BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4919 of 2023**
Date of filling	:	**06.11.2023**
Date of decision	:	**02.05.2025**

Mr. Amit Kapoor
Ms. Sharon Kapoor
Address:- VK-142, Ridgewood Estate, DLF Phase-IV, Gurugram – 122009, Haryana (India)

Complainants

Versus

Ireo Grace Realtech Private Limited
Office: - C-4, 1st Floor, Malviya Nagar, New Delhi-110017

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Shri Gaurav Rawat — Advocates for the complainants
Ms. Shivani Dang — Advocate for the respondent

ORDER

1. The present complaint dated 06.11.2023 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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations

made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	**Particulars**	**Details**
1.	Name of the project	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	37.5125 acres
4.	DTCP license no. and validity status	05 of 2013 dated 21.02.2013 valid upto 20.02.2021
5.	Name of licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
6.	RERA Registered/ not registered	**Registered** Registered in 3 phases Vide 378 of 2017 dated 07.12.2017(Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3)
7.	Validity Status	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
8.	Unit no.	501, 5th floor, tower B8 (page no. 73 of the complaint)
9.	Unit area admeasuring	1904.16 sq. ft.

		(page no. 73 of the complaint)
10.	Date of approval of building plans	23.07.2013 (as per project detail)
11.	Date of allotment	07.08.2013 (page no. 61 of the complaint)
12.	Date of environment clearance	12.12.2013 (as per project detail)
13	Date of apartment buyer agreement	31.07.2014 (page no. 70 of the complaint)
14	Date of fire scheme approval	27.11.2014 (as per project detail)
15	Possession clause	***13. Possession and Holding Charges*** *Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration charges, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer* ***the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfillment of the preconditions imposed thereunder(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.
16	Due date of possession	23.07.2017 (calculated from the date of approval of building plans) **Note:** Grace Period is allowed.
17	Total sale consideration	Rs. 2,07,79,225/- (as per payment plan on page no. 106 of complaint)
18	Amount paid by the complainants	Rs. 2,08,34,227/- (As per statement of account on page no. 140 of complaint) Rs. 1,97,98,054/- as per the amended complaint filed by the complainant.
19	Occupation certificate	27.01.2022 [annexure R-21 on page no. 99-101 of reply]
20	Offer of possession	16.02.2022 [page no. 138 of complaint]
21.	Legal notice by complainant for Possession and DPC	16.06.2023 (Page no. 160 of complaint)

B. Facts of the complaint

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

i. That the That the Complainants booked a unit by paying an amount of INR 19,00,000/- vide Cheque/Draft/PO No. 63 dated

15.03.2013 drawn on Standard Chartered Bank towards the booking of the unit bearing Unit No. CD-B8-05-501, Type - 3 BHK+ S, Floor 5, Tower B8 admeasuring 1904.16 sq. ft. (hereinafter called "the Unit") in the Project and the same was acknowledged by the Respondent vide Acknowledgment Letter dated April 13,

ii. That the Unit was purchased under the Instalment Payment Plan for a sale consideration of INR 2,07,79,225/- (hereinafter called "the Consideration Amount").

iii. That after a long follow-up on 31.07.2014, a pre-printed, unilateral, arbitrary Apartment Buyer's Agreement (hereinafter called "the Agreement") was executed between the Respondent and the Complainants. According to Clause 13.3 of the Agreement, the Respondent has to give possession of the Unit within 42 months from the date of approval of the Building Plans and /or Fulfilment of the Preconditions imposed thereunder (hereinafter called "the Commitment Period") with an additional 180 days (6 months) Grace Period. That it is germane to mention here that the building plans were approved on 23.07.2013, therefore the due date of possession was 23.01.2017. It is pertinent to mention here that the Respondent is not entitled to the grace period, because, they have failed to complete the construction in the prescribed time and offer the possession.

iv. That the Complainants as per the Instalment Payment Plan, made timely payments as and when the Respondent raised a Payment Request. That the Respondent issued a letter on 18.03.2014 and offered a timely payment rebate of INR 200/- per sq. ft. of super area of the Unit, calculated on the basic sale price subject to the

conditions mentioned in the letter (hereinafter called "the Rebate"). It is pertinent to mention that the Complainants fulfilled all the conditions as mentioned in the said letter without any delay whatsoever.

v. That on 16.02.2022, the Respondent sent a notice of possession informing the Complainants that the occupation certificate of "Phase-II of The Corridors Project" has been granted by the Competent Authority and asked for completion of necessary formalities and informed the Complainants that upon receipt of the entire outstanding amount and completion of documentary formalities, the Respondent shall handover the possession of the Unit.

vi. That on 09.03.2022, the Complainants received an email from the Respondent, which included the Statement of Accounts. The said Statement of Accounts included compensation for delayed possession to the tune of INR 5,54,494/- however, it did not include the Rebate.

vii. That on 07.07.2022, the Complainants sent an email informing the Respondent that they are eligible for the Rebate and also disputed the compensation for delayed possession. On 08.07.2022, a response was received from the office of the Respondent, whereby the rebate was denied without providing any reason.

viii. That Mr Amit Kapoor i.e. one of the Complainants, visited the Respondent's office in the month of September, 2022 and met with one Mr. Arunjeet, and again explained that all the payments were made on a timely basis and hence the Complainants are entitled to the Rebate under the scheme. The Respondent

acknowledged and prepared the revised Statement of Accounts (hereinafter referred to as "first Revised Statement of Accounts"), which included the rebate of INR 3,80,832/. However, there was no change in the compensation for delayed possession.

ix. That the Respondent has acknowledged the delay in handing over the possession and therefore, inserted INR 5,54,494/- for Compensation for Delay @7.5/- per month/ per sq. ft. and INR 27,176/- as GST Rebates. That since the compensation for delayed possession was not in accordance with the Agreement, Mr. Amit Kapoor called the Respondent's office several times and sent emails dated 03.12.2022 and 15.12.2022, requesting a response regarding the construction status of the Unit and the final Statement of Accounts which included the correct amount of compensation for the delayed possession. However, the Complainants did not receive any response.

x. That on 28.02.2023, Mr. Amit Kapoor visited the Respondent's office and again met with Mr Arunjeet to discuss the construction status of their Unit and the compensation amount for delayed possession and subsequently, sent an email recording the minutes of the meeting vide email dated 01.03.2023. On 02.03.2023, the Respondent sent an email, which included the Revised Statement of Accounts (hereinafter referred to as "second Revised Statement of Accounts"). However, to the Complainants' dismay, there was no change in the compensation amount for delayed possession in the second Revised Statement of Accounts as well.

xi. That on 02.04.2023, the Complainants responded by way of an email whereby they sought an explanation for not updating the delayed compensation amount in the second Revised Statement of Accounts. In response, the Respondent sent an email dated 03.04.2023 explaining the alleged calculation of compensation for delayed possession and denied granting the rebate to the Complainants. That on 14.04.2023 the Complainants sent a response to the above-mentioned email and requested to review the second Revised Statement of Accounts and revise the compensation amount for delayed possession and pay the amount due to them, including the interest, after considering the order passed by the Hon'ble Tribunal. However, the Respondent chose to ignore the plight of the Complainants and sent an automated response.

xii. That the above facts clearly demonstrate that ever after timely payments by the Complainants, they are being subjected to unfair, clever dilatory tricks and tactics, false promises and assurances, biased agreements, ill trade practices and highly deficient services causing immense loss to the Complainants. The Complainants have already paid approximately 95% of the Consideration Amount of the Unit. That despite paying a substantial amount, the Complainants received nothing in return but a loss of their valuable time and hard-earned money.

xiii. Throughout this entire duration of multiple follow-ups regarding the status of the construction and inquiries related to compensation for the delayed possession of the Unit, all efforts made to reach the Respondent have unfortunately fallen upon

deaf ears. The Complainants had no other option but to send a legal demand notice dated 16.06.2023 for possession of the Unit and delayed possession compensation amount along with interest to the Respondent. However, even after the successful delivery of the notice, the Respondents deliberately did not reply to the notice.

