

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

Order reserved on:	19.09.2024
Date of Order:	14.11.2024

NAME OF THE BUILDER		IREO PRIVATE LIMITED	
PROJECT NAME		"IREO CITY CENTRAL"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1034/2022	Nitish Kumar Roy V/S Ireo Private Limited	Shri S.S. Hooda Advocate Shri Rahul Thareja Advocate
2.	CR/1035/2022	Nitish Kumar Roy V/S Ireo Private Limited	Shri S.S. Hooda Advocate Shri Rahul Thareja Advocate
3.	CR/1036/2022	Nitish Kumar Roy V/S Ireo Private Limited	Shri S.S. Hooda Advocate Shri Rahul Thareja Advocate
4.	CR/1037/2022	Nitish Kumar Roy V/S Ireo Private Limited	Shri S.S. Hooda Advocate Shri Rahul Thareja Advocate

CORAM:

Shri Vijay Kumar Goyal

Member

HARERA
GURUGRAM
ORDER

1. This order shall dispose of all the 4 complaints titled as above filed before this authority 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

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or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ireo City Central" (Commercial Complex) being developed by the same respondent/promoter i.e., M/s Ireo Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, and cancellation of the unit way back in 2017 seeking delay possession charges along with interest and other.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in a table below:

Project Name and Location	Ireo Private Limited at "Ireo City Central" situated in Sector- 59, Gurugram.
<p>Possession Clause: - 13.3 Possession and Holding Charges</p> <p><i>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 defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Rental Pool Serviced Apartment to the Allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfilment of the preconditions imposed there under ("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.</i></p>	
<p>Occupation certificate: - Not obtained</p>	

Complaint No., Case Title	CR/1034/2022 Nitish Kumar Roy V/S Ireo Private Limited	CR/1035/2022 Nitish Kumar Roy V/S Ireo Private Limited . Ltd.	CR/1036/2022 Nitish Kumar Roy V/S Ireo Private Limited	CR/1037/2022 Nitish Kumar Roy V/S Ireo Private Limited
Reply status	09.12.2022	09.12.2022	09.12.2022	09.12.2022
Unit no.	R0307 [As per BBA annexed in the complaint]	R0308 [As per page no. 27 of the complaint]	R0309 [As per page no. 27 of the complaint]	R0406 [As per page no. 27 of the complaint]
Area admeasuring	908.33 sq. ft. [As per BBA annexed in the complaint]	908.33 sq. ft. [As per page no. 27 of the complaint]	925.00 sq. ft. [As per page no. 27 of the complaint]	908.33 sq. ft. [As per page no. 27 of the complaint]
Date of execution of buyer's agreement	24.09.2013 [As per BBA annexed in the complaint]	24.09.2013 [As per page no. 22 of the complaint]	24.09.2013 [As per page no. 22 of the complaint]	24.09.2013 [As per page no. 22 of the complaint]
Due date of handing over of possession	05.03.2017 (Note: Due date to be calculated as 42 months from date of approval of building plan i.e., 05.09.2013 as held by the Authority in various cases)	05.03.2017 (Note: Due date to be calculated as 42 months from date of approval of building plan i.e., 05.09.2013 as held by the Authority in various cases)	05.03.2017 (Note: Due date to be calculated as 42 months from date of approval of building plan i.e., 05.09.2013 as held by the Authority in various cases)	05.03.2017 (Note: Due date to be calculated as 42 months from date of approval of building plan i.e., 05.09.2013 as held by the Authority in various cases)
Offer of possession	Not offered	Not offered	Not offered	Not offered
Cancellation of the unit	23.01.2017 [As per page no. 92 of the reply]	23.01.2017 [As per page no. 90 of the reply]	23.01.2017 [As per page no. 94 of the reply]	23.01.2017 [As per page no. 95 of the reply]
Total Consideration / Total Amount paid by	TSC: Rs.1,42,70,311/- (As per payment plan annexed at Annexure-IV) AP: Rs.66,52,940/-	TSC: Rs.1,42,70,311/- (As per payment plan on page no. 65 of the complaint) AP: AP:	TSC: Rs.1,45,13,852/- (As per payment plan on page no. 66 of the complaint) AP: AP:	TSC: Rs.1,42,70,311/- (As per payment plan on page no. 65 of the complaint) AP: AP:

the complainant(s)	(As per cancellation letter on page no. 92 of the reply)	Rs.66,52,940/- (As per cancellation letter on page no. 90 of the reply)	Rs.57,08,802/- (As per cancellation letter on page no. 94 of the reply)	Rs.56,09,413/- (As per cancellation letter on page no. 95 of the reply)
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The complainant in the above complaint(s) has sought the following reliefs:

