's agreement, the possession of the unit was to be handed over within 48 months from the date of execution of buyer's agreement i.e. 06.05.2019.
- iv. That the complainants have paid an amount of Rs.28,14,128/- to the respondent against the total sale consideration of Rs.78,49,425/-. However, the possession of the unit has still not been handed over and therefore, the complainants filed a complaint titled as "*Virendra Kumar Gandhi & Anr. Vs ILD Pvt. Ltd.*" (CR/355/2020) for handing over the possession along with interest on delay possession which was allowed on 09.12.2020.
- v. That the said order was not complied by the respondent. So, the complainants filed an execution petition bearing no. 3344 of 2021 wherein the complainants claimed the interest on the delayed possession from 06.10.2019 to 25.08.2021 and the same was paid by the respondent and the same is recorded in the order dated 08.10.2021.

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- vi. That the possession of the unit has not been handed over till today and the respondent has not paid the interest on the delay possession from September 2021 and therefore, the complainants have through this complaint invoked the jurisdiction of this Authority for seeking refund of amount paid to the respondent as there is no progress towards the completion of this project. So, the complainants does not wish to continue with the project.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- (i) Direct the respondent to refund the entire paid up amount along with prescribed rate of interest.
 - (ii) To pay litigation cost of Rs.1,50,000/-.

D. Reply by respondent/promoter:

5. The respondent/promoter by way of written reply made following submissions:
1. That at the outset each and every averment, statement, allegation, contention of the complainants which is contradictory and inconsistent with the reply submitted by the respondent/promoter is hereby denied and no averment, statement, allegation, contention of the complainants 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.



- II. That the complainants have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
- III. At the outset in 2014, the complainants herein, learned about the project launched by the respondent/promoter titled as 'Arete' and approached the respondent/promoter repeatedly to know the details of the said project. The complainants further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- IV. That after having keen interest in the project constructed by the respondent/promoter the complainants herein vide application dated 13.11.2014 booked a unit. Thereafter, on 06.05.2015, an apartment buyer's agreement was executed between the parties wherein the apartment no. C-1601, having super area of 1325 sq. ft. in the project of respondent at Gurgaon, Haryana for an amount of Rs.78,49,425/-.
- V. That the respondent had been running behind the complainants for the timely payment of instalment due towards the respective unit in question. That in spite being aware of the payment schedule the complainants have failed to pay the instalment on time.
- VI. That time is the essence under this agreement and the buyer shall timely payment of each installment of the total sale consideration as per the payment plan opted and other charges, taxes, escalation charges, securities, additional charges, deposits including any interest or penalty payable under this agreement in accordance with the timelines indicated herein and timely performances by the buyer of all his

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obligations under this agreement, and for the developer to complete the construction of the said apartment.

- VII. That the construction work of the said project is completed around 40-50% in totally. That the majority of prospective buyers in the said project failed to make the payments as per the payment schedule attached to the agreement which eventually resulted in the delay in construction process. That the respondent with the availability of funds are carrying the construction and the construction of the project is at full swing despite the defaults of the prospective buyers, which is a matter of concern and hence the complainants are themselves liable for the said delay in the handing over of the possession.
- VIII. 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.
- IX. 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.

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- X. 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.
- XI. 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.
- XII. 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.
- XIII. 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.

- XIV. 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.
- XV. 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.
- XVI. 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.
- XVII. 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

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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. 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.

- XVIII. 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.
- XIX. 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.

XX. 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 complainants are not entitled for compensation in any which way and the same was agreed into between the complainants and the respondent/promoter under clause 10.1-10.6, and clause 18. Therefore, the complainants are not entitled for compensation for delay.

XXI. That, the complainants are 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 complainants 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 Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

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

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

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.

8. 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

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decided by the adjudicating officer if pursued by the complainants at a later stage.

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

F.I Objections regarding delay due to force majeure:

9. 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.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19

10. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:





69. *The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

11. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 06.10.2019. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to refund the entire paid up amount along with prescribed rate of interest.

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

"Section 18: - Return of amount and compensation

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

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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



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

(Emphasis supplied)

13. 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.**"*

14. At the outset, it is relevant to comment on the preset possession clause of the booking form wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government /regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by him in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the booking application form by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right



accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

15. Due date of handing over possession and admissibility of grace period:

As per clause 10.1 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by April 2019. However, considering the ground in above mentioned clause of handing over possession which led to delay in completion of the project, in the present case, the grace period of 6 months is allowed.

16. The complainants booked a unit in the respondent's project and was allotted unit no. 1601, 15th floor in tower-C, vide buyer's agreement dated 06.04.2015. As per clause 10 of the said agreement, 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 06.10.2019.

17. During proceeding dated 06.07.2023, the counsel for the complainants states that earlier the authority has allowed DPC vide order dated 09.12.2020 in CR No. 355 of 2020 and in pursuance thereof, the respondent has paid Rs.5,04,000/- on 25.10.2021 as delayed possession interest. But there is no progress towards completion of the project and hence allottee does not wish to continue with the project and is now seeking full refund along with interest by way of file this present complaint. Further, on



26310.2023, counsel for both the parties agreed that refund of the deposited amount along with prescribed rate of interest may be allowed after adjustment of an amount of rupees five lacs already paid by the respondent towards delayed possession interest.

18. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the agreement to sell executed between the parties on 06.04.2015, the possession of the subject unit was to be delivered within a period of 48 months from the date of execution of buyer's agreement which comes out to be 06.04.2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 06.10.2019.
19. Keeping in view the fact that the allottee/complainants wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
20. The due date of possession as per agreement for sale as mentioned in the table above is **06.10.2019** and there is delay of 2 years 5 months and 1 day on the date of filing of the complaint. The authority has further, observes that even after a passage of more than 4.20 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. In the present matter, the respondent in its reply mentioned that the allotted unit of the complainants

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is 40-50% completed. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which they have paid a considerable amount of money towards the sale consideration. It is also pertinent to mention that complainant has paid more than 35% of total consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

21. Moreover, 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 allottees 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....."

22. Further in the judgement of the Hon'ble Supreme Court of India in the cases ***of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed



25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*
23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 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 from the date of each payment till the actual date of refund of the amount.

G.II. To pay litigation cost of Rs.1,50,000/-.

25. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority:

26. 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/promoter is directed to refund the entire paid-up amount i.e., Rs.28,14,128/- received by it from the complainant along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount. The respondent shall also deduct an amount of Rs.5,04,000/- already paid towards delayed possession charges to the complainants.



HARERA
GURUGRAM

Complaint No. 909 of 2022

- 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.

27. Complaint stands disposed of.

28. File be consigned to the registry.

Dated: 26.10.2023



v.i - g
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM