

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

Complaint no.:
Date of decision:

2810 of 2024
21.05.2025

1. Neelam Grover
2. Shobhna Grover
Through SPA Jagdish Lal Grover
R/o:- C-114, G.F Inderpuri, New Delhi..

Complainants

Versus

M/s Celestial Estate Private Limited
Registered Office at: B-11/9, Phase-V,
Sector-54, Gurugram, Haryana-122001.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mayank Gupta (Advocate)
Pawan Kumar Mittal (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Earth Iconic"
2.	Location of the project	Sector-71, Village-Badshahpur, Gurugram-Manesar Urban Complex, Haryana.
3.	Total area of the project	13795.79 sq.mtrs
4.	Nature of the project	Commercial complex
5.	DTCP license no.	License No.-101 of 2011 Dated-29.11.2011
6.	Registered/not registered	Registered Vide registration no. 115 of 2023 Dated-11.12.2023
7.	Unit no.	No no. only floor mentioned-2 nd (As on page no. 19 of complaint)
8.	Area of the unit	500 sq.ft. (As on page no. 19 of complaint)

9.	MoU	04.06.2014 (As on page no. 18 of complaint)
10.	Possession clause	<i>Not available</i>
11.	Due date of possession	04.06.2017 [Calculated 3 years from the date of agreement]
12.	Assured return	Clause 3.1 <i>The Company hereby undertakes to make a fixed payment of Rs.26,400/- (Rupees Twenty Six Thousand Four Hundred Only) (hereinafter referred to as the Commitment Amount) every calendar month to the Allottee(s) w.e.f June 14 till the date of First PDC, which the Allottee(s) duly accepts.</i> [Emphasis supplied] (As on page no. 20 of complaint)
13.	Basic sale consideration	Rs.40,25,000/- (As on page no. 19 of complaint)
14.	Total amount paid by the complainant	Rs.40,25,000/-
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint.

- I. That in the year 2014, Mr. Avdhesh Goel, Managing Director of M/s Earth Infrastructures Ltd. approached the complainants being their neighbour and pitched them the proposal to purchase a property in his company's upcoming project namely "Earth Iconic, situated at Sector-71, Badshahpur, Gurgaon-Manesar Urban Complex, Haryana-122001 by showing rosy pictures.
- II. Further the complainants agreed to visit the office of the respondent on 01.02.2014 and Mr. Avdhesh Goel along with the three directors of the respondent company gave a tour of the site plan of their upcoming project to the complainants, gave assurances and fraudulently persuaded them to book a unit in the project by showing the false dream that if the complainant purchase a commercial space/unit in the aforesaid project he will get 12% monthly return.
- III. That in pursuance of the assurance, the complainant booked a commercial space/unit no. EISH- 874, New Code HSOB- 874 admeasuring 500sq. ft. at second floor of the complex being the space for food court, canteen, restaurant shops etc. in the project. That from 01.02.2014 till the signing of the BBA/ MOU, a sum of Rs.23,15,000/- was paid vide multiple transactions.
- IV. Subsequent thereto, a BBA/ Memorandum of Understanding was executed on 04.06.2014 between the complainant and the respondent. That the representative of the respondent further undertook to pay a fixed amount of Rs.26,400/- as commitment amount every month to the complainant w.e.f June 2014, but the respondent failed to abide by the condition of MOU and was highly irregular to make payments and upon the objection of the

complainant, the representative of the respondent did not gave any satisfactory reply to the complainant.

- V. However, from February 2015, the respondent has stopped making the committed payments to the complainant in direct contravention of the terms of MOU dated 04.06.2014. Further, the complainant visited the project site in view to check the progress of the project but the construction was completely shut down by the respondent and no person was found working at the project site.
- VI. That later, the complainant came to know that the respondent had undergone insolvency and the said project was handed over to H.S. Oberoi and Co. along with the respondent in the year 2021 vide resolution plan dated 15.03.2021 with subject to condition that they will complete the said project within 28 months, but till May 2023, no construction was started. Further, the buyers such as complainants have been restricted from entering the project to check the construction status.
- VII. That, despite making the complete payments, the respondent sent a demand letter dated 16.05.2023 for a sum of Rs.1,13,800/- for License fee renewal to the complainant. However, without prejudice to the right of the complainant, the same was paid under protest vide their receipt dated 09.06.2023. That as per the resolution plan, the revised date of handing over of possession came out to be 13.08.2023.
- VIII. However, on 28.01.2024, the respondent again sent an intimation letter to the complainant for further payment in response to which the complainant had sent a reply dated 31.01.2024. Despite receipt of the said reply, the respondent failed to respond to

the same till date. That since the respondent failed to complete the project as per the time committed and had chosen to raise further illegal demands over and above amounts agreed as per MOU/ BBA, the complainant is constrained to withdraw from the project and requested for refund of their hard earned money with delay penalty as well as assured returns, but no response has been received till date.

C. Relief sought by the complainant:

4. The complainants have filed the present compliant for seeking following reliefs:
 - i. Direct the respondent to refund the amount paid by the complainants along with interest and assured returns also.
5. On the date of hearing, the Authority explained to the respondent /promoter about the contravention 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 respondent:

6. The respondent has contested the present complaint on the following grounds:
 - I. That pursuant to an agreement between the respondent and M/s Earth Infrastructure Ltd, the construction, development and marketing of the real estate project namely "Earth Iconic" situated at Sector 71, Badshahpur, Gurugram- Manesar Urban Complex, Haryana- 122001 was the undertaken by M/s Earth Infrastructure Pvt. Ltd. Since the land of the project is owned by the respondent, Directorate of Town and Country Planning, Haryana (DTCP) approved/granted the license bearing no. 101/2011 for the same.

Unfortunately, the company namely Earth infrastructure could not honour its commitments and on an application under section 7 of the Insolvency and Bankruptcy Code, 2016, being C.P No. (IB) 401/2017 titled as "Deepak Khanna v/s Earth Infrastructure Pvt Ltd.", the Hon'ble National Company Law Tribunal, Delhi, admitted the petition under section 7 of the IBC, 2016 vide order dated 06.06.2018.

- II. That the Interim Resolution Professional (IRP) so appointed by the Hon'ble NCLT, caused the public announcement in the Local Newspapers namely "Jansatta" and Financial Express" inviting claims from the public. He also caused to publish second public notice in the above stated newspapers on 06.04.2019. On receipt of claims, he formed Committee of Creditors (CoC) of the respondent. The complainants herein namely Ms. Neelam Grover and Ms. Sobhana Grover also filed their claim with the IRP/RP of the respondent.
- III. That during the CIRP, in accordance with the Act and Rules of IBC 2016, the Resolution Professional invited plan for revival of the respondent. M/s H S Oberoi Buildtech Pvt Ltd. filed the resolution plan for revival of the respondent on 04.11.2019. The resolution plan submitted by M/s H S Oberoi Buildtech Pvt. Ltd. was approved by the Committee of Creditors on 14.11.2019 by 100% of votes. It is respectfully submitted that the complainant herein, having filed their claim and are bound by the terms of the approved resolution plan.
- IV. That the resolution plan so approved by CoC by 100 % of vote, was approved by the Hon'ble NCLT vide order dated 15.03.2021 in I.A of

920/2021. It is submitted that as per paragraph no. 69 of the order dated 15.03.2021, the present petition is not maintainable. The paragraph 69 of the order dated 15.03.2021 is reproduced herein for ready reference:

69. From the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorised to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceedings, as the case may be.

- V. That the complainant while alleging the payments made in the past, is seeking the claim w.r.t the payments made prior to the plan approval date i.e 15.03.2021, and in terms of the order dated 15.03.2021 stands discharged. It is submitted that in terms of section 238 of the IBC, 2016, the provisions of the IBC,2016 overrides any other law. Thus, the complaint seeking refund of the payments made prior to the date of approval of the plan, w.r.t affairs of the respondent prior to the date of approval of the resolution plan is not maintainable and deserves dismissal. That the time for implementation of the resolution plan was 4 + 24 (Four + Twenty-Four) months.
- VI. That the Hon'ble NCLT, vide order dated 03.08.2021 in I.A No. 3320/2021, granted exclusion of the time from 15.03.2021 till 30.06.2021 from the period of implementation of 4+24 months as provided in the resolution plan approved by the Hon'ble NCLT.
- VII. That the successful resolution applicant moved an application before Director of Town and Country Planning immediately after

the approval of resolution plan vide order dated 15.03.2021 for grant of renewal of the licence for development of the project. The DTCP vide communication dated 20.06.2023 informed the respondent grant of renewable of license no. 101/2011 w.r.t the project "Earth Iconic". It is further submitted that the payment as demanded by DTCP to the tune of Rs.4,25,00,000/- towards balance EDC and IDC, interest and penalty were paid and Rs.4,63,62,400/- towards the arrears of licence fee, penalty and interest.

- VIII. That after the receipt of the grant of renewable of the license from DTCP, on an application of the respondent, this Authority has granted registration no.115/2023 dated 11.12.2023. It is further submitted that in terms of the RERA, escrow account with ICICI Bank has been opened and the amount received from the claimant / allottee is being received in the said account.
- IX. That the Hon'ble NCLT vide order dated 13.06.2024 in IA No. 1408/2024 granted exclusion of the time from 01.07.2021 till 31.12.2024 from the period of implementation of 4+24 months as provided in the resolution plan approved by the Hon'ble NCLT.
- X. That pursuant to the order dated 03.08.2021 and order dated 13.06.2021, the time for implementation of 4 + 24 months is to be reckoned from 01.01.2024. Further, it is submitted that as per the provisions of IBC,2016, the resolution plan approved by the Hon'ble NCLT is binding on all stakeholders, including the complainants herein. Further, the complainants are estopped from filing any plea before this Authority. In view of the order dated 13.06.2024, passed by the Hon'ble NCLT, the period from 01.07.2021 till 31.12.2024 has been excluded from the period of implementation of 4+24 months.

Thus, the time for implementation of 4 + 24 months is to be reckoned from 01.01.2024 and the construction is to be completed and unit to be handed over in 28 months starting from 01.01.2024. Thus, the present complaint is pre-mature and deserves to be dismissed.

- XI. That the complainants alleged delay in handing over of the unit has claimed refund of Rs.41,14,597/- allegedly paid by them, and Rs. 1,13,800/- along with interest and assured return. It is submitted that there is no delay on the part of the respondent and the period of 28 months stipulated for handing over the unit is to be reckoned w.e.f 01.01.2024.
- XII. That as per clause 6.6 of the approved resolution plan, the respondent has undertaken to complete the construction of the unit and handover the possession thereof to the claimants which includes the complainants as well, and the respondent or successful resolution applicant has not undertaken to pay any amount. Further, as per the approved resolution plan, in case the complainant opts to surrender or cancel the unit, then the complainant is not entitled for refund of any amount. The relevant clause 6.9 of the resolution plan is reproduced herein below for ready reference.

Clause 6.9 reads as follows:

Any and all existing allottees of Earth Iconic Project shall not have the right to surrender / cancel the allotment of Units to them and/or claim refund of any amounts from HSOB whether paid by them or due to them from or in connection with EIL, CEPL or the Earth Iconic Project. Provided that, the allottee shall have a right to transfer/assign Units allotted to them to prospective buyers / transferee subject to the condition that such prospective buyers / transferees shall agree to the terms and conditions of this Resolution Plan by executing necessary transfer documents provided by HSOB as well as payment of transfer charges as provided for in this Resolution Plan in

respect of the relevant Unit. Such transfer shall be subject to the transfer charges payable as per this Resolution Plan in respect of the allottee's Unit.

- XIII. That in terms of the approved resolution plan, about 159 claimants have executed fresh Builder Buyer Agreement, incorporating the terms of the approved resolution plan as mutually agreed.
7. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. 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-DTCP 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;

9. 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.
10. 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 (Civil), 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."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants

F.I. Direct the respondent to refund the amount paid by the complainants along with interest and assured returns also.