1. Direct the respondent company to pay delayed interest on the amount received by the respondent from the complainant in respect of the unit no. R0-307.
2. Cost of escalation may kindly be waive off in favour of the complainant as per section 18 and other relevant provisions of Act of 2016
3. Direct the respondent to refund the illegal amount taken by the respondent from the complainant.
4. Direct the respondent to pay the litigation cost of Rs.1,00,000/- to the complainant.

Note: In the table referred above, certain abbreviations have been used.

They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case



CR/1034/2022, case titled as Nitish Kumar Roy V/S Ireo Private Limited are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and litigation cost.

A. Unit and project related details

7. 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. No.	Particulars	Details
1.	Name of the project	"Ireo City Central", Sector 59, Gurgaon
2.	Project area	3.9375 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	56 of 2010 dated 31.07.2010 valid up to 30.07.2020
5.	Name of licensee	SU Estates Pvt. Ltd.
6.	RERA Registered/ not registered	107 of 2017 dated 24.08.2017
7.	RERA registration valid up to	30.06.2020
8.	Unit no.	R0307, 3 rd Floor, R tower (As per BBA annexed in complaint)
9.	Unit area admeasuring (super area)	908.33 sq. ft. (As per BBA annexed in complaint)
10.	Approval of building plans	05.09.2013 (As per project details)
11.	Date of execution of Buyer's Agreement	24.09.2013 (As per BBA annexed in complaint)
12.	Environmental Clearance	12.12.2013 (As per project details)
13.	Consent to establish from pollution angle	07.02.2014 (As per project details)
14.	Possession clause	13.3 Possession and Holding Charges <i>Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its</i>

		<p><i>obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Rental Pool Serviced Apartment to the Allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the preconditions imposed there under ("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.</i></p>
15.	Due date of possession	05.03.2017 (Note: Due date to be calculated as 42 months from date of approval of building plan i.e., 05.09.2013 as held by the Authority in various cases)
16.	Total sale consideration	Rs.1,42,70,311/- (As per payment plan annexed at Annexure-IV)
17.	Amount paid by the complainant	Rs.66,52,940/- (As per cancellation letter on page no. 92 of reply)
18.	Reminders for payment	09.11.2015, 02.12.2015, 25.01.2016, 09.02.2016, 18.02.2016, 10.05.2016, 07.06.2016, 05.07.2016 (Final notice), 08.06.2016, 01.07.2016, 25.07.2016, 19.09.2016, 13.10.2016,

		07.11.2016 (Final notice)
19.	Cancellation Letter	23.01.2017 (Annexure R-38 on page no. 92 of reply)
20.	Occupation certificate /Completion certificate	Not obtained
21.	Offer of Possession	Not offered

B. Facts of the complaint:

8. The complainant has made the following submissions:

- I. That the complainant was in a dire need of an accommodation in Gurgaon of his own.
- II. That after visiting various places in Gurgaon in search of a good accommodation, the complainant came into contact with the respondent company's officials, where it was informed to the complainant that the respondent company is planning to build residential accommodations in Sector 59, Gurgaon and after going through the attractive brochure, the payment plan and assurance given by the officials of the respondent company regarding construction of various projects in Gurgaon within the stipulated period and the reputation of the respondent company, the complainant decided to have an accommodation in the project of the respondent.
- III. That accordingly the complainant booked a unit/floor in the project of the respondent i.e., 'IERO CITY' in Sector-59, Gurgaon and on payment of Rs.14,41,900/-, the complainant was allotted a unit bearing No. R-0307, 3rd floor, Tower-R having an area measuring 908.33 sq. ft.
- IV. That apart from issuing the payment receipts on different dates, acknowledging the receipt of amount of Rs.14,41,900/-, the

respondent company also issued an allotment letter dated 26.09.2012 in reference to the application of the complainant for provisional allotment dated 16.05.2012 and a builder buyer's agreement was executed on 24.09.2013 carrying the details of unit allotted and also the details of amount to be deposited by the complainant time to time as per payment plan opted by the complainant.

- V. That as per one of the terms and conditions of the said buyer's agreement dated 24.09.2013, it was agreed and settled that the possession of the said unit shall be handed over to the complainant within a stipulated period of 42 months from the date of sanctioning of the building plans or execution of buyer's agreement whichever is later (commitment period). It was further agreed and settled that the respondent company shall additionally be entitled to a grace period of 180 days after the expiry of said commitment period to allow for filing and pursuing the occupancy certificate etc. from DTCP under the Act in respect of the entire colony. Hence, from the above said clause as per clause no.13.3 of buyer's agreement dated 24.09.2013, the respondent company was duty bound to handover the physical possession of the above said unit to the complainant positively up to 16.02.2016 and it was told that till date they have not delayed on completion of any project they have in their hand.
- VI. That the complainant without making any kind of delay always deposited the amount as per the payment plan opted by the complainant immediately on receipt of letters from the respondent company and in total the complainant paid an amount of Rs.66,52,940/- which has also been admitted and

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acknowledged by the respondents company officials. The stamp duty plus registration charges & administrative charges as mentioned in the payment plan is liable to be payable by the complainant and that too at the time of offer of possession.

- VII. That from the said timely payment made by the complainant in the respondent company leaves no iota of doubt that the complainant has been very sincere and honest while complying the terms and conditions of the application for provisional allotment dated 16.05.2012 as well as of buyer's agreement dated 24.09.2013 and there were reasons on the part of the complainant not to deposit the remaining amount as the same was agreed and settled to be payable at the time of offer of possession of the said unit by the respondent company.
- VIII. That on account of not constructing the above said unit within the stipulated period of 42 months and even after taking grace period of 180 days (6 months), the complainant kept on requesting the respondent company's officials to complete the construction of the said unit as early as possible and handover the possession of the above said unit to the complainant by narrating the bonafide and genuine reasons that the complainant was left with no alternative but to continue to live in a rental accommodation by paying huge amount of rent per month to the owner/landlord being no fault at all on the part of the complainant and despite being invested huge amount in the respondent company for purchasing the aforesaid unit, but all the time, the respondent kept on putting forth the complainant on one reason or the other and could not adhere to the terms and conditions as settled and agreed between the respondent and the complainant and failed to

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hand over the physical possession of the above said unit to the complainant till date.

- IX. That instead of admitting their fault/negligence on account of offering possession of the said unit without being fit for living, respondent kept on issuing reminders for illegal demand regularly, the respondent crossed all the limits by keeping aside all the provisions of law of land and without having any fear of law of land, the respondent demanded illegal demands from the complainant.
- X. That on account of issuance of the above illegal demands regularly, followed by reminders and claiming huge amount without their being any justification leaves no doubt in the mind of the complainant that the respondent being such type of reputed company firstly trapped the innocent customers like the complainant by showing attractive brochures boosting about the reputation of the respondent company and once the customers like the complainant is trapped in their net, they with having no fear of law of land demands the amount without having any norms leaving the customers like the complainant to run from pillar to post without there being any fault on their part.
- XI. That on account of not completing the construction of the above said unit allotted to the complainant within the stipulated period, the complainant has incurred huge monetary loss besides having sleepless night for the past more than 6 years. The complainant has also suffered with great harassment and humiliation.

C. Relief sought by the complainant:

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

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- i. Direct the respondent company to pay delayed interest on the amount received by the respondent from the complainant in respect of the unit no. R0-307.
- ii. Cost of escalation may kindly be waive off in favour of the complainant as per section 18 and other relevant provisions of Act of 2016.
- iii. Direct the respondent to refund the illegal amount taken by the respondent from the complainant.
- iv. Direct the respondent to pay the litigation cost of Rs.1,00,000/- to the complainant.

D. Reply by the respondent:

10. The respondent contested the complaint on the following grounds:

- a. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The buyer's agreement was executed between the complainant and the respondent prior to the enactment of the Act of 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
- b. That there is no cause of action to file the present complaint.
- c. That the complainant has no locus standi to file the present complaint.
- d. That the complainant is estopped from filing the present complaint by own acts, omissions, admissions, acquiescences and laches.
- e. That this Hon'ble Authority does not have the jurisdiction to try and decide the present complaint.
- f. That the present complaint is barred by limitation.

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- g. That the complaint is not maintainable as the matter is referable to arbitration as per the Arbitration and Conciliation Act, 1996 in view of the fact that buyer's 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 34 of the buyer's agreement, and the same is reproduced for the ready reference of this Hon'ble Authority:

"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".

- h. That the complainant has not approached the Hon'ble Authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by him 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:

- i. That the respondent is a reputed real estate company having immense goodwill comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered

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several prestigious projects such as 'The Corridors' 'Grand Arch', 'Victory Valley', 'Skyon' and 'Uptown'. That the complainant, after checking the veracity of the project namely, 'Ireo City Central', Sector 59, Gurugram had applied for allotment of an apartment vide his booking application form.

- ii. That based on the said application, the respondent vide its offer of allotment letter dated 26.09.2012 allotted to the complainant apartment no. R0307 having tentative super area of 908.33 sq. ft. for a sale consideration of Rs.1,42,72,526/-. It is pertinent to mention here that the complainant had booked the unit with the respondent when the Act of 2016 was not in force and the provisions of the same cannot be applied retrospectively.
- iii. That the complainant has been a defaulter in making payment towards the installment demands from the very inception. It is submitted that the respondent had sent payment demand dated 26.09.2012 to the complainant for net payable amount of Rs.13,11,194/-. However, the complainant made the payment only after reminders dated 22.10.2012, 14.11.2012 and final notice dated 18.12.2012 was sent by the respondent to the complainant. Vide letter dated 19.12.2013 the respondent also intimated the complainant that an installment cheque dated 03.12.2013 of Rs.60,92,640/- has been returned unpaid by the complainant's bank due to 'Insufficient funds' or got bounced.
- iv. That vide payment demand dated 05.03.2014, the respondent had raised the payment demand towards the 3rd



installment for the net payable amount of Rs.16,01,259/-. However, the complainant made the part-payment only after reminders dated 31.03.2014, 21.04.2014 and final notice dated 13.05.2014.

- v. That vide payment demand dated 15.04.2015, the respondent had raised the payment demand for the net payable amount of Rs.12,70,135/-. However, the complainant made the payment only after reminder dated 13.05.2015. The due date amount was accordingly adjusted in the next installment demand as arrears.
- vi. That vide installment dated 08.10.2015, payment towards 5th installment was sent by the respondent. However, the complainant failed to make the payment towards the due amount despite reminders dated 09.11.2015 and 02.11.2015.
- vii. That vide payment demand dated 28.12.2015, the complainant was bound to remit payment of Rs.20,88,555/-. However, despite reminders dated 25.01.2016, letter dated 09.02.2016 and reminder dated 18.02.2016, the complainant remitted only a part payment out of the total demanded amount and the rest of the amount was accordingly adjusted in the next installment demand.
- viii. That vide payment demand dated 12.04.2016, the complainant was bound to remit payment of Rs.20,90,057/-. However, the complainant failed to make the payment towards the due amount despite reminders dated 10.05.2016 and 07.06.2016 and final notice dated 05.07.2016.
- ix. That vide payment demand dated 12.05.2016, the complainant was bound to remit payment of Rs.31,35,087/-.

