

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

**Complaint no. : 6659 of 2022**  
**First date of hearing: 13.10.2022**  
**Date of decision : 02.05.2025**

**M/s Lush Hospitality Ltd.**

**Registered office** at 10, Homi Modi Street,  
Second Floor, Above Kapol Bank,  
Fort Mumbai-400023 through its authorized  
representative Naveen Sharma, Director of the  
company.

**Complainant**

**Versus**

**M/S IREO Pvt. Ltd,**

**Registered office** at A-11, First Floor, Niti  
Bagh, New Delhi-110049 and corporate office  
at 5th Floor, Orchid Center, Golf Course Road,  
Sector-53, Gurugram-122002 .

**M/s Nucleus Conbuild Pvt. Ltd.**

**Registered office** at 304, Kanchan House,  
Karampura Commercial Complex,  
New Delhi-15

**Respondents**

**CORAM:**

Shri Arun Kumar

**APPEARANCE:**

Sh. Ashish Budhiraja

Ms. Shivani Dang

**Chairman**

**Counsel for Complainant**  
**Counsel for Respondent**

**ORDER**

1. The present complaint dated 13.10.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules)

for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions 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 unit details, sale consideration, the amount paid by the complainant, 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	"Ireo Gurgaon Hills" at Gwal Phari, sector 2, Gurugram
2.	Nature of the project	Group Housing Scheme
3.	Project area	11.06875 acres
4.	DTCP license no. and validity status	36 of 2011 dated 26.04.2011 valid upto 25.04.2026
5.	Name of licensee	M/s Nucleus Conbuild Pvt. Ltd.
6.	RERA Registered/ not registered	<b>Not Registered</b>
7.	Date of Application	03.01.2012 (annexure P-2 on page no. 19 of complaint)
8.	Allotment Letter	27.08.2012 (annexure P-2 on page no. 19 of complaint)



9.	Date of apartment buyers' agreement	28.11.2012 (page no. 33 of complaint)
10.	Endorsement in favour of complainant	19.01.2013 (page no. 22 of complaint)
11.	Unit no.	B05_41 on 5 <sup>th</sup> Floor, Tower B (page no. 39 of complaint)
12.	Unit area admeasuring	6388.05 sq. ft. (page no. 39 of complaint)
13.	Date of approval of building plan	17.05.2012 (annexure R-42 on page no. 128 of reply)
14.	Date of environment clearance	26.06.2013 (annexure R-43 on page no. 134 of reply)
15.	Date of fire scheme approval	26.12.2013 (annexure R- 44 on page no. 145 of reply)
16.	<i>Possession clause</i>	<b>14.3 Possession and Holding Charges</b> <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</i>



		<p><i>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>
17.	Due date of possession	<p>17.05.2016 [calculated from the date of approval of building plans] <b>Note:</b> Grace period is allowed.</p>
18.	Offer for start of interior work	<p>22.02.2017 (annexure R- 45 on page no. 146 of reply)</p>
19.	Total sale consideration	<p>Rs. 5,75,17,194/- [as per payment plan on page no. 98 of complaint]</p>
20.	Amount paid by the complainant	<p>Rs. 5,24,21,798/- [as per SOA on page no. 126 of complaint]</p>
21.	Occupation certificate	<p>29.06.2022 (annexure R- 56 on page no. 237 of reply)</p>
22.	Offer of possession	<p>11.07.2022</p>

	(annexure R- 57 on page no. 240 of reply)
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**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:

- i. That an apartment buyer's agreement dated 28.11.2012 was executed at Gurugram between the respondent Ireo Pvt. Ltd. and above said Krishan Kumar Khullar and M/s Nuclears Conbuild Pvt. Ltd. (Confirming Party). The confirming party was entitled to develop, sell and deal with semi furnish residential apartments proposed to be constructed on the land mentioned in the Apartments Buyers Agreement.
- ii. The said apartment was for a basic sale price of Rs. 7950/- per sq. feet of super area i.e. total of Rs. 5,07,84,998/- hereinafter referred to as basic sale price and other charges such as development charges, PLC and Club Membership charges. The allottee had opted for the payment plan annexed as Annexure IV of the agreement which is a construction linked payment plan. As per clause 7.4, the allottee shall be liable to pay simple interest on every delayed payment at the rate of 20% per annum from the date that it is due to payment till the date of actual payment thereof. As per Clause 14.2, the allottee agreed that if it fails, ignores or neglects to take the possession of said apartment in accordance with notice of possession sent by the Company the allottee shall be liable to pay additional charges equivalent to Rs. 10/- per sq. feet on the super area per month of the said apartment (holding charges) as per clause 14.3, the respondent 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 fulfilment of the pre conditions of