12. In the present complaint, the complainants booked a commercial space bearing no. EISH-874, New Code HSOB-874, admeasuring 500 sq.ft. at second floor of the complex being the space for Food Court, canteen, restaurant shops etc, in the project "Earth Iconic" situated at Sector-71, village Badshahpur, Gurgaon-Manesar Urban Complex, Haryana. The Memorandum Of Understanding was executed between the complainant and the respondent on 04.06.2014 at the basic sale consideration of Rs.40,25,000/- under the "Flexi Payment Plan". As per clause 3.1 of the said MOU dated 04.06.2014, M/s. Earth Infrastructure Ltd. undertook to pay Rs.26,400/- every month to the complainant w.e.f June-2014 till the date of First PDC. The complainants have paid an amount of Rs.41,14,597/- till date.
13. No possession timelines are mentioned in the MOU dated 04.06.2014 and thus, the due date if calculated, three years from the date of the MOU. No Occupation certificate has been received by the respondent till date and no possession has been offered to the complainant till date. The complainants wishes to withdraw from the project and are seeking refund of the amount paid by them and the assured returns that were committed to them by the respondent.

It is noteworthy to mention that CIRP had been initiated against the corporate debtor i.e., Ms. Earth Infrastructures Ltd. In the present case, the respondent submitted in its reply that during the CIRP, the Resolution Professional invited plan for revival of the respondent on 04.11.2019. The resolution plan submitted by M/s H S Oberio Buildtech Pvt Ltd. was approved by the Committee of Creditors(CoC) on 14.11.2019 by 100% of votes. The resolution plan so approved by the CoC was approved by the Hon'ble NCLT vide order dated 15.03.2021 in I.A of 920/2021.

14. That as per the approved resolution plan, M/s. H S Oberio Buildtech Pvt Ltd took over the management of the respondent and became responsible for completing the construction of the project and handover the unit to the allottees, subject to the terms and conditions as stipulated in the approved resolution plan including the term that the claimants make the balance payment.
15. That the time for implementation of the resolution plan was 24 months + 4 months as per clause 7.0 of the resolution plan. The same is reiterated below:

7.0 IMPLEMENTATION PERIOD

HSOB estimates to complete the above revival plan of implementation within a period of 4+ 24 months (i.e from the date of approval of resolution plan)(i.e., 4 months of pre-construction work like seeking of necessary approvals licences RERA registration etc. and 24 months of construction related activity) from effective date in a phased manner, subject to receipt of approvals/licenses from the concerned authorities, on the terms and conditions mentioned herein and not restricted to the various reliefs sought under this plan from various claims, government/semi government/local authorities or such other parties which are either a part or not to this resolution plan"

[Emphasis supplied]

16. As per Clause 7 of the resolution plan, the time period to complete the abovementioned revival plan was within 4 months plus 24 months

from the date of approval of the plan. Therefore, the due date of completion as per revival plan comes out to be 13.08.2023.

17. In view of the orders of the Hon'ble NCLT and the resolution plan annexed with CA-920/2019 filed in CP(IB)-1768(ND)/2018 is hereby approved which shall be binding on the corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including the Resolution Plan.
18. In the present complaint, the complainants are seeking the relief of refund alongwith payment of Assured Returns. As stated above, as per clause 7 of the revival plan, the time period to complete the above revival plan was within a period of 4 months plus 24 months from the date of approval plan. M/s. H S Oberio Pvt Ltd moved an application before the Director of Town and Country Planning immediately after the approval of resolution plan for grant of renewal of the licence for development of the project. The DTCP vide communication dated 20.06.2023 informed the respondent grant of renewable of license no. 101/2011 w.r.t the project "Earth Iconic". The Hon'ble NCLT vide order dated 03.08.2021 in I.A No.3320/2021, granted exclusion of the time from 01.04.2021 till 01.07.2021 from the period of implementation of 4 + 24 months as provided in the resolution plan.
19. Thereafter, the Hon'ble NCLT vide order dated 13.06.2024 in IA-1408/2024 excluded the period from 01.07.2021 to 31.12.2023 from the period of 4 + 24 months from the schedule of implementation as stipulated in the resolution plan on the ground that the application seeking renewal of the licence granted in favour of the respondent for the project was made on 15.03.2021 to the DTCP and the license was granted by the DTCP on 20.06.2023.