- However, the complainant failed to make the payment towards the due amount despite reminders dated 08.06.2016 and 01.07.2016 and final notice dated 25.07.2016.
- x. That the respondent had sent an payment demand dated 24.08.2016 to the complainant for the amount of Rs.41,81,618/-. Yet again, the complainant failed to remit the complete amount even after reminders dated 19.09.2016, 13.10.2016 and final notice dated 07.11.2016 were sent by the respondent.
- xi. That the respondent had sent an installment demand dated 19.09.2016 to the complainant for the amount of Rs.52,28,149/- and a demand dated 25.11.2016 for Value added tax of Rs.46,330/-. Yet again, the complainant failed to remit the complete amount even after reminders dated 14.10.2016, 07.11.2016 and final notice dated 08.12.2016 were sent by the respondent.
- xii. That on account of non-fulfillment of the contractual obligations by the complainant despite several opportunities extended by respondent, the allotment of the complainant was cancelled and the earnest money deposited by the complainant along with other charges were forfeited vide cancellation letter dated 23.01.2017 in accordance with clause 20 read with clause 7.4 of the apartment buyer's agreement and the complainant is now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment. Despite failure of the complainant to adhere to his contractual obligations of making payments and executing an apartment buyer's agreement, the respondent

- has completed the construction of the tower in which the unit allotted to the complainant was located.
- xiii. That according to agreed clauses of the booking application form and apartment buyer's agreement, timely payment of installments within the agreed time schedule was the essence of allotment. The complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, his calculations went wrong on account of slump in the real estate market and the complainant did not possess sufficient funds to honor his commitments. The complainant was never ready and willing to abide by his contractual obligations and he also did not have the requisite funds to honor his commitments.
- xiv. That even though the complainant has nothing to do with the construction yet it is pertinent to mention here that the respondent has already completed the construction of the tower in which the cancelled unit of the complainant was located and the respondent has already obtained the occupation certificate for the retail shops of the project in question.
- xv. That the implementation of the said project was hampered due to several force majeure factors like inability to undertake construction for approximately 7-8 months due to Central Government's notification regarding demonetization, orders passed by the National Green Tribunal, non-payment of installments by allottees such as the complainant, heavy rainfall in Gurgaon in the year 2016 and unfavorable weather conditions and outbreak of Covid-19 and its subsequent

waves. The said events and conditions were beyond the control of the respondent and materially affected and construction and progress of the project.

- xvi. That the complainant committed several defaults and despite several reminders and follow-ups, failed to remit the due amount and accordingly, the unit allotted to the complainant was cancelled. The complainant who has no right, title or interest left in the unit previously allotted to him is trying to somehow blackmail, pressurize and harass the respondent by way of present false, baseless and frivolous complaint. The complainant has no right to do so and the present complaint is being liable to be dismissed.

E. Jurisdiction of the authority:

11. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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.

F. Findings on objections raised by the respondent:

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

13. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will 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)* 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."

14. 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."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the

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apartment buyer's agreement has 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, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding complainants are in breach of agreement for non-invocation of arbitration:

16. The respondent has raised an objection that the complainant has not invoked arbitration proceedings as per the provisions of apartment buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The clause 34 has been incorporated w.r.t arbitration in the apartment buyer's agreement:

"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".

17. The respondent contended that as per the terms & conditions of the buyer's agreement duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. 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. 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 complainant and builders could not circumscribe the jurisdiction of a consumer.
18. 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 has upheld the aforesaid judgement dated 13.07.2017 of NCDRC 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*. 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 an 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."

19. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within his rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 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.

F.III Objection regarding complaint barred by Limitation Act, 1963

20. Another contention of the respondent is that if the date of possession was to be construed in March 2017, the period of limitation has come to an end in the year March 2020. However, the possession of the unit is yet to be handed over to complainant. Therefore, the project shall be

regarded as an "on-going" project and liability of the respondent is still continuing. Further, as per section 11(4)(a) of the Act of 2016, the responsibility of the promoter continues till the execution of conveyance deed. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as ***M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others*** which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

21. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

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

22. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as demonetisation, orders/restrictions of the National Green Tribunal, weather conditions in NCR region, non-payment of instalment by different allottees of the project and major spread of Covid-19 across

worldwide. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 05.03.2017. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainant:

G.I Direct to the respondent company to pay delayed interest on the amount received by the respondent from the complainant in respect of the unit no. R0-307.

