

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

Complaint no.	2485 of 2023
Date of filing complaint	09.06.2023
First date of hearing	10.11.2023
Date of decision	20.09.2024

1. Alok Kumar Choudhary 2. Kritika Choudhary R/o: B-129, Sales Office, Ground Floor, Jindal Realty Ltd., Sector-35, Sonipat, Haryana-131001	Complainants
Versus	
M/s International land Developers Pvt. Ltd. Office address: ILD Trade Centre, 9 th floor, Sector 47, Sohna Road, Gurugram-122018	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Ajay Kumar Singh	Complainants
Shri Rishabh Gupta	Respondent

ORDER

1. The present complaint 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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations



made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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.	Allotment Letter	06.04.2014 (Page 16 of complaint)
8.	Date of execution of apartment agreement of buyer	20.01.2015 (Page 23 of complaint)



9.	Unit no.	402, 4 th floor, tower C (Page 27 of complaint)
10.	Unit area admeasuring (super area)	1275 sq. ft. (Page 27 of complaint)
11.	Possession clause	<p>10. Possession of Apartment</p> <p>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.</p>

12.	Due date of possession	20.07.2019 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
13.	Total sale consideration	Rs. 76,25,975/- (As per payment plan on page 80 of complaint)
14.	Amount paid by the complainants	Rs. 27,54,064/- (As alleged by complainants on page 8 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

B. Facts of the complaint:

- That in 2013, the respondent approached the complainants for booking a flat in the residential project launched by them as "ARETE", situated in Revenue Estate, Village Dhunela, Sector 33, Tehsil Sohna, Gurugram, Haryana 122005. The respondent claimed to be one of the best and finest in the construction and one of the leading real estate developers of the country, in order to lure prospective customers to buy the apartment in the project.
- That the complainants opted for the possession link payment plan as offered by the respondent and at the time of booking development was being started on the project and representative of the respondent told to the complainants that offer of handing over the possession of the said flat

within 48 months from the date of execution of apartment buyer agreement with additional grace period of 6 months.

5. That the complainants booked a unit/apartment bearing no. C-402, Tower-C, 2BHK, measuring 1275 sq. ft. on 28.12.2013 and paid an amount of Rs. 3,00,000/-. The complainants continued to make payments to the respondent company and paid an amount of Rs. 4,00,000/- and Rs. 4,00,000/- dated 11.02.2014.
6. That after the payment of Rs. 11,00,000/- the respondent allotted the apartment vide allotment letter dated 06/04/2014.
7. That after this payment the respondent demanded more amount from the complainants without executed the apartment buyer agreement and without reaching to the mile stone of the construction and forced to the complainants to took home loan from the HDFC Bank which was sanction for the sum of Rs. 40,00,000/-vide sanction latter dated 16.02.2015 in which Rs. 15,70,402/- was disbursed to the respondent.
8. That after the booking of 18 months the respondent executed the "apartment buyer agreement" on 20.06.2015 in favor of the complainants and through this agreement the respondent allotted Unit bearing C-402 on 4th floor, tower-C, with area 1275 sq. ft., of "ARETE", situated in Revenue Estate, Village Dhunela, Sector-33, Gurugram, Haryana 122005, and total cost of the unit was Rs. 76,25,975/- including other charges, Accordingly, a binding contract came into existence in the form of the said allotment agreement duly signed by both the parties.
9. That as per clause "10.1" it was stipulated that the possession was supposed to be delivered in May 2019, however, even after a delay of 3

year 11 months, the respondent till date has failed to handover the possession of the unit to the complainants.

10. That according to apartment buyer agreement dated 20.06.2015, it was specifically and categorically assured by the respondent that it shall handover the said residential unit within 48 months of execution of the apartment buyer agreement dated 20.06.2015 with the grace period of 6 months. It means that, the respondent was supposed to handover the said unit along with the required amenities and facilities which are fairly necessitated and promised under the said brochure/booking form/letter of allotment/ apartment buyer agreement; by 19.06.2019 and at most 19.12.2019 (Including 6 months of extension/grace period).
11. That after making the above said payment the complainants were looking for the possession of their unit as committed by the respondent in the agreement 48 months from the date of booking, but the respondent fail to handover the possession of their unit within 48 months and kept silent after getting the above said payment.
12. However, after the initial excavation work at the tower site, there was no progress in construction at the site, it appears that respondent with fraudulent intention to cheat, to lure and persuade the public at large to book and invest in the said project, initiated excavation work at the tower site, but after receiving substantial amount, the respondent have abandoned the tower site. The complainants repeatedly approached the respondent's personally as well as via email communication, requested them to increase the pace of work and handover the booked flat in stipulated time. But a part of frivolous assurances, nothing constructive was yield out, causing lots of immense mental agony, physical



harassment & financial loss to the complainants. In such scenario, the complainants requested the respondent to refund the deposited amount along with interest.

13. That the complainants made all the payments from time to time and looking for possession of the said flat as per the agreement but the construction is not as per the agreement, and from the construction work it seems to take 6-7 years for the possession from till now.

14. That the complainants paid a total sum of Rs. 27,54,064/- till 16/02/2015. The complainants paid all demand time to time and there was no delay in the payment of instalments but the respondent failed to provide possession of the flat as per the agreement.

C. Relief sought by the complainants:

15. The complainants have sought following relief(s):

- i. Direct the respondent to refund the entire amount along with prescribed rate of interest.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

16. That at the outset each and every averment, statement, allegation, contention of the complainants which is contradictory and inconsistent with the reply submitted by the respondent is hereby denied and no averment, statement, allegation, contention of the complainants shall deem to be admitted save as those specifically admitted to be true and correct. It is respectfully submitted that the same be treated as a specific denial of the complaint. The respondent is a leading real estate company

aiming to provide state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.

17. That the present complaint, filed by the complainants, is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds.
18. That the complainants herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
19. That after obtaining all the requisite permissions from the competent authorities commenced the construction and development of the group housing project in the name & style of "Arete", situated at Sector 33, Gurugram, Haryana (henceforth referred as 'Project'), further, It is humbly submitted that the respondent had adopted the general practices of the promotion and advertisement of the project for allocating the units to the aspiring allottees. Accordingly, the complainants after perusing such general advertisement approached the respondent for further details of the project and the respondent placed all the documents pertaining to the project for the assimilation and satisfaction of the complainant.
20. That the complainants after comprehending the details of the project presented by the respondent, thereby decided to book a unit in the project. Correspondingly, filed the booking application on 28.12.2013 and paid the booking amount of INR. 3,00,000/- (Rupees Three Lakhs Only), which was duly acknowledged by the respondent through receipt no. 148 dated 28.12.2013.

21. That on 06.04.2014, an allotment letter was issued in favor of complainants wherein provisionally allotting the apartment no. C-402, 4th floor, tower C situated at ILD Arete, Sector-33, Gurugram, Haryana.
22. That on 20.01.2015, an apartment buyer's agreement (hereinafter referred as 'Agreement') as was executed between the complainants and the respondent wherein the apartment/unit no. C-402, 4TH Floor, Tower C situated at ILD Arete, sector-33, Gurugram, Haryana (henceforth referred as "Unit"), having admeasuring area of 1275 sq. ft and total sale consideration of Rs. 76,25,975/-. Further, the clause 10.1 of the agreement postulates that possession of the unit was supposed to be handed-over within forty eight (48) months in supplementation of grace period of six (6) months from the date of the execution of the agreement.
23. That time is the essence under this agreement and the buyer shall timely payment of each installment of the total sale consideration as per the payment plan opted and other charges, taxes, escalation charges, securities, additional charges, deposits including any interest or penalty payable under this agreement in accordance with the timelines indicated herein and timely performances by the buyer of all his obligations under this agreement, and for the developer to complete the construction of the said apartment.
24. That the construction work of the said project is completed around 40-50% in totally. That it is also further pertinent to mention that the majority of prospective buyers in the said project failed to make the payments as per the payment schedule attached to the agreement which eventually resulted in the delay in construction process. That the

respondent with the availability of funds are carrying the construction and the construction of the project is at full swing despite the defaults of the prospective buyers, which is a matter of concern and hence the complainants are themselves liable for the said delay in the handing over of the possession.

25. That the project of the respondent got delayed due to reasons beyond control of the respondent. It was further submitted that major reason for delay for the construction and possession of project is lack of infrastructure in the said area. The twenty-four- meter sector road was not completed on time. Due to non- construction of the sector road, the Respondent faces many hurdles to complete the project. For completion of road, the respondent the Govt. Department/machinery and the problem is beyond the control of the respondent. The aforementioned road has been recently constructed.
26. That the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21/09/2015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to this reason the project got delayed.
27. That in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made

from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.

28. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after lifting of ban by the Hon'ble court the construction activity could not resume at full throttle due to such acute shortage.
29. It was submitted that the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.
30. In past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L- 49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L- 53 dated 01.11.2019.
31. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs.

Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.

32. The demonetization and new tax law i.e. GST, affected the development work of the project. In the view of the facts stated above it is submitted that the respondent has intention to complete the project soon for which the respondent is making every possible effort in the interest of allottees of the project.
33. Even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and such period shall not be added while computing the delay.
34. The Covid-19 pandemic has resulted in serious challenges for the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020- DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25,2020. By virtue of various subsequent notifications the Ministry of Home Affairs, GOI further extended the

lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

35. After such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the World wide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances.

36. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. That on 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM- I (A) recognized that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. Subsequently, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. It is to note, various State Governments, including the Government of Haryana have

also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.

37. It is an evident fact the respondent herein had been running behind the complainants for the timely payment of instalment due towards the respective unit in question. That inspite being aware of the payment schedule the complainants herein has failed to pay the instalment on time.

38. That the respondent is committed to complete the development of the project at the earliest for which every necessary action is being taken by the respondent. That as the development of the project was delayed due to the reasons beyond the control of the respondent, the complainants are not entitled for compensation in any which way and the same was agreed into between the complainants and the respondent under clause 10.1, 10.2, 10.3, 10.4, and Clause 18. Therefore, the complainants are not entitled for compensation for delay.

39. That, it is evident that the entire case of the complainants are nothing but a web of lies and the false and frivolous 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. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

40. All other averments made in the complaint were denied in toto.

41. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

42. The plea of the respondent regarding lack of jurisdiction of Authority is 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. I Territorial jurisdiction

43. 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

44. 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.

45. 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.

F. Findings on the objections raised by the respondent:

F.I Objections regarding delay due to force majeure:

46. The respondent-promoter raised the contention that the construction of the project was delayed due to conditions beyond the control of the respondent such as non-construction of sector road by Government, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016 along with demonetization and new tax law i.e., GST, affected the development work of the project. First of all, the orders of High Court in the year 2012 does not have any impact on the project as the same was passed even before the Apartment Buyer's Agreement was executed between the parties. Further, the orders banning construction and extraction of ground water were imposed for a very short duration and thus, a delay of such a long

duration cannot be justified by the same. The plea regarding delay due to GST and demonetisation is also devoid of merit and thus, all the pleas stand rejected. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainants for refund:

G.I Direct the respondent to refund the amount deposited by the complainants along with interest at the prescribed rate.

47. 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 at the prescribed rate as provided under section 18(1) of the Act. Sec.18(1) of the Act 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)

48. Clause 10.1 of the apartment buyer agreement dated 20.01.2015 provides for handing over of possession and is reproduced below:



4.2 Possession Time and Compensation

*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..**"*

49. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government /regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.



50. **Due date of handing over possession and admissibility of grace period:** As per clause 10.1 of the apartment buyer agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months from the date of execution of agreement plus 6 months of grace period. The due date of possession is calculated from the date of agreement which comes out to be 20.07.2019 including grace period of 6 months as it is unqualified.

51. **Admissibility of refund along with prescribed rate of interest:** The complainants intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

52. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

53. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on



date i.e., 16.10.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

54. On consideration of documents available on record as well as submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the apartment buyer agreement executed between the parties on 20.01.2015, the possession of the subject unit was to be delivered within a period of 48 months from the date of execution of apartment buyer's agreement which comes out to be 20.01.2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 20.07.2019. The authority observes that even after a passage of more than 5 years 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.
55. Keeping in view the fact that the complainant/allottees wish to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit in question with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
56. 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....."

57. 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. 2021-2022 (1) RCR (Civil), 357*** 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 that:

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."*

58. 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 sell or duly completed by the date specified therein. Accordingly, the



promoter is liable to the allottees, as the allottees wish 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.

59. 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., @11.10% 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:

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 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 from the complainants i.e., Rs. 27,54,064/- along with interest at the rate of 11.10% 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. Even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainants/allottees.
61. Complaint stands disposed off.
62. File be consigned to the registry.



Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.09.2024

HARERA
GURUGRAM