20. The Authority observes that no case for refund is made out as the compliant is pre-mature and as per Clause 7 of the Resolution Plan, the respondent undertook to complete the construction of the project within 4 + 24 Months from the date of approval of resolution plan. The Hon'ble NCLT have excluded the period from 01.04.2021 till 01.07.2021 vide order dated 03.08.2021 and further excluded the period from 01.07.2021 till 31.12.2023. Thus, the time period for implementation of 4 + 24 months is to be reckoned from 01.01.2024, and the same comes out to 01.05.2026. The present complaint has been filed on 21.06.2024 i.e., before the expiry of the due date of possession. Further, as per clause 6.6 of the approved resolution plan, which is binding on the complainants also, the respondent has undertaken to complete the construction of the project and handover the possession to the allottees but has not undertaken to pay any amount on account of assured returns or interest or penalty agreed under the BBA/MOU. The same is reiterated below:

"Clause 6.6

HSOB proposes to satisfy all the admitted claims in Iconic Project by completing the pending construction activities and handing over the possession of the unit holders/buyers which are considered as financial creditors under this plan, without taking any liability towards assured return or interest or penalty promised under BBA/MOU or otherwise, in the manner as proposed, and subject to the terms and conditions contained, herein.

[Emphasis supplied]

21. Further, As per clause 6.9 of the resolution plan, in case the allottee opts to surrender or cancel the unit, then the complainant is not entitled to any amount. The same is reproduced below:

" Clause 6.9

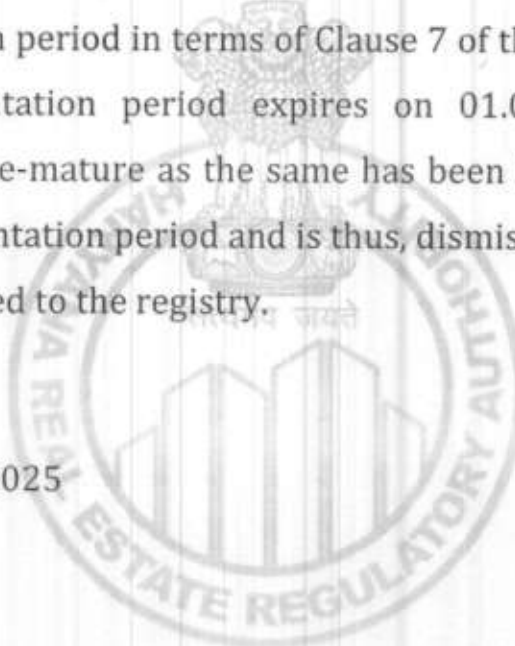
Any or all existing buyers of Iconic Project shall not have the right to surrender/cancel the allotment of units to them and/or claim refund of any amounts from HSOB whether paid by them or due to them from or in connection with EIL, CEPL or the Earth Iconic Project. Provided that, the

allottee shall have a right to transfer/assign Units allotted to them to prospective Buyers/transferee subject to the condition that such prospective buyers/transferees shall agree to the terms and conditions of this Resolution plan by executing necessary transfer documents provided by HSOB as well as payment of transfer charges as provided for in this Resolution plan in respect of the relevant Unit. Such transfer shall be subject to the transfer charges payable as per this resolution plan in respect of the allottee's unit."


[Emphasis supplied]

22. Thus, in terms of Clause 6.6 and 6.9 of the resolution plan, the complainants are not entitled to claim refund/ assured return till the time the resolution plan is in force, i.e., till the completion of the implementation period in terms of Clause 7 of the resolution plan. The said implementation period expires on 01.05.2026. The present complaint is pre-mature as the same has been filed before the expiry of the implementation period and is thus, dismissed.
23. File be consigned to the registry.

Dated: 21.05.2025



HARERA


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram