

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

Complaint no.	:	29 of 2023
Date of filing complaint:		02.02.2023
Date of decision	:	26.09.2023

	Mohini Bansal R/O: H.No.154, Sector-5, Part-6, Gurugram	<b>Complainant</b>
Versus		
1.	Earth Infrastructures Ltd R/O: 1501-1503, 15th Floor, Signature Tower, Gurugram, Haryana	<b>Respondents</b>
2.	Celestial Estate Pvt Ltd Subsidiary Of Earth Infrastructure Ltd R/O Crop. Office B-11/9, Dlf Phase-V, Sector-54, Gurugram	

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Rajesh Kumar (Advocate)	<b>Complainant</b>
Sh.Akhilesh Lakhan Lal for R2 (Advocate)	<b>Respondents</b>

**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 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 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 of the project	'Earth Iconic' Sector 71, Gurugram
2.	Nature	Commercial space
3.	Registered	Un registered
4.	DTCP	N.A
5.	Unit no.	011 block A Ground floor (Page 24 of complaint)
6.	Unit area admeasuring	305.16 sq. ft. (Page 24 of complaint)
7.	MOU	21.11.2012 (Page 21 of complaint)
8.	Date of allotment letter	18.09.2012 (Page 24 of complaint)
9.	Date of bba	Not executed

10.	Possession clause	Cannot be ascertain
11.	Due date of possession	The due date cannot be ascertained as no BBA is signed. Therefore, the due date of handing over of the possession of the unit comes out to be 18.09.2015 and the same is calculated from the date of allotment.
12.	Total sale consideration	Rs. 34,19,489/- (As alleged by the complainant)
13.	Amount paid by the complainant	Rs. 28,58,702/- (As alleged by the complainant)
14.	Occupation certificate	Not Obtained
15.	Notice of possession	Not Offered

**B. Facts of the complaint:**

- That the complainant booked a commercial space in the project being developed by the respondent at Sector-71, Gurgaon by the name of 'Earth Iconic'. The complainant was allotted unit no.011, in Block-A, on Ground Floor admeasuring 305.16 sq. fts. in Earth Iconic Project vide allotment letter dated 18.09.2012, The total sale consideration for the said shoppe was Rs.34,19,489/-. In pursuance to the allotment, the complainant has made all the payments on time to the respondent. The memorandum of understanding was executed between the complainant and the respondent on dated 21.11.2012.
- That the respondents failed to fulfil its obligations and failed to handover the possession of the said unit to the complainant till date. Thus, there is

delay of 7 years in handing over the possession of the unit by the respondent to the complainant.

5. That instead of handing over the possession of unit, the respondent no. 2 sent a Letter No. HSOB No.0183 dated 28.09.2021, for the complainant, for reconciliation of the accounts. Thus, there is a delay of 7 years on the part of the respondent, in handing over the possession of the unit.
6. That the respondent is liable to pay interest for every month of delay to the allottee, till the handing over of the possession of the unit it becoming due. Thus, there is an inordinate and unreasonable delay in handing over the physical possession and the respondent failed to fulfil contractual obligations of the agreement/MOU.
7. That the respondent had failed to deliver physical possession of the unit to the complainant till June,2015 and thereafter, a period of more than 7 years had elapsed, but the project is still incomplete. Thus, there is an inordinate and unreasonable delay in handing over the physical possession of the unit and the respondent failed to fulfil contractual obligations of the agreement/MoU dated 21.11.2012. That respondent has violated the law of contract as well as the contractual obligations under RERA Act and rules and regulations thereunder.
8. That the respondent had collected 90% of the sale consideration as per the payment schedule annexed with the agreement, however, still the respondent has failed to handover the possession of the unit to the complainant, thereby violating the very fundamental term of the buyer's agreement.
9. That the respondent has failed to complete the project in time, resulting in harassment, extreme mental distress, pain and agony to the complainants.

That intention of the respondent was dishonest right from the beginning.

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

10. The complainant has sought following relief(s):

- a) Direct the respondent to handover the possession of the unit.
- b) Direct the respondent to pay interest at prescribed rate towards delay in handing over the possession.
- c) Direct the respondent to refund the paid amount of Rs. 28, 58,702/- with interest in case if the respondent is not able to handover the possession.

**D. Reply by respondents:**

11. No reply has been filed by the respondent no. 1 as moratorium proceeding has been initiated against the corporate debtor/ respondent no. 1.

The respondent no. 2 by way of written reply made the following submissions:

12. That the present reply is on behalf of respondent no. 2. It is submitted that complainant had not disclosed the complete facts before this Hon'ble Forum as such and the respondent no. 2 has undergone corporate insolvency resolution process (CIRP) and the Adjudicating authority has admitted C.P. (IB) - 1768/2018 titled as Sanjay Malik And Ors. VS Celestial Estate Private Limited filed by Sanjay Malik and Ors vide its order dated 11.03.2019.

13. That the complainant has submitted her claim before the insolvency resolution professional (IRP) and her claim was admitted by the IP and the complainant has allotted voting right equal to 0.24 % of total voting of committee of creditors. The IRP has invited resolution plan for the

respondent no.2 Celestial Estate Pvt Ltd, put it before the committee of creditors it's for approval, committee of creditor has pass the resolution plan submitted by the successful resolution applicant (SRA), H S Oberoi Buildtech Pt Ltd, by 100% vote.

14. That the complainant being member of committee of creditors has voted for the resolution plan submitted by the SRA, M/s H S Oberoi Buildtech Pvt Ltd. The Adjudication authority (NGLT, Delhi) has admitted the resolution plan submitted by the M/s H S Oberoi Buildtech Pvt Ltd vide order dated 15.03.2021.
15. That the complainant by voting to resolution plan, has agreed and adopted the resolution plan submitted by the SRA and as per the clause no. 6.13 of the resolution plan submitted before the adjudicating authority and therefore the complainant cannot claim the amount or any other relief from this forum.
16. That the complainant by voting to resolution plan, has further agreed and adopted the resolution plan submitted by the successful resolution plan and as per the clause no. 7 of the resolution plan submitted before the adjudicating authority and therefore the complainant cannot claim the amount or any other relief from this forum. Para 7 of the resolution plan is reproduced as below:-

*(... 7.0 IMPLEMENTATION PERIOD: HSOB estimates to complete the above revival plan of implementation within a period of 4+ 24 months (i.e. from the date of approval of resolution plan) (i.e. 4 months of preconstruction work like seeking of necessary approvals licences RERA registration etc. and 24 months of construction related activity) from effective date in a phased manner, subject to receipt of approvals/licences from the concerned authorities, on the terms and conditions mentioned herein and not restricted to the various reliefs sought under this plan from various claims, government/semi government/local*

*authorities or such other parties which are either a part or not to this resolution plan. HSOB believes that HSOB will be able to successfully complete the plan on the basis of the previously executed projects on debt free model. The current problem faced by the real estate industry is excess leveraging in the projects through debt from various sources such as financial institution and others rather than equity infusion. With the resolution Applicant having arrangement and capability of infusing required funds and with the forte in the domain of construction activities in real estate sector clubbed with the experience of forte in the infrastructure sector, HSOB has an edge over many real bigger players in the market who have been adopting the model of taking debt as major contribution of source of funds in executing the real estate projects. Further, the plan has been devised in such a manner so as to optimise the strength of own funds of the members of HSOB and the receivables from the financial creditors and other receivables or recovery which may arise in future. HSOB, thus, believes that HSOB will be able to revive the project and HSOB will be able to add value to the project and all its stakeholders who will be beneficial to all concerned and it will thus be absolutely in the spirit of IBC.*

17. 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:**

18. The plea 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.1 Territorial jurisdiction**

19. 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**

20. 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.*

21. 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.



22. 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. (Supra)*** 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."*

23. 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. Entitlement of the complainant for refund:**

**F.1 Direct the respondent to handover the possession of the unit.**

**F.II Direct the respondent to pay interest at prescribed rate towards delay in handing over the possession.**

**F.III Direct the respondent to refund the paid amount of Rs. 28, 58,702/- with interest in case if the respondent is not able to handover the possession.**

