

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

Complaint no. : 6739 of 2022
Date of complaint : 13.10.2022
Date of decision : 31.05.2024

Kapil Marwaha
R/o: - H.No. 173-B, New Colony, Gurugram
Haryana-122001.

Complainant

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:
Sanjeev Kumar Arora

Member

APPEARANCE:
Ashish Budhiraja (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 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"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.	D-303, 3 rd Floor, Tower D (Page 23 of complaint)
8.	Unit area admeasuring (super area)	1325 sq. ft. (Page 23 of complaint)
9.	Date of execution of apartment agreement buyer	25.08.2014 (Page 19 of complaint)
10.	Possession clause	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

		<p><i>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></p>
11.	Due date of possession	25.02.2019 (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.74,20,475/- (as on page 11 and 16 of complaint - allotment letter)
13.	Amount paid by the complainant	Rs.41,43,942/- (As per page 11 of complaint and also as per receipts)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not obtained

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. Relying on the promise and undertakings given by the respondent in the aforementioned advertisement, the complainant filed an application dated 28.12.2013 for booking a residential apartment admeasuring super area 1325 sq. feet at ILD Arete, Sector 33, Gurugram for total sale consideration of Rs 74,20,475/- which includes BSP, car parking, IFMS, Club Membership, PLC etc including

- taxes and paid the booking amount of Rs.3,00,000/- to the respondent, duly acknowledged by the respondent vide receipt dated 28.12.2013 and the allotment letter for the said unit was issued. That on 05.04.2014, respondent issued allotment letter to him in respect of subject unit.
- II. On 25.08.2014, parties executed the apartment buyers' agreement in respect of subject unit. As per the agreement dated 25.08.2014, the total sale consideration was Rs.74,20,475/- and the payment was to be made in accordance with the construction linked plan as specified in the agreement.
 - III. That as per clause 10 of the apartment buyer agreement, the respondent had agreed to deliver the possession of the flat within 48 months from the date of execution of agreement with an extended period of six months and according to that the flat was to be delivered till February 2019.
 - IV. That some of the clauses in the buyer agreement that the complainant/buyer were made to sign by the respondent are one sided. He had signed already prepared documents and that some of the clauses contained therein were totally unreasonable and in favor of the respondent only.
 - V. He has made the payments to the respondent from time to time as and when the demand/demand letter were issued by the respondent and made the total payment of Rs. 41,43,942/- till date.
 - VI. He regularly visited the site but was surprised to see that construction was very slow. That despite receiving all payment of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits

of the complainant, the respondent has failed to deliver the possession of the allotted apartment to him within stipulated period.

VII. However, when he visited the site in February 2019 i.e. after the lapse of 56 months, he was shocked to see that even the civil work was not complete, let alone the entire project and that there was no likelihood of the project to be completed anytime soon.

VIII. The respondent has utilized the deposited amount of complainant for sufficient time and now it is liable to refund a sum of Rs. 41,43,942/- along with interest at the rate of 20% per annum from the date of each deposit till the realization of payment to him.

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. Despite specific direction, the respondent has failed to comply with the orders of the authority as he neither properly appeared nor put in his appearance. It shows that the respondent is intentionally delaying the proceedings of the authority by non-filing of written reply and not putting in his appearance. Hence, its defence was ordered to be struck off for not filing reply vide proceeding dated 10.11.2023.

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 these undisputed documents submissions made by the complainant.

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 complainant 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 relief sought by the complainant.

F.1 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 him 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. **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 25.02.2019.
16. 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 25.02.2019.

17. Keeping in view the fact that the complainant/allottee 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.
18. The due date of possession as per agreement as mentioned in the table above is 25.02.2019. 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 allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has 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 allottee 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.

19. 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 allottee 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....."

20. 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."*

21. 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.

22. 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 complainant is entitled to refund of the entire amount paid by him 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*.
23. Accordingly, planning branch is directed to initiate separate proceedings under the provisions of the Act of 2016 as registration of the project has been expired.

G. 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. 41,43,942/- from the complainant 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 complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant-allottee.
25. Complaint stands disposed of.
26. File be consigned to the registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2024

HARERA
GURUGRAM