

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

Complaint no.	6888 of 2022
Complaint filed on	31.10.2022
Order pronounced on	16.05.2025

**Aditi Garg**

Both R/o: H.No. 20, Housing Board colony,  
Kalka Dist. Panchkula, Haryana

**Complainant**

**Versus**

**M/s Identity Buildtech Pvt. Ltd.**

Regd. Office: Vishwakarma Colony, Opp. ICD,  
MB Road, Lal Kuan, New Delhi- 110044

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Arun Gaur (Advocate)

Shri Amandeep Kadyan (Advocate)

**Complainant  
Respondent**

**ORDER**

1. The present complaint 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 allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project-related details:**

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

S. No.	Heads	Information
1	Project name and location	"Ansal Highland Park", Sector-103, Gurugram
2	Project area	11.7 acres
3	Nature of the project	Residential
4	DTCP license no. and validity status	32 of 2012 dated 12.04.2012 valid upto 11.04.2020
5	Name of licensee	Identity Buildtech & another
6	RERA registration details	Registered Vide registration no. 16 of 2019 dated 01.04.2019 valid upto 30.11.2021
7	Unit no.	EDNBG-0202 [page 30 of complaint]
8	Unit measuring	1940 sq. ft. super area [Super Area]
9	Date of execution of builder buyer agreement	09.09.2013 [page 27 of complaint]
10	Due date of possession	09.03.2018
11	Possession clause	<b>Clause 31</b> <i>31. The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanction and approval necessary for commencement of construction whichever</i>



		<i>is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit.</i>
12.	Basic sale consideration as per BBA dated 09.09.2013	Rs. 77,76,060/- [pg. 30 of complaint]
12	Total consideration as per BBA dated 09.09.2013	₹ 85,49,460/- [page 44 of complaint]
13	Total amount paid by the complainant	₹ 83,68,757/- [as per complainant on page no. 10 of complaint]
14.	Occupation certificate	Not yet obtained
15.	Offer of possession	Not offered

### B. Facts of the complaint:

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

- i. That the complainant had booked a residential apartment bearing EDNBG-0202 in their project Ansals Highland Park, Sector-103, Gurugram by filling the application form dated 11.05.2012 which is also mentioned in the buyers' agreement dated 09.09.2013.
- ii. That the respondent is engaged in the business of real estate development and thus, in its usual course of business are engaged in purchase of and, entering joint ventures, marketing with various stake holders.
- iii. That on the basis of assurances and representations made by the respondent who boasted of the project in relation to its location,

clarity of title documents, strict observance to scheduled timelines of completion and quality of construction and other amenities made in their public advertisements also, the complainant was persuaded by the respondents to purchase the shop in the said project and accordingly, the claimant tendered various amounts.

- iv. The amounts were to be tendered for a construction linked plan after execution of the agreement to sell but the respondent initially delayed the same and after having entered into a detailed buyers' agreement to sell but did not carry out the construction as per the construction linked time-schedule of construction despite having received the payments as per the schedule. The respondents maintained hostile attitude after initial assurances to do the needful shortly.
- v. That the respondent, instead of curing the material defect, have continued to maintain their hostile attitude ever since and did not handover the actual physical possession of the allotted unit up to 09.09.2017 i.e. within 48 months of the buyer's agreement dated 09.09.2013. That of late, the respondent has threatened to cancel the sale agreement and to forfeit/usurp the entire money of the complainant which is being used and utilized by the respondent for the past over almost 9 years.
- vi. It is pertinent to mention that the complainant has made payments of huge sums of money amounting to rs.83,68,757.9/- to the respondent but the respondent has failed to comply with their obligation of providing the unit for which the agreement was entered into by them. The respondent is acting in most despotic and horrendous manner, which amounts to unfair trade practice as well as such act is against the settled principle of law and natural justice.



- vii. That being aggrieved with the unabated acts of unwarranted harassment and exploitation by the respondent, the complainant does not want to continue with the said project and wants to withdraw from the said project and wants to get refund of his amount paid to the respondent along with interest and compensation.
- viii. That in view of Section 3, 12, 18, 19(1), 19 (2), 59, 60 and Section 61 of RERA Act, 2016 the complainant is entitled to refund of entire amount paid to the respondent along with interest at the prescribed rate from the date of application for allotment.
- ix. Furthermore, as per the provisions of Rule 15 of Haryana Real Estate Regulatory Rules 2017, the complainant is entitled for interest on the amount paid to the respondent at the rate prescribed under the RERA act, 2016 and for the sake of brevity and convenience the relevant provisions are reproduced herein below.
- x. That the complainant has suffered huge financial loss due to the said unwarranted delay in handing over of the actual physical possession of the property as per the terms of the agreement to sell. Thus, the complainant is entitled to withdraw from the said project of the respondent and is entitled to get the amount refunded along with interest from the respondent due to false assurances and representation/statements to cure the defect in terms of Section 12 of the RERA, Act, 2016.
- xi. That by the wrongful acts, conduct and behaviour as well as the deficient services of the respondent the complainant has suffered the following losses/damages.