xiv. That the main grievance of the Complainants in the present complaint is that despite having paid approximately 95% of the actual cost of the Unit and being ready to pay the remaining amount (due if any), the Respondent has failed to deliver the possession of the Unit along with the proposed amenities. Further, the Respondent has blatantly ignored the Complainants request for revising the compensation for delayed possession.

xv. That the Complainants had purchased the Unit with the honest intention of being owners of a residential apartment in Gurugram. Further, it was promised by the Respondent at the time of booking of the Unit that the possession of a fully constructed flat along like Basement and Surface Parking, Landscaped lawns, club/ pool, EWS, etc. as shown in the Brochure at the time of sale, would be handed over to the Complainants as soon as construction work is complete i.e. by March 2017. 1t is pertinent to mention here that the Unit is not yet ready for possession with all proposed amenities promised at the time of booking.

xvi. That since 2017, the Complainants have diligently pursued the matter with the Respondent through various modes of communication, including calls, emails, and visits, in a bona fide attempt to get possession of the allotted Unit. Regrettably, all their

conscientious endeavours have thus far been to no avail, prompting the need for legal intervention in this matter.

xvii. That for the first-time, the cause of action for the present complaint arose in July 2014, when the unilateral, arbitrary, and one-sided terms and conditions were imposed on Complainants. Thereafter, the cause of action arose in March, 2017 for the second time, when the Respondent failed to hand over the possession of the Unit as per the Agreement. Further, the cause of action again arose on various occasions, and many times till date, when the protests were lodged with the Respondent about its failure to deliver the project, and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time, as this Hon'ble Authority restrains the Respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainants:

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

(i) Directing the respondent to provide the interest on delayed possession on the total amount paid by the complainants.

(ii) Directing the respondent to pay the prescribed interest for the period calculated from time, complainants have paid the money to the respondent.

(iii) Direct the respondent to provide all amenities as was promised and committed as per terms of the agreement.

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

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:

i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the parties prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.

ii. That there is no cause of action to file the present complaint.

iii. That the complainants are estopped from filing the present complaint by their own acts, omissions, admissions, acquiescence's, and laches. That this authority does not have the jurisdiction to try and decide the present complaint.

iv. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 35 of the buyer's agreement.

v. That the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. It been filed maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law.

vi. That the complainants, after checking the veracity of the project namely, 'Corridor; sector 67-A, Gurugram applied for allotment of an

apartment vide booking application form and agreed to be bound by the terms and conditions of the same.

vii. That based on the application for booking, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainant's apartment no. CD-B8-05-501 having tentative super area of 1904.16 sq. ft. for a sale consideration of Rs. 2,07,79,225/-. The copies of the apartment buyer's agreement were sent by the respondent vide letter dated 31.07.2014. The complainants agreed to be bound by the terms contained in the apartment buyer's agreement.

viii. That the possession of the unit was supposed to be offered to the complainants as per clause 13.3 of the buyer's agreement. The time was to be computed from the date of receipt of all requisite approvals. Even otherwise the construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in Sub- clause (iv) of Clause 17 of the approval of building plan dated 12.12.2013 of the said project that the Clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. The environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan was to be duly approved by the fire department before the start of any construction work at site. As per clause 35 of the environment clearance certificate dated 12.12.2013, the project was to obtain permission of Mines & Geology Department for excavation of soil before the start of construction. The requisite permission from the Mines & Geology Department has been obtained on 04.03.2014.

ix. That the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, would elapse only on 27.11.2019. The complainants are trying to mislead this authority by making baseless, false and frivolous averments. The respondent has already completed the construction of the tower in which the unit allotted to the complainants is located and have even applied for the grant of the occupation certificate vide application dated 10.09.2019. The concerned authorities after scrutiny of the documents granted the occupation certificate for the tower in question on 27.01.2022 and the respondent has already offered the possession of the unit to the complainants on 16th February 2022.

