

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

Complaint no. : 6807 of 2019  
First date of hearing: 05.02.2020  
Date of decision : 24.08.2022

1. Arihant Jain
2. Kiran Jain

**Both R/O:** A-54, Retreat CGHS, IP Extension,  
Plot no. 20, Delhi-110092

**Complainants**

Versus

Ireo Grace Realtech Private Limited  
**Registered Office:** - 304, Kanchan House,  
Karampura, Commercial Complex,  
New Delhi-110015

**Respondent**

**CORAM:**

Dr. K.K Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri S. Nanda  
Shri M.K Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 13.01.2020 has been filed by the complainants/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 thereunder or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Licensed area	37.5125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	05 of 2013 dated 21.02.2013
	License valid up to	20.02.2021
	Licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
5.	RERA registered/not registered	<b>Registered</b> Registered in 3 phases Vide 378 of 2017 dated 07.12.2017(Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3)
	Validity	30.06.2020 (for phase 1 and 2)



		31.12.2023 (for phase 3)
6.	Unit no.	303, 3rd Floor, B2 Tower (annexure C-2 on page no. 38 of complaint)
7.	Unit measuring	1726.69 sq. ft. (annexure C-2 on page no. 38 of complaint)
8.	Date of approval of building plan	23.07.2013 (annexure R-21 on page no. 93 of reply)
9.	Date of allotment	07.08.2013 (annexure R-2 on page no. 68 of reply)
10.	Date of environment clearance	12.12.2013 (annexure R-22 on page no. 97 of reply)
11.	Date of execution of builder buyer's agreement	26.03.2014 (annexure C-2 on page no. 35 of complaint)
12.	Date of fire scheme approval	27.11.2014 (annexure R-23 on page no. 103 of reply)
13.	Reminders for payment	<b>For Fifth Instalment:</b> 09.07.2015, 19.10.2015 <b>For Sixth Instalment:</b> 28.08.2015 <b>For Seventh Instalment:</b> 28.09.2015, 12.11.2015 <b>For Eighth Instalment:</b> 12.11.2015 <b>For Ninth Instalment:</b> 05.11.2015, 10.02.2016
14.	Withdrawal letter by complainants/notice for termination	<b>05.03.2016</b> (annexure R-19 on page no. 88 of reply)





15.	Total consideration	Rs. 1,73,06,088/- (as per payment plan on page no. 70 of complaint)
16.	Total amount paid by the complainants	Rs. 33,46,486/- (as per payment receipts from page no. 80-82)
17.	Due date of delivery of possession	<b>23.01.2017</b> (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
18.	Possession clause	<b>13. Possession and Holding Charges</b> Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the



		<p>allottee <b>within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder</b>(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.</p> <p><b>(Emphasis supplied)</b></p>
19.	Occupation certificate	31.05.2019 (annexure R-30 on page no. 169 of reply)
20.	Offer of possession	Not offered

**B. Facts of the complaint**

The complainants have submitted that:

3. That the complainants applied for booking in the project of the respondent vide application dated 22.03.2013. That after booking the complainants were offered allotment of a residential apartment on 3<sup>rd</sup> floor tower B2, admeasuring 1726.69 sq. ft under a construction linked payment plan for total sale consideration of Rs. 1,73,06,088/-.





4. That the complainants did not have the means to finance the cost of the apartment. Therefore, in order to arrange fund approached axis bank and had obtained a loan of Rs. 56,43,761/- on 26.03.2014 and for the same the parties herein entered into tripartite agreement.
5. That thereafter, an apartment buyer's agreement was executed between the parties on 26.03.2014 under which the they were constrained to accept various arbitrary and unilateral clauses made in favour of the respondent.
6. That as per the agreement the apartment was to be handed over within 42 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed there under.
7. That the building plans for the project were approved on 23.07.2013. Thus, the respondent was supposed to deliver the possession of the apartment latest by January 2017 but till date respondent had miserably failed in completing the project and delivering the possession to allottees.
8. That respondent till date is in receipt of Rs. 73,00,316/- in lieu of the said unit. The respondent had received an amount to the tune of Rs.39,53,830 from the bank directly and further Rs.33,46,486/- from the complainants.
9. That the complainants after paying such an exorbitant amount and on not getting any intimation from the respondent regarding the construction progress about the stage of construction decided to make inspection of the project. After visiting the site they were shocked to see that the demand raised by the respondent were not as per the instalment linked payment plan.