23. The complainant was allotted a unit in the project of respondent "Ireo City Central", in Sector 59, Gurugram vide allotment letter dated 26.09.2012 for a total sum of Rs.1,42,70,311/-. An apartment buyer's agreement was executed between the parties on 24.09.2013 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.66,52,940/.
24. The respondent vide letter dated 19.09.2016 raised a demand for due instalment and on 25.11.2016 raised a demand for value added tax which was due as per the payment plan opted by the complainant. After reminders dated 14.10.2016 and 07.11.2016 for payment of outstanding dues, the respondent issued a final demand notice on

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- 08.12.2016 and finally terminated the allotment of the unit on 23.01.2017 on failure of payment of outstanding instalments.
25. The complainant-allottee is under an obligation to make payment of outstanding as agreed between the parties vide agreement dated 24.09.2013. As per section 19(6) of the Act of 2016, every allottee who has entered into an agreement to take an apartment, plot or building under section 13 is responsible to make necessary payments in the manner and within the time as specified in the said agreement. In the present case, the complainant-allottee has not complied with the terms of the agreement, therefore, the cancellation dated 23.01.2017 of the unit stands valid.
26. The counsel for the respondent has mentioned in the reply as well as during the proceedings of the day dated 13.07.2023 brought to the notice of the Authority that the unit of the complainant was cancelled way back in 2017 due to non-payment of instalments despite issuance of numerous reminders and hence no case of DPC is made out as the unit has already been cancelled. Though the complainant has sought the relief of DPC while filing the complaint but the counsel for the complainant during the proceedings of the day dated 13.07.2023 stated that if DPC is not allowed, then the amount deposited by the complainant be refunded and requested to file an application for amending the relief sought. But despite ample opportunities being given vide hearing dated 05.10.2023, 18.01.2024, 21.03.2024, 18.07.2024 and 19.09.2024, the complainant has failed to file an application for amendment of relief.
27. The counsel for the respondent vide proceedings of the day dated 19.09.2024 stated that as the relief sought by the complainant in the complaint is not maintainable due to cancellation of the unit on

23.01.2017. He further stated that though the unit was cancelled on 23.01.2017 but no amount has been refunded till date and requested for deduction of 20% of sale consideration as earnest money as per clause 6 of buyer's agreement dated 24.09.2013. Clause 6 of the buyer's agreement is reproduced below for the ready reference:

(6) EARNEST MONEY

The company and the allottee hereby agree that 20%(twenty percent) of the sale consideration of the Rental Pool Serviced Apartment shall be deemed to constitute the "Earnest Money".

28. The issue with regard to deduction of earnest money on cancellation of a contract arose 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***, and wherein it was 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 Indian Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as ***Jayant Singhal and Anr. VS. M3M India Private Limited*** decided on 26.07.2022, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. Amount Of Earnest Money

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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."

29. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the earnest money paid by the complainant against the allotted unit and shall not exceed 10% of the consideration amount. So, the same was liable to be forfeited as per clause 6 of the buyer's agreement and Haryana Real Estate Regulatory Authority Regulation 11(5). So, the respondent/builder is directed to refund the amount received from the complainant i.e., Rs.66,52,940/- after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (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 cancellation i.e., 23.01.2017 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- G.II Cost of escalation may kindly be waive off in favour of the complainant as per section 18 and other relevant provisions of Act of 2016.**
- G.III Direct the respondent to refund the illegal amount taken by the respondent from the complainant.**
30. The counsel for the complainant requests for refund of the paid-up amount along with the interest vide proceedings of the day dated 13.07.2023. As the Authority is allowing the refund of the paid-up

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amount along with interest as mentioned in para 30, all above sought reliefs by the complainant becomes redundant.

G.IV Direct the respondent to pay the litigation cost of Rs.1,00,000/- to the complainant.

31. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* 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.

H. Directions of the authority:

32. 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 amount i.e., **Rs.66,52,940/-** received by him from the complainant after deduction of 10% of sale consideration of Rs.1,42,70,311/- as earnest money along with interest at the rate of 11.10% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 23.01.2017 till the actual date of refund of the amount.
- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

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- iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
34. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
35. Files be consigned to the registry.



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.11.2024

HARERA
GURUGRAM