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

4. The complainant has sought the following relief(s):

- i. Refund of the total amount of Rs. 8368757.9/- paid to the respondent along with interest from the date of expected delivery as per buyer's agreement.
- ii. Direct the respondent to pay litigation expenses of Rs. 2,20,000/-

**D. Reply by the respondent:**

5. The respondent has made following submissions in the reply:

- i. The respondent is a developer and has built multiple residential and commercial buildings within DELHI, NCR. The complainants had approached the answering respondent for booking unit no. EDNBG 0202 in an upcoming project Ansal Highland Park, Sector 103, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 09.09.2013 was signed between the parties.
- ii. That the current dispute cannot be governed by the RERA Act, 2016 because the builder buyer agreement signed between the complainant and the respondent was in the year 2014. It is submitted that the regulations at the concerned period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.
- iii. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.
- iv. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the



complaint in the year 2022 and the cause of action accrue on 09.09.2017 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.

- v. That even if the complaint is admitted being true and correct, the agreement which was signed in the year 2014 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 36 of the said agreement provides for Rs. 5/ sq. foot per month on super area for any delay in offering possession of the unit as mentioned in Clause 30 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Authority in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.
- vi. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondent has in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.
- vii. That the respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering respondent. It is further submitted that the

builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

- viii. That the respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. Clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
- ix. That the respondent has clearly provided in clause 34 the consequences that follow from delayed possession. It is submitted that the complainant cannot alter the terms of the contract by preferring a complaint before the HRERA Gurugram.
- x. That the present complaint has been filed by the father-in-law of the buyer and acting as a complainant on her behalf on the strength of a GPA. No GPA or SPA has been filed by the complainant specifically with regards to the present complaint and property/shop in question. Hence, the complaint is liable to be dismissed on that account only.
- xi. That the present complaint very cleverly does have sworn affidavit. Therefore, this Authority cannot proceed without the sworn affidavit as



the complaint in question is not as per the rules laid by the Hon'ble Supreme Court of India.

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

**E. Jurisdiction of the Authority:**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

8. 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 the entire Gurugram District for all purposes 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**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

10. Hence, given 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 objections raised by the respondents**

**F.I Objection regarding delay due to force majeure circumstances**

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to lockdown, outbreak of Covid-19 pandemic And Demonetization. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. The plea of the respondent regarding various orders of the authorities, all the pleas advanced in this regard are devoid of merit. The orders passed by authorities 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 delay in the completion.

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

**G.I. Direct the respondent to refund of the amount paid to the respondent with interest.**

12. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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."*

13. Clause 31 of the builder buyer's agreement provides for time period for handing over of possession and is reproduced below:

*31. The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanction and approval necessary for commencement of construction whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit.*

14. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by it along with interest prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

15. 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.

16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

17. 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;"*

18. In the present case, the complainant booked a unit with the respondent in its project "Ansal Highland Park", Sector-103, Gurugram" Haryana. The complainant was allotted a unit bearing no. EDNBG-0202, admeasuring 1940 sq. ft. and subsequently, builder buyer agreement was executed between the parties on 09.09.2013. As per possession clause 31 of buyer's agreement which states that the developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanction and approval necessary for commencement of construction whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Therefore, due date of possession is comes out to be 09.03.2018.



19. It is pertinent to mention over here that even after a passage of more than 7 years neither the occupation certificate has been obtained by the competent authority nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondent have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
20. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.***

*".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

21. The Hon'ble Supreme Court of India in the cases ***of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under:

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any*

*contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to pay the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.
23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents no. 1 and 2 are established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

#### **H. Directions issued by the Authority:**



24. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to refund the paid-up amount of Rs. 83,68,757/- paid by the complainant along with prescribed rate of interest @ 11.10% p.a. as prescribed under section 18(1) of the Act, 2016 read with rule 15 of the rules from the date of each payment till the date of the rules from the date of each payment till the date of realization.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant-allottee.

25. Complaint stands disposed of.

26. File be consigned to the Registry.

**Dated: 16.05.2025**

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