- approval of building plan and / or fulfilment of pre conditions imposed thereunder (commitment period) and the allottee further agrees and understands that the company shall additionally be entitled to period of 180 days (grace period) after the expiry of said commitment period to allot for a unforeseen delays beyond the control of the company.
- iii. As per clause 14.4 subject to clause 14.3, if the company fails to offer the possession of the said apartment to the allottee by the end of grace period, it shall be liable to pay the allottee a compensation calculated @ 10 per sq. feet of the super area (Delay Compensation) for every month of delay until the actual date fixed by the company for handing over the said possession of the apartment to the allottee. As per clause 14.5, subject to clause, 14.3 in the event of delay by the company in offering the possession of the said apartment beyond a period of 12 months from the end of grace period (such 12 months period hereinafter referred to as extended delay period) then the allottee shall become entitled to opt for termination of the allotment/ agreement and refund of the actual paid up instalments paid by it against the said apartment after adjusting the interest or delayed payments along with delay compensation for 12 months. Such refund shall be made by the Company within 90 days of receipt of intimation to this effect from the allottee without any interest thereon.
- iv. That some of the clauses in the buyer agreement that the complainants/buyers were made to sign by the respondent are one sided. The complainants had signed already prepared documents and that some of the clauses contained therein were totally unreasonable and in favor of the respondent only.
- v. That the above said three receipts and apartment buyers agreement was endorsed in favour of complainant by the respondent as the



complainant has purchased the said apartment from Krishan Kumar Khullar. In terms of application/ affidavit dated 19.1.2013 filed by Krishan Kumar Khullar, the said documents i.e. three receipts and apartment buyers' agreement were endorsed in favour of the complainant. On 28.1.2013 the respondent sent a letter bearing no. IREO Ggn/CRN/GH/B05-41 by which the respondent informed the complainant that onwards rights/ obligations with respect to Unit no. B05-41 are hereinafter being assigned to the complainant as nominee of Mr. Krishan Kumar Khullar in terms of clause 15 of the apartment buyers agreement.

- vi. The payment made by Krishan Kumar Khullar to the respondent was paid to him by the complainant with premium on the apartment. Thus, the respondent has received an amount of Rs. 5,24,21,799/-till today. No dues are to be paid by him as per annexure 4 IV i.e. payment plan annexed with the Apartment Buyers Agreement. Certain amount is to be paid by the complainant to the respondent on filing of OC by the respondent with the concerned authority and certain amount is to be paid by the complainant to the respondent on receipt of occupation certificate/ offer of possession. There is no default in payment by the complainant to the respondent as per payment plan. The complainant has already fulfilled its obligation of Apartment Buyers agreement but the respondent has miserably failed to fulfill its obligation as per said agreement. Neither occupation certificate has been applied by the respondent nor the same has been received from the appropriate authority. No notice of offer of possession has been given by the respondent to the complainant till today. There is an unreasonable delay in offering possession of the apartment by the respondent to the complainant. Complainant cannot be forced by the respondent to take



possession of the apartment as per whims of the respondent. If there is delay in handing over the possession of the apartment then the complainant has liberty either to take possession of the apartment or to seek refund of its amount with interest and delayed compensation.

- vii. That despite receiving of all payment of the demands raised by the respondents for the said Flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondents have failed to deliver the possession of the allotted apartment to the complainants within stipulated period which clearly shows that ulterior motive of the respondents to extract money from the innocent people fraudulently.