10. That they went to the office of the respondent several times for redressal of their grievance and also for justification on the demands as to how they have been raised as the construction for the same have not been started but no appropriate reply was given by the respondent.
11. That on 05.03.2016 the complainants terminated the agreement between the parties and the respondent did not adhere to their request and failed to refund the amount claimed by them as they had made their mind to withdraw from the project as their hard earned money was blocked with the respondent.
12. That the financing company i.e. Axis Bank as per the terms and conditions of the loan agreement and tripartite agreement terminated the loan agreement vide legal demand-cum-loan recall dated 08.08.2016 and called the parties to make the payments and on not getting any positive response from the side of the complainants as well as the respondent herein the bank was constrained to file an application under section 19 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 before the Debts Recovery Tribunal, Delhi bearing O.A. No.725 of 2016 against the complainants and the respondent for recovery the amount disbursed.
13. That the authority after hearing both the parties and after duly examining the evidences put forward by both the parties vide its judgment dated 2nd July 2018 allowed the O.A. No.725 of 2016 and directed the bank to recover a sum of Rs.45,68,279/- from the complainants as well as the respondent. That the tribunal vide its order dated 02.07.2018 directed the respondent herein to pay a





sum of Rs.39,53,380/- to the bank as the respondent had directly received the said amount from the bank and the same has been admitted by the respondent and the remaining amount was to be paid by the complainants.

14. That it is not in the knowledge of the complainants whether the respondent had abided by the judgment dated 2nd July 2018 passed by the such tribunal of refunding back the monies which the respondent had received from the bank directly. If the respondent had abided by the said order and in compliance to the same if payment is being made, then the respondent may be put to strict proof of the same.
15. That the agreement between the parties got terminated on 05.03.2016 as the complainants wanted to exit from the project due to construction status and had the respondent had failed in completing the project. That on the termination of the agreement the parties are not bound by the terms and conditions of the agreement. That rather than refunding the amount of the complainants the respondent had illegally forfeited the monies to the tune of Rs.33,46,486/-.

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

16. The complainants have sought following relief(s):
  - (i) **Direct the respondent to refund an amount of Rs. 33,46,486/- with interest @ 18% from the date of deposit till actual realization.**





- (ii) **Direct the respondent to pay a cost of Rs. 10,00,000/- as compensation for mental agony caused to complainants.**
- (iii) **Direct the respondent to pay a sum of Rs. 1,00,000/- as litigation expenses.**

17. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

The respondent has contested the complaint on the following grounds: -

- 18. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the parties prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
- 19. That there is no cause of action to file the present complaint.
- 20. That the complainants have no locus standi to file the present complaint.
- 21. That the complainants are estopped from filing the present complaint by their own acts, omissions, admissions, acquiescence's, and laches.
- 22. That the respondent has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.



23. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 35 of the buyers agreement.
24. That the complainants have not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
25. That the complainants, after checking the veracity of the project namely, 'Corridor; sector 67-A, Gurugram applied for allotment of an apartment vide booking application form dated 22.03.2013. The complainants agreed to be bound by the terms and conditions stipulated in the application for provisional registration of the residential apartment.
26. That based on the said application, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainants apartment no. CD-B2-03-303 having tentative super area of 1726.69 sq.ft for a total sale consideration of Rs 1,73,06,088.41. The apartment buyer's agreement was executed between the parties to the question on 26.03.2014.
27. That the complainants had approached the axis bank ltd. for a loan for making the payment towards the total sale consideration of the allotted unit and thus entered into a tripartite agreement with the respondent and Axis Bank Ltd. on 26.03.2014. as per clause 3 of the tripartite agreement, the complainants were liable to pay penalty





to the respondent on the delayed installment as per the terms of the apartment buyer's agreement. Even as per clause 6 of the tripartite agreement, if there is termination of allotment of the unit on account of continuous defaults of the complainants, then the respondent was entitled to retain the earnest money as defined in apartment buyer's agreement.

28. That the respondent raised payment demands from the complainants in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and they made some payments in time and then started delaying and committing defaults. It is pertinent to mention herein that the respondent had raised the second installment demand on 14.04.2013 for the net payable amount of Rs 16,46,486/-. However, the due amount was credited only after a reminder dated 14.05.2013 was sent by the respondent to the complainants.
29. That vide payment demand dated 05.06.2015, the respondent raised the payment demand towards the fifth installment for net payable amount of Rs. 17,11,226.32. However, the complainants yet again failed to remit the demanded amount despite reminders dated 09.07.2015 and 19.10.2015 and the same was adjusted in the next installment demand as arrears.
30. That the respondent had raised the payment demand dated 08.07.2015 towards the sixth installment demand for net payable amount of Rs.34,02,485.32. However, the respondent failed to remit the due amount despite reminders dated 28.08.2015 and the same was adjusted in the next installment demand as arrears.



31. That vide payment demand dated 04.08.2015, the respondent raised the payment demand towards the seventh installment for net payable amount of Rs. 52,36,243.32. However, the complainants yet again failed to remit the demanded amount despite reminders dated 28.09.2015 and 12.11.2015 and the same was adjusted in the next installment demand as Arrears.
32. That vide payment demand dated 02.09.2015, the respondent raised the payment demand towards the eighth installment for net payable amount of Rs. 69,27,501.76. However, the complainants yet again failed to remit the demanded amount despite reminder dated 12.11.2015 and the same was adjusted in the next installment demand as Arrears.
33. That vide payment demand dated 06.10.2015, the respondent raised the payment demand towards the ninth installment for net payable amount of Rs. 86,18,760.32. However, the complainants failed to remit the demanded amount despite reminders dated 05.11.2015 & 10.02.2016. It is submitted that the respondent had even issued a letter dated 14.03.2016 intimating the complainants about the interest accrued on the delayed payment made by the complainants.
34. The complainants were fully aware that due to their continuous default, Axis Bank had called upon the respondent vide email dated 14.06.2016 to cancel the allotment of the apartment in question of the complainants and the respondent was left with no other option but to cancel the allotment.
35. As per the terms and conditions of the tripartite agreement dated 26.3.2014 and the apartment buyer's agreement dated 26.03.2014,





the respondent had full right to forfeit the earnest money and other charges and the respondent rightly did so. It is important to mention here that on account of continuous default of the complainants and other allottees like them, the respondent suffered huge loss and injury. The respondent had to arrange funds on its own by raising loans on payment of interest to banks/financial institutions just because of the defaults committed by the complainants and other defaulters. Earnest money was rightly and lawfully forfeited by the respondent and the same is also in accordance with the terms and conditions of the tripartite agreement dated 26.3.2014 and the apartment buyer's agreement. The respondent had to refund the amount of Rs. 39,53,830/- to axis bank as per the order dated 02.07.2018 of DRT and the amount of Rs. 33,46,486/- has been rightly forfeited. The complainants have filed the present highly frivolous and false complaint cooking up wholly false and untenable grounds as an afterthought by misusing the provisions of the Act, 2016.

36. As per possession clause 13.3 of the agreement the time of handing over of possession was to be computed from the date of receipt of all requisite approvals. Even otherwise the construction could not be raised in the absence of the necessary approvals. It has been specified in sub-clause (iv) of clause 17 of the memo of approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. It is submitted that the environment clearance for construction of the said project was granted on



12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan duly was to be duly approved by the fire department before the start of any construction work at site. That as per clause 35 of the environment clearance certificate dated 12.12.2013, the project was to obtain permission of mines & geology department for excavation of soil before the start of construction. The requisite permission from the department of mines & geology department has been obtained on 04.03.2014. That the fire scheme approval was granted on 27.11.2014 and the time period for calculating the date for offering the possession, according to the agreed terms of the buyer's agreement, would have commenced only on 27.11.2014. Therefore, 60 months from 27.11.2014 (including the 180 days grace period and extended delay period) would have expired on 27.11.2019. However, the same was subject to the complainants complying with their contractual obligations and the occurrence of the force majeure events.

37. That the implementation of the project was hampered due to non-payment of instalments by allottees on time and several other issues also materially affected the construction and progress of the project.

- Inability to undertake the construction for approx. 7-8 months due to Central Government's notification with regard to demonetization : The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f





from 9-10 November 2016 the day when the central government issued notification with regard to demonetization. During this period, the contractor could not make payments to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on the site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of central government.

There are also studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the impact of demonetization on real estate industry and construction labour.

Thus, in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should deemed to be extended for 6 months on account of the above.