24. All the reliefs being interconnected are being taken up together. In the present case the complainant was allotted the unit vide allotment letter dated 18.09.2012 and therefore a memorandum of understanding was executed between the parties on 21.11.2012. The complainant has paid a total amount of Rs. 28, 58,702/-
25. The complainant was allotted his unit no. 011 vide allotment letter dated 18.09.2012. No buyer's agreement was executed between the parties .It is necessary to ascertain the due date, so the date of signing of allotment letter is ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over of the possession of the unit to the allottee comes out to be 18.09.2015. No occupation certificate has been received by the respondents, No possession has been made by the respondents till date.
26. However it is noteworthy to mention that moratorium proceeding has been initiated against the corporate debtor/ respondent no. 1 i.e. Earth Infrastructures Ltd. In the present case, the respondent no. 2 stated at bar vide proceeding dated 01.08.2023 that consequent to NCLT proceedings and resolution plan which was approved on 15.03.2021, a dispensation was provided for the association of the allottees of which the complainant is also a member. The complainant can seek further recourse to his complaint in terms of the resolution plan.

27. Vide proceeding dated 01.08.2023 the counsel for the complainant stated at bar that the time specified in the resolution plan has also expired and seeks an order of the authority w.r.t relief of refund.
28. In terms of order dated 13.04.2021 as per Para 7 of the resolution plan is talks about the implementation period and the same is reproduced below:-

#### 7.0 IMPLEMENTATION PERIOD:

*HSOB estimates to complete the above revival plan of implementation within a period of 4+ 24 months (i.e from the date of approval of resolution plan) (i.e. 4 months of preconstruction work like seeking of necessary approvals licences RERA registration etc. and 24 months of construction related activity) from effective date in a phased manner, subject to receipt of approvals/ licences from the concerned authorities, on the terms and conditions mentioned herein and not restricted to the various reliefs sought under this plan from various claims, government/semi government/local authorities or such other parties which are either a part or not to this resolution plan. HSOB believes that HSOB will be able to successfully complete the plan on the basis of the previously executed projects on debt free model. The current problem faced by the real estate industry is excess leveraging in the projects through debt from various sources such as financial institution and others rather than equity infusion. With the resolution Applicant having arrangement and capability of infusing required funds and with the forte in the domain of construction activities in real estate sector clubbed with the experience of forte in the infrastructure sector, HSOB has an edge over many real bigger players in the market who have been adopting the model of taking debt as major contribution of source of funds in executing the real estate projects. Further, the plan has been devised in such a manner so as to optimise the strength of own funds of the members of HSOB and the receivables from the financial creditors and other receivables or recovery which may arise in future. HSOB, thus, believes that HSOB will be able to revive the project and HSOB will be able to add value to the project and all its stakeholders who will be beneficial to all concerned and it will thus be absolutely in the spirit of IBC.*

29. As per clause 7 of the resolution plan the time period to complete the above revival plan was within 4 month plus 24 months from the date of approval plan. Therefore, date of completion of the revival plan comes out to be 13.08.2023.
30. In view of the orders of the NCLT and the resolution plan annexed with CA -920/2019 filed in CP(IB)-1768(ND)/2018 *is hereby approved which shall be binding on the corporate Debtor and its employees , members , creditors , guarantors and other stakeholders involved in the Resolution Plan including the Resolution Plan.*
31. In the present case the complainant is seeking for relief of delay possession charges in case the same cannot be allowed/granted then refund as a relief has been requested. As stated above as per clause 7 of the resolution plan the time period to complete the above revival plan was within a period of 4months plus 24 months from the date of approval plan. Therefore, date of completion of the revival plan comes out to be 13.08.2023. The relief with regard to the delay possession charges cannot be allowed prior to the date of revival plan is 13.08.2023 as per the order of Hon'ble NCLT. However the complainant has filed the present complaint before this date i.e on 02.02.2023. Therefore the relief with regard to delay possession charges is not maintainable.
32. The Authority observes that the resolution plan was approved on 13.04.2021. No case of refund is made out. So therefore, the complainant can seek further recourse to his complaint in terms of the resolution plan approved by the competent Authority i.e NCLT. Hence, the present complaint stands dismissed. However the complainant is at liberty to file fresh complaint.

**G. Directions of the Authority**

33. Hence, in view of the findings recorded by the authority on the aforesaid issue, no case of refund of the paid-up amount with interest is made out. Hence, the complaint is liable to be dismissed and as such is rejected.
34. Complaint stands disposed of.
35. File be consigned to the Registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.09.2023

**HARERA**  
**GURUGRAM**