x. That the reasons for delay in grant of occupation certificate in respect of Phase – II of the project which were beyond the control of the respondent are detailed hereinbelow: -

- That pursuant to the grant of occupation certificate for phase-I, notice of possession to the respective allottees was issued and possession was been handed over to approx. 275 allottees and conveyance deed of approx. 119 apartments in favour of respective allottees have been executed and registered. The respondent applied for grant of occupation certificate to the DGTCP for approx. 658 apartments of phase-II vide application dated 10.09.2019 and the same was subsequently granted on dated 27.01.2022 and notice of possession was given on 16.02.2022 including the complainants herein. Despite completion of the project way back in 2019, the occupation

certificate of corridors- phase-II could only be issued on 27.01.2022 by the DTCP, Haryana due to filing of false and frivolous complaints from time to time. The same had created difficulties for the respondent in getting OC on time. Some of the defaulter allottees failed to pay the demanded installments in the present project and the same resulted in extreme pressure upon the respondent. The complaints were totally false and frivolous alleging violation of licensing norms by the respondent. The aforesaid allottees have on various dates (18.06.2019, 29.06.2019, 04.07.2019, 05.07.2019 and 18.10.2019) filed written complaints before the DTCP, Haryana so as to obstruct the grant of occupation certificate. The said complaints were filed with totally malafide motives so that the allottees are not obligated to take possession of the apartments allotted to them and to gain undue advantage over the developer/respondent.

- The DTCP, Haryana after repeated requests passed a detailed and reasoned order on 25.09.2020 on the complaints of the allottees in favour of the respondent thereby rejecting their plea for cancellation of occupation certificate.
- That some of the aforesaid allotees/homebuyers of the said project preferred appeal against the order dated 25.09.2020 passed by the DTCP, Haryana. The said appeal was filed on 22.10.2020 before Principal Secretary to Government of Haryana, Town and Country Planning Department, Chandigarh. The appeal was filed inter alia with prayer to set aside the Order dated 25.09.2020, seeking to suspend the occupation certificate

granted against licence No. 5 of 2013 dated 31.05.2019 and to restrain issuance of remaining OC for Phase-II, etc. The Hon'ble Principal Secretary to Government of Haryana Town and Country Planning Department, Chandigarh on 11.11.2021 was pleased to dismiss the said appeal being devoid of any merits. The respondent was granted occupation certificate on 27.01.2022 after the dismissal of the said appeal. Thus, it can be seen from the above that occupation certificate was applied on 10.09.2019 but was granted only on 27.01.2022 as the process of granting occupation certificate came to a halt due to the allottees filing various false and frivolous complaints before DTCP, Haryana.

- The occupation certificate with respect to phase – ii of the projects could not have been issued due to the pending writ petition preferred by other allottees/ homebuyers in the said project of the respondent being C.W.P. No. 20261 of 2020 titled "Manju Taneja & Ors. Vs. State of Haryana & Ors." which was filed on 27.11.2020, wherein DTCP, Haryana and other government authorities were made party. The reliefs sought in the said writ petition was to direct the DTCP, Haryana to not issue the occupation certificate applied for remaining/phase-II further to stay the operation and to set-aside/quash the order dated 25.09.2020 passed by DTCP, further seeking direction to initiate proceedings under Section 8 of Haryana Development & Regulation of Urban Areas Act, 1975. All the allottees who had filed the said writ petition had on one hand filed frivolous complaints for opposing the grant of occupation certificate and

on other hand they were before NCDRC for seeking refund on the ground of non-grant of occupation certificate. The said writ petition has been filed by 12 petitioners and the entire writ petition was silent about the particulars of the petitioners, their respective allotments and the fact that in the year 2017, all petitioners had already approached the Ld. NCDRC seeking refund of the sale consideration, which is much before filing of the present writ petition on 24.11.2020.

- That the same group of allottees even approached principal secretary to Government of Haryana, Department of Town and Country Planning and challenged the Order of DTCP dated 25.09.2020 by way of a statutory appeal under section 19 of the Haryana Development and Regulation of Urban Area Act, 1975. The said allottees did not disclose the said facts before the Hon'ble Punjab and Haryana High Court. The said appeal was and dismissed on 11.11.2021.

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

- Inability to undertake the construction for approx. 7-8 months due to Central Government's notification with regard to demonetization : The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the central government issued notification with regard to demonetization. During this period, the

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

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

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

- Orders passed by National Green Tribunal: In last four successive years i.e., 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. The Hon'ble NGT has passed orders with

regard to phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region has been quite high for couple of years at the time of change in weather in November every year. The Contractor of respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to that, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November-December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.

In view of the above, construction work remained badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period is also required to be added for calculating the delivery date of possession.

- Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
- Inclement weather conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be

shut down/closed for many days during that year due to adverse/severe weather conditions.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

9. 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

10. 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.

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

12. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

13. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that

situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 and which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

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

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

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

> *"**35. Dispute Resolution by Arbitration***
> *"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings*

shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".

17. 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.

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

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

> *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
>
> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*
>
> ...
>
> *56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

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

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error*

committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength 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."

20. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

F.III Objections regarding force majeure

21. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction during the years 2015-2016-2017-2018, dispute with contractor, non-payment of instalment by allottees and demonetization. The plea of the respondent regarding various orders of the NGT and demonetisation advanced in this regard is devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit. Further, any contract and

dispute between contractor and the builder cannot be considered as a ground for delayed completion of project as the allottees were not a party to any such contract. Also, there may be cases where some of the allottees have not paid instalments regularly but all the allottees cannot be expected to suffer because of them. 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. **Findings regarding relief sought by the complainants.**

(i) **Directing the respondent to provide the interest on delayed possession on the total amount paid by the complainants.**

(ii) **Directing the respondent to pay the prescribed interest for the period calculated from time, complainants have paid the money to the respondent.**

(iii) **Direct the respondent to provide all amenities as was promised and committed as per terms of the agreement.**

22. The complainants booked a residential apartment in the project of the respondent named as "Corridors" situated at Sector-67-A, Gurugram, Haryana for a total sale consideration of Rs. 2,07,79,225/-. The allotment of the unit was made on 07.08.2013. Thereafter the builder buyer agreement was executed between the parties on 31.07.2014.

23. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under:-

> *"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, —*
>
> .....

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."

24. Clause 13.3 of the apartment buyer's agreement (in short, the agreement) dated 31.07.2014, provides for handing over possession and the same is reproduced below:

*"**13.3** Subject to Force Majeure, as defined herein and further subject to the Allottees 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 Allottees having complied with all formalities or documentation as prescribed by the Company, the company proposes to offer the possession of the said apartment to the allottees within a period of 42 months from the date of approval of the Building plans and/or fulfilment of the preconditions imposed thereunder ("**Commitment Period**"). The Allottees 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 reasonable control of the company."*

25. The apartment buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the

buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only them. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

26. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. 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 allottees that even a single default by them in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for their purpose and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment buyer's agreement 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 mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

27. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed

thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.

28. The counsel for the respondent promoter argued that the due date of possession should be calculated from the date of fire scheme approval which was obtained on 27.11.2014, as it is the last of the statutory approvals which forms a part of the preconditions. The authority is of the view that the respondent has not kept the reasonable balance between his own rights and the rights of the complainants/allottees. The respondent has acted in a pre-determined and preordained manner.

29. On a bare reading of the clause 13.3 of the agreement, it becomes apparently clear that the possession in the present case is linked to the "fulfilment of the preconditions" which is vague and ambiguous. If the said possession clause is read in entirety the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject apartment. According to the established principles of law and the principles of natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement, which are totally arbitrary, one sided and totally against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken

as the date for determining the due date of possession of the unit in question to the complainants.

30. By virtue of apartment buyer's agreement executed between the parties on 31.07.2014, the possession of the booked unit was to be delivered within 42 months from the date of approval of building plan (23.07.2013) which comes out to be 23.07.2017 along with grace period of 180 days which is allowed in the present case.

31. Here, the authority is diverging from its earlier view i.e., earlier the authority was calculating/assessing the due date of possession from date approval of firefighting scheme (as it the last of the statutory approval which forms a part of the pre-conditions) i.e., 27.11.2014 and the same was also considered/observed by the Hon'ble Supreme Court in Civil Appeal no. 5785 of 2019 titled as **'IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.'**

32. On 23.07.2013, the building plans of the project were sanctioned by the Directorate of Town and Country Planning, Haryana. Clause 3 of the sanctioned plan stipulated that an NOC/ clearance from the fire authority shall be submitted within 90 days from the of issuance of the sanctioned building plans. Also, under section 15(2) and (3) of the Haryana Fire Service Act, 2009, it is the duty of the authority to grant a provisional NOC within a period of 60 days from the date submission of the application. The delay/failure of the authority to grant a provisional NOC cannot be attributed to the developer. But here the sanction building plans stipulated that the NOC for fire safety (provisional) was required to be obtained within a period of 90 days from the date of approval of the building plans, which expired on 23.10.2013. It is pertinent to mention here that the developer applied for the provisional fire approval on 24.10.2013 (as contented by the

respondent herein the matter of Civil Appeal no. 5785 of 2019 titled as **'IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.**) after the expiry of the mandatory 90 days period got over. The application filed was deficient and casual and did not provide the requisite. The respondent submitted the corrected sets of drawings as per the NBC-2005 fire scheme only on 13.10.2014 (as contented by the respondent herein the matter of Civil Appeal no. 5785 of 2019 titled as **'IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.)**, which reflected the laxity of the developer in obtaining the fire NOC. The approval of the fire safety scheme took more than 16 months from the date of the building plan approval i.e., from 23.07.2013 to 27.11.2014. The builder failed to give any explanation for the inordinate delay in obtaining the fire NOC.

33. In view of the above the authority has changed its stand and is diverging from its previous view of calculating the due date of possession from the date of fire NOC as the complainant/allottees should not bear the burden of mistakes/ laxity or the irresponsible behaviour of the developer/respondent. It is a well settled law that no one can take benefit out of his own wrong. In light of the above-mentioned facts the respondent/ promoter should not be allowed to take benefit out of his own mistake just because of a clause mentioned i.e., fulfilment of the preconditions even when they did not even apply for the same in the mentioned time frame. In view of the above, the authority has started to calculate the due date of possession from the date of approval of building plans.

34. **Admissibility of grace period:** The respondent promoter had proposed to hand over the possession of the apartment within 42 months from the date of sanction of building plan and/or fulfilment of the preconditions imposed thereunder which comes out to be 23.01.2017. The respondent promoter

has sought further extension for a period of 180 days after the expiry of 42 months for unforeseen delays in respect of the said project. Grace period is allowed as unqualified. Therefore, the due date of handing over of possession comes out to be 23.07.2017 including grace period of 180 days.

35. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% p.a. however, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.*

36. 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.

37. 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 02.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.

38. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

39. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

40. On consideration of the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of apartment buyer's agreement executed between the parties on 31.07.2014, the possession of the booked unit was to be delivered within 42 months from the date of approval of building plan (23.07.2013) which comes out to be 23.01.2017. The grace period of 180 days is allowed for the reasons mentioned above. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month

of delay on the amount paid by them to the respondent from due date of possession i.e.,23.07.2017 till offer of possession of the booked unit i.e., 16.02.2022 plus two months which comes out to be 16.04.2022 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.

H. Directions of the authority: -

41. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act:-

i. The respondent is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 23.07.2017 till offer of possession of the booked unit, plus two months i.e., 16.04.2022 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.

ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.

iii. The complainants are also directed to pay the outstanding dues, if any.

iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2 (za) of the Act.

v. The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.

42. Complaint stands disposed of.

43. File be consigned to the registry.

Dated: 02.05.2025

Arun Kumar

Chairman

Haryana Real Estate
Regulatory Authority,
Gurugram