- Orders passed by National Green Tribunal: In last four successive years i.e., 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. The Hon'ble NGT has passed orders with regard to phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of Respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to that, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard. In view of the above, construction work remained badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period is also required to be added for calculating the delivery date of possession.
- Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or



not made resulting in badly impacting and delaying the implementation of the entire project.

- Inclement weather conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

38. That Divisional Commissioner, Gurgaon directed District Town Planner, Gurgaon to stop construction at site and for nearly two months the implementation was kept in abeyance. Despite all these circumstances mentioned above respondent worked hard and tirelessly and was able to complete the construction of the apartment allotted to the complainants.

39. That despite failure of the complainants to adhere to their contractual obligations of making payments, the respondent has completed the construction of the tower in which the unit allotted to the complainants was located.

40. 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 and submission made by the parties.

#### **E. Jurisdiction of the authority**

41. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

42. 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**

43. 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.*

44. 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.
45. 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."*

46. 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 respondents.**

**F.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.**

47. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
48. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules.





Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 and which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

49. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair

*and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

50. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

**F.II Objection regarding complainants is in breach of agreement for non-invocation of arbitration**

51. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

***"35. Dispute Resolution by Arbitration***

*"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the*



*Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".*

52. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

53. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors.*, **Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

*"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-*

*"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

*...*

*56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

54. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing



arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh** in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength on arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

55. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be

referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

**G. Findings regarding relief sought by the complainants.**

- (i) Direct the respondent to refund an amount of Rs. 33,46,486/- with interest @ 18% from the date of deposit till actual realization.

56. The complainants have booked the residential apartment in the project named as 'The Corridors' situated at sector 67 A for a total sale consideration of Rs. 1,73,06,088/-. The complainants were allotted the above-mentioned unit vide allotment letter dated 07.08.2013. Thereafter the apartment buyer agreement was executed between the parties on 26.03.2014.
57. As per the payment plan respondent started raising payments from the complainants. The complainants in total have made a payment of Rs. 33,46,486/- . The respondent vide letter dated 05.06.2015 raised the demand towards fifth instalment and due to non-payment from the complainants it sent reminder on 09.07.2015 and 19.10.2015 and thereafter various instalments for payments were raised but they failed to pay the same. On 05.03.2016 complainants sent notice for termination of agreement (annexure R-19) and further on 14.06.2016, the complainants sent an email for refund of the amount paid. However, no action on their representation was taken by the respondent builder. Though it is pleaded on behalf of the respondent that it has obtained occupation certificate of the project on 31.05.2019 and the allottees be



directed to take possession of the allotted unit but the plea advanced in this regard is devoid of merit. When the allottees have already withdrawn from the project before the due date then it was obligatory for the respondent to act upon their representation and refund the paid-up amount after making statutory deductions. But that was not done despite a lapse of about 4 years. Hence failure on the part of the respondent builder to act amounts to non-performance of its obligations. Thus, in such situation the respondent builder is directed to return the paid-up amount to the complainants after retaining 10% of the basic sale price and cant retain more than that and which is reasonable one. Even in cases of **Maula Bux Vs. Union of India, (1970) 1 SCR 928** and **Sirdar K.B Ram Chandra Raj Urs. Vs. Sarah C. Urs, (2015) 4 SCC 136**, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of Section-74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damage. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e.*

*apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

58. Keeping in view the aforesaid legal provisions, the respondent is directed to refund the deposited amount i.e., Rs. 33,46,486/- after deducting 10% of the basic sale price of the unit within a period of 90 days from the date of this order along with interest @ 10% p.a. on the refundable amount from the date of withdrawal i.e., 05.03.2016 till the date of its payment.
- (ii) Direct the respondent to pay a cost of Rs. 10,00,000/- as compensation for mental agony caused to complainants.
  - (iii) Direct the respondent to pay a sum of Rs. 1,00,000/- as litigation expenses.
59. The complainants in the aforesaid relief are seeking 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.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the



complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the authority: -**

60. 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 promoter as per the functions entrusted to the authority under sec 34(f) of the Act:-

- i. The respondent/promoter is directed to refund the amount i.e., Rs. 33,46,486/- to the complainants after deducting 10% of the basic sale price of the unit along with interest @ 10% p.a. on the refundable amount from the date of withdrawal i.e., 05.03.2016 till the date of its actual payment.
- 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.

61. Complaint stands disposed of.

62. File be consigned to the registry.

v.1-3  
(Vijay Kumar Goyal)  
Member

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 24.08.2022