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

4. The complainant has sought following relief(s).
- i. Direct the respondent to refund the payment made by the complainant along with interest at the prescribed rate from the date of such payments.
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 no. 1 has contested the complaint on the following grounds.
- i. That the present complaint is neither maintainable nor tenable and is liable to be out rightly dismissed. The buyer's agreement was executed between the original allottee and the respondents and endorsement were done in the name of the complainant prior to the enactment of the





- RERA Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively.
- ii. That the complaint is not maintainable as the matter is preferable to arbitration as per the Arbitration and Conciliation Act, 1996 in view of the fact that the 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 that the Clause 36 of the agreement.
  - iii. That the complainant has not approached this Authority with clean hands and has intentionally suppressed and concealed the material facts. The conduct of the complainant has been mala fide and it is not entitled to any relief at all.
  - iv. That respondents are reputed real estate developers having immense goodwill, comprised of law abiding and peace-loving persons and have always believed in rendering best services to their customers including the complainant. Respondents along with their associate companies have developed and delivered several prestigious projects such as 'Grand Arch', 'The Corridors', 'Victory Valley', 'Skyon', 'Uptown', 'Ireo City', 'Ireo City Central', etc. and in most of these projects large number of allottees have already shifted and having taken possession and Resident Welfare Associations have been formed which are taking care of the day-to-day needs of the allottees of the respective projects.
  - v. That the original allottee Mr. Krishan Kumar Khullar, after checking the veracity of the project namely, 'Ireo Gurugram Hills' had applied for allotment of an apartment vide Booking Application Form dated 03.01.2012.
  - vi. That respondent no. 1 raised payment demand from the original allottee in accordance with the agreed terms and conditions of the



allotment. It is submitted that vide payment demand dated 23.05.2012, respondent no. 1 had sent first instalment demand for the net payable amount of Rs. 59,47,676/-. However, the original allottee failed to remit the demanded amount despite reminders dated 18.06.2012 and 04.07.2012.

- vii. That vide letter dated 16.07.2012, the original allottee requested respondent no. 1 for the extension of time period till 20.08.2012 for making arrangements to clear the payment of the first instalment and as a customer-oriented company, respondent no. 1 vide its email dated 17.07.2012, granted the extension of time as requested by the original allottee.
- viii. That based on the said Application, respondent no. 1 vide Allotment Offer Letter dated 27.08.2012 allotted to the original allottee apartment no. B05\_41, having tentative super area of 6388.05 sq. ft. for sale consideration of Rs. 5,74,65,706/-. This consideration was exclusive of the registration charges, stamp duty, service tax and other charges which are still payable. Accordingly, the Apartment Buyer's Agreement was executed between the original allottee and respondents on 28.11.2012.
- ix. That vide General Power of Attorney dated 17.12.2012, the original allottee conferred upon his son and attorney Mr. Kanishk Khullar the power to do various acts, deeds and things on his behalf. Thereafter, the original allottee through his GPA holder Mr. Kanishk Khullar, entered into an agreement to sell dated 17.12.2012 with the complainant to sell the unit in question for a total sale consideration of Rs. 6,35,85,842.
- x. That the original allottee through his GPA holder Mr. Kanishk Khullar and the complainant to whom the original allottee wanted to sell his



said unit approached respondent no. 1 with a request to transfer/assign the allotment of the said Unit in favour of the complainant. The original allottee through his GPA holder and the complainant executed requisite documents in this behalf. The complainant executed affidavit, indemnity bond-cum-undertaking and Transfer Agreement dated 19.01.2013. The complainant had furnished the Indemnity Bond-Cum-Undertaking specifically admitting therein that the complainant shall keep the developer indemnified against any claims, losses, damages etc. of any kind whatsoever. Therefore, the present complaint is not at all maintainable as the complainant is estopped from filing the present complaint.

- xi. That upon fulfilment of the requisite formalities by the original allottee as well as the complainant, the respondent endorsed all the documents with respect to the said transfer in favour of the complainant. The complainant with its eyes wide open and after inspecting all the documents and being totally satisfied, purchased the said Unit from the original allottee. The complainant agreed to be bound by the terms and conditions of the Booking Application Form and Apartment Buyer's Agreement and the same has been duly endorsed in favour of it.
- xii. That respondent no. 1 company after scrutinizing the application and the documents mentioned above, assigned the rights of the unit in question to the complainant and intimated the same to it vide its letter dated 28.01.2013. It is submitted that a fresh booking application form was signed by the complainant and the Apartment Buyer's Agreement was endorsed in the name of the complainant on account of assignment of the rights in the allotted unit. Hence, the complainant is bound by the terms of the booking application form as well as of the Agreement and



cannot wriggle out of its contractual obligations by raising baseless, false and frivolous pleas.

