

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

Complaint no. : 6874 of 2022
Date of complaint : 10.11.2022
Date of decision : 31.01.2024

1. Amitabh Trehan,
2. Shilpa Trehan,
Both R/o: - H.No. N-258, First Floor,
Mayfield Gardens, Sector-51, Islampur,
Gurgaon, South City-II, Haryana-122018.

Complainants

Versus

M/s International Land Developers Pvt. Ltd.
Office: B-418, New Friends Colony,
New Delhi-110025.
Also at: 9th Floor, ILD Trade Centre,
Sector-47, Sohna Road, Gurgaon-122018.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Sukhbir Yadav (Advocate)
Rishabh Gupta (Advocate)

Complainants
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 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 allottees 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", Sector 33, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	11.61 acres
4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid upto 03.06.2019
5.	Name of licensee	Brijesh-Sanjeev Ss/o Satbir and 2 others
6.	RERA Registered/ not registered	06 of 2019 dated 08.02.2019 valid upto 02.07.2022
7.	Unit no.	A-604, 6 th Floor, Tower A (Page 54 of complaint)
8.	Unit area admeasuring (super area)	1785 sq. ft. (Page 54 of complaint)
9.	Date of execution of apartment buyer agreement	25.09.2014 (Page 39 of complaint)
10.	Possession clause	10. Possession of Apartment <i>10.1 Subject to timely grant of all approvals (including revisions thereof). permissions. certificates. NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and</i>

		<i>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 endeavour to complete the construction of the Said Apartment within 48(Forty Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months.</i>
11.	Due date of possession	25.03.2019 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
12.	Total sale consideration	Rs.98,33,765/- (as per payment plan on page 94 of complaint)
13.	Amount paid by the complainant	Rs.64,41,510.79/- (As per customer ledger dated 08.08.2023 annexed with reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not obtained

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That vide allotment letter dated 05.04.2014, the complainants were allotted a unit bearing no. A-604, 6th Floor in Tower-A admeasuring 1785 sq. ft. in the project of the respondent named 'Arete', situated in Sector - 33, Gurugram under construction link ^{ed n} payment plan for a

total sale consideration of Rs.98,33,765/-. Thereafter, an apartment buyer's agreement was executed between the parties regarding the said allotment on 25.09.2014.

- II. That as per clause 10(1) of the buyer's agreement, the respondent has to give possession of the said flat within 48 months from the date of execution of that agreement. Therefore, the due date of possession was 25.09.2018.
- III. That the demand of Rs.11,33,550/- raised by the respondent on account of "Completion of Upper Basement Roof Slab" was fully adjusted by the respondent from the advance payment made by the complainants.
- IV. That on 11.05.2015, a credit note was issued by the respondent. It was mentioned by the respondent in the said credit note that "An amount of Rs. 2,14,816/- has been credited to your account with us towards ATPR (Advance Timely Payment Rebate) against advance payment of Rs. 30,00,000/-."
- V. That on 02.11.2015, the respondent raised a demand of Rs.9,29,684/- "On Completion of Fourth Floor Roof Slab" and the same was fully adjusted by the respondent from the advance payment made by the complainants and on 20.11.2015, another "Credit Note as per ATPR Scheme" was issued by the respondent for Rs.94,990/-.
- VI. That on 26.04.2016, the respondent raised a demand of Rs.9,45,891/- on account of "On Completion of Eighth Floor Roof Slab" and the same was partly adjusted by the respondent from the advance payments made by the complainants. Thereafter, the complainants made a payment of Rs.19,625/- i.e. the balance demanded amount.

- VII. That on 07.09.2016, the respondent raised another demand of Rs.7,29,664/- on account of "On Completion of Twelfth Floor Roof Slab Installment" and the said demand was paid by the complainants before the due date. It is pertinent to mention here that till 28.09.2016, the complainants paid Rs.63,21,480/- to the respondent.
- VIII. That the respondent has refused to refund the amount paid by the complainants and it is not willing to hand over possession of the flat as well as it has been almost 3 years since the respondent stopped the construction of his project.

C. Relief sought by the complainants:

4. The complainants have 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 31.01.2024 contested the complaint on the following grounds:
- i. That the complainants were allotted an apartment bearing no. A-604, located on the 6" floor in Tower-G, having super area of 1785 sq. ft. in the project of the respondent named "Arete" at Sector-33, Sohna, Gurgaon, Haryana. Thereafter, on 25.09.2014, a builder buyer agreement was executed between the parties regarding the said allotment.
- ii. That the project got delayed due to reasons beyond control of the respondent. Some of the major reasons due to which the construction and possession of project was delayed are: lack of infrastructure in the said area, incompleteness of sector road on time, revisions of building plans, ban on construction by the competent authorities, acute shortage of labourers in the NCR Region, ban on extraction of ground

water by the interim orders passed by Hon'ble High Court of Punjab & Haryana, ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities etc to prevent pollution, demonetization, implementation of new tax law i.e. GST, Covid-19 pandemic etc. However, the respondent has intention to complete the project soon for which it is making every possible effort in the interest of allottees of the project.

- iii. That the complainants have intentionally concealed material facts and filed the present complaint with the sole purpose of avoiding the agreed terms of the agreement. That the construction work of the concerned tower wherein the unit of the complainants is situated is almost complete and thus, the possession of the said unit of the complainants shall be offered very soon.
- iv. That the respondent had been running behind the complainants for timely payment of instalment due towards the respective unit in question. That inspite being aware of the payment schedule the complainants have failed to pay the instalment on time.
- v. That the entire case of the complainants is nothing but a web of lies and the allegations made against the respondent are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainants 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 authority has complete territorial and 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 complainants at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-***



2022(1) RCR(C), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

F.I Objection regarding the project being delayed because of force majeure circumstances.

13. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as lack of infrastructure in the said area, incompleteness of sector road on time, revisions of building plans, ban on construction by the competent authorities, acute shortage of labourers in the NCR Region, ban on extraction of ground water by the interim orders passed by Hon'ble



High Court of Punjab & Haryana, ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities etc to prevent pollution, demonetization, implementation of new tax law i.e. GST, Covid-19 pandemic etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 25.03.2019. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

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

14. 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)

15. 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."***

16. **Due date of handing over possession:** 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 25.03.2019.
17. 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 buyer's agreement executed between the parties on 25.09.2014, 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 along with

a grace period of 6 months. Therefore, the due date of possession comes out to be 25.03.2019.

18. Keeping in view the fact that the complainant/allottees 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.
19. The due date of possession as per agreement for sale as mentioned in the table above is 25.03.2019. The authority has further, observes that even after a passage of more than 9 years (from the date of execution of agreement till date), neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/ completion certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intends to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.
20. 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 they have 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....."

21. 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."*

22. 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 allottees 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 allottees, as the allottees 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.

23. 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., @10.85% 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 within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority:

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

- i. The respondent/promoter is directed to refund the entire amount received by it i.e., Rs.64,41,510.79/- from the complainants along with interest at the rate of 10.85% 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 date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up



amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant-allottees.

25. Complaint stands disposed of.
26. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 31.01.2024



HARERA
GURUGRAM