- xiii. That respondent no. 1 kept on raising payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as payment plan. The complainant is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.
- xiv. That vide payment demand dated 13.11.2014, respondent no. 1 had sent fourth instalment demand for the net payable amount of Rs. 61,56,801.96. However, the complainant failed to remit the demanded amount despite reminders dated 09.12.2014, 30.12.2014 and final notice dated 20.01.2015 and the said demanded amount was accordingly adjusted in the next instalment demand as arrears.
- xv. That vide payment demand dated 03.03.2015, respondent no. 1 had sent fifth instalment demand for the net payable amount of Rs. 1,03,75,498.70. However, the complainant failed to remit the demanded amount despite reminders dated 29.03.2015 & 19.04.2015 and respondent no. 1 was ultimately constrained to terminate the allotment vide Cancellation letter dated 01.05.2015.
- xvi. That the complainant requested respondent no. 1 to restore the allotment of the unit in question. Respondent no. 1 being a customer-oriented developer acceded to the said request of the complainant and intimated the complainant vide its letter dated 11.06.2015 about the restoration of allotment after receiving all the outstanding installments due till that date. That vide payment demand dated 25.09.2018, respondent no. 1 had sent fourteenth installment demand for the net



payable amount of Rs. 56,87,924/-. However, the complainant failed to remit the demanded amount despite reminder dated 25.10.2018.

xvii. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the Apartment Buyer's Agreement. The complainant vide Clause 14.5 of the Buyer's Agreement and Clause 55 of the Booking Application Form had further agreed for an extended delay period of 12 months from the end of grace period. From the aforesaid terms of the buyer's agreement, it is evident that time was to be computed from the date of receipt of all the requisite approvals. Even otherwise, construction cannot be raised in the absence of necessary approvals. It is pertinent to mention herein that it has been specified in sub-clause (v) of clause 17 of the Building Plan Approval dated 17.05.2012 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India had to be obtained before starting the construction of the project.

xviii. That the environment clearance for construction of the said project was granted on 26.06.2013. Furthermore, in Clause 22 of the Part A of the Environment Clearance dated 26.06.2013, it was stated that the fire safety plan was to be duly approved by the fire department before the start of any construction, at site.

xix. That the last of the statutory approvals which forms a part of the precondition was the fire scheme approval which was granted on 26.12.2013 and the time period for offering the possession, according to the agreed terms would have expired on 26.12.2018. However, the said period is subject to the occurrence of the force majeure condition which is beyond the reasonable control of respondent no. 1 and the complainant also complying with its contractual obligations.



- xx. That respondent no. 1 had intimated the construction status to the complainant and as per Clause 13 of the Apartment Buyer's agreement invited the complainant, vide its email dated 18.04.2016 to start the interior works of the unit allotted by taking physical measurements along with architects and by doing design management. Respondent no. 1 vide email dated 22.02.2017 had reminded the complainant regarding its contractual obligation to complete the interior works in the said unit within a period of 9 months from the grant of permission for interior works. However, the complainant failed to adhere to its obligations.
- xxi. That the complainant failed to adhere to its contractual obligations of completing the interior design management and respondent no. 1 could not have waited endlessly and accordingly had applied for the grant of occupation certificate on 24.09.2018.
- xxii. That it is pertinent to mention herein that DTCP, Haryana vide its letter dated 14.02.2019 intimated to respondent no. 1 that the building was not completed as per the approved building plans and that it would not have any objections in getting the figments and fixtures/remaining interior work of the flat completed with either by the colonizer or through the allottees.
- xxiii. It is reasserted that the obligation of completing the interior work and design management was of the complainant and not of respondent no. 1. However, respondent no. 1 being a customer-oriented developer completed the construction of the unit as per Section 7.15 of the Haryana Building Code, 2017 which deals with the minimum provisions with regard to the dwelling unit, although the same was the liability of the complainant as per the terms of the buyer's agreement and respondent no. 1 again applied for the grant of occupation certificate



vide its letter dated 13.08.2019. This fact was intimated to the complainant vide letter dated 22.08.2019.

xxiv.

That it is pertinent to mention here that the implementation of the project was affected due to the non-payment of installments by the allottees including the complainant on time and also due to events and conditions which were beyond the control of respondent no. 1 and which affected the implementation of the project in question. Some of the force majeure events/conditions which were beyond the control of respondent no. 1 and affected the implementation of the project are as under: -

- i. Order passed by Environmental bodies: - In last 4 years i.e. 2015- 2018, Hon'ble Green Tribunal has been passing orders to protect the environment of the country and specially the NCR region. The Hon'ble NGT has passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders with regard to phasing out the 10-year-old diesel vehicles from NCR. The contractor of respondent no. 1 could not undertake construction for several months in compliance of the orders of the Hon'ble NGT. Due to the same, there was a delay as labour went back to their hometowns which resulted in shortage of labour as well. In view of the same, construction work remained very badly affected for 6-12 months and the same was beyond the reasonable control of respondent no. 1 and the said period is required to be added for calculating the delivery of possession.
- ii. Non-payment of instalments by the allottees: - Several other allottees were in default of the agreed payment plan and the payment of the construction linked instalments was delayed

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

- iii. Inclement weather conditions in Gurugram:- Due heavy rainfall in Gurgaon in the Year 2016 and unfavorable weather conditions, the construction activities were badly affected as the whole town was weather logged 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 the year due to adverse/severe weather conditions.
- iv. Inability to undertake the construction of the project for approx. 7-8 months due to notification with regard to Demonetization: Respondent no. 1 had awarded the construction 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 payment to the labour in cash. It is submitted that majority of the casual labour engaged in construction activities 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 a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted





into shortage of labour. Hence, the implementation of the project in question got delayed on account of issues faced by the contractor due to the notification of the Central Government. Furthermore, there are studies of Reserve Bank of India and even independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the issue of impact of demonetization on real estate industry and construction labour. The Reserve Bank of India has also published reports on impact on demonetization. In this report, it has been observed and mentioned by Reserve Bank of India at page 42 that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April, 2017.

- xxv. That it is pertinent to mention here that as per clause 6 of the DTCP order dated 02.08.2021 clearly mentions that DTP Gurugram, after inspecting the site, vide his report dated 16.11.2018 informed that the internal walls of the rooms, toilets, kitchens and other approved in the units are not constructed at site and are bare-shell as on date. Outer Façade of all the towers is finished. Thus, as per Report of DTP, Gurugram, respondent has completed all its obligations under the Apartment Buyer's Agreement as on 16.11.2018 and there was no default on the part of respondents. The internal work which is shown as incomplete is the obligation of the complainant itself and complainant failed to do the same despite being invited by respondent no. 1 various times. Despite complete non-compliance of obligations by the complainant and other similar allottees, respondent no. 1 has already completed its part of the obligations.

- xxvi. That furthermore, during the pendency of the present complaint, the Director, Town Country and Planning, Haryana, Chandigarh has been pleased to grant occupation certificate bearing Memo No.ZP-722/JD (RM)/2022/18110 dated 29.06.2022 after completion of the project by respondent no. 1. Respondent no. 1 had applied for the grant of the Occupation Certificate way back on 24.09.2018. Upon receipt of the said Occupation Certificate, respondent no. 1 vide its e-mail dated 11.07.2022 has duly intimated the complainant in this regard and has also simultaneously invited the complainant to 'Take the possession of its unit to start the interior works' as per the agreed terms and conditions of the apartment buyer's agreement so that the unit of the complainant may be ready for occupation.
- xxvii. That it is respectfully submitted that there is no liability of the respondents to refund the amount paid by the complainant along with interest as falsely claimed by the complainant. Rather, the complainant is required to be directed by this Authority to adhere to its contractual obligations set out in the Allotment as well as the Apartment Buyer's Agreement at the time of offer of possession of the unit in question by respondent no. 1. There is no ground whatsoever for refunding the amount paid by the complainant as the complainant itself is the wrong doer.
- xxviii. That the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in short span of time. However, it appears that its calculations have gone wrong and it is now trying to somehow unilaterally wriggle out of its obligations by raising baseless and false claims before this Authority. The complainant cannot be allowed to succeed in its malafide motives.

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.
8. An application was filed by the complainant on 07.04.2025 seeking an amendment in the relief originally claimed, modifying the prayer from refund to possession. However, in view of the fact that the said application was filed after the matter was reserved for orders, it is held to be not maintainable, having been filed at a belated stage. Accordingly, the application stands dismissed solely on this ground.

**E. Jurisdiction of the authority:**

9. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

10. 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**

11. 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.*

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 complainants at a later stage.

**F. Finding on objections raised by the respondent.**

**F.I Objection regarding force majeure conditions:**

13. The respondent-promoter alleged that the construction of the project was delayed due to force majeure conditions such as orders of Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. As per the flat buyer's agreement, the due date of handing over of possession comes out to be 17.05.2016. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA were for a shorter

duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

**F.II Objection regarding complainant being investor.**

14. The respondent submitted that the complainant is investor and not consumer/allottee, thus, the complainant is not entitled to the protection of the Act and thus, the present complaint is not maintainable.
15. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are an allottee/buyer and they have paid total price of Rs. 5,24,21,798/- to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

16. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a

party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainants-allottees being investors are not entitled to protection of this Act stands rejected.

**F.III Objection regarding complainant is in breach of agreement for non-invocation of arbitration clause**

17. 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:

**"36 DISPUTE RESOLUTION:**

*"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".*

18. 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.

19. 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 builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

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

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

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in *A. Ayyaswamy (supra)*, the matters/disputes, which the Authorities under the Real Estate Act are



*empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

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

20. 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."*

21. 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 right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration.



Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

**G Findings on the relief sought by the complainant.**

**G. I Direct the respondent to refund the paid-up amount along with interest at prescribed rate.**

22. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

**Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."**

23. The complainant was allotted unit no. B05- 41 on 5<sup>th</sup> Floor, Tower B 6388.05 sq. ft. in the project "Ireo Gurgaon Hills" at Gwal Phari, sector 2, Gurugram by the respondent/builder for a basic sale price of Rs. 5,75,17,194/- and he has paid a sum of Rs. 5,24,21,798/- which is approx. 91% of the sale

consideration. A buyer's agreement dated 28.11.2012 was executed between parties with regard to the allotted unit and the due date for completion of the project and offer of possession was on 17.05.2016. The respondent obtained the OC from the concerned authority on 29.06.2022 and subsequently offered the possession of the unit vide letter dated 11.07.2022, the complainant was requested to clear outstanding dues and to take the possession. The complainant failed to pay the outstanding amount due against the allotted unit.

24. The respondent issued many reminders dated 29.03.2017 and 25.09.2018 thereafter issued final demand on 25.10.2018. The Occupation Certificate for the project of the allotted unit was granted on 29.06.2022. After receipt of OC the respondent offered the possession to the complainant on 11.07.2022. It is evident from the above mentioned facts that the complainant paid a sum of Rs. 5,24,21,798/- against basic sale consideration of Rs. 5,75,17,194/- of the unit allotted to him on 27.08.2012. The complainant has failed to adhere to the terms and conditions of the builder buyer agreement.
25. However, the deductions of earnest money shall be made accordance with the applicable laws and as per the law of the land laid down by the Hon'ble apex court of the land 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 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 Limited decided on 26.07.2022*, held that 10% of basic sale price is 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**

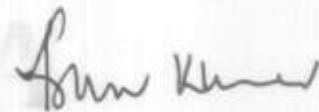
*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission 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."*

26. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs. 5,24,21,798/- after deducting 10% of the basic sale consideration of Rs. 5,75,17,194/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of filing of complaint i.e., 13.10.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**H. Directions of the authority**

27. 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 function entrusted to the authority under section 34(f):
- i. The respondents/promoter is directed to refund the paid-up amount of Rs. 5,24,21,798/- after deducting 10% of the basic sale consideration of Rs. 5,75,17,194/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of filing of complaint i.e., 13.10.2022 till its realization.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
28. Complaint stands disposed of.
29. File be consigned to registry.

Dated: 02.05.2025



**Arun Kumar**

**Chairman**

Haryana Real Estate  
Regulatory Authority,  
Gurugram