



**HARERA** HARYANA REAL ESTATE REGULATORY  
AUTHORITY GURUGRAM

**GURUGRAM**

New PWD Rest House, Civil Lines, Gurugram, Haryana नया

पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint No: 1382/2020  
Date of Decision : 31.03.2021**

Manoj Kumar S/o Shyam Lal  
R/o Plot No.30-31, Flat No.EKH-31/21, Village  
Matiala, D K Mohan Garden, Uttam Nagar  
New Delhi-110059

**Complainant**

**V/s**

M/s International Land Developers Ltd.  
B-418, New Friends Colony,  
New Delhi-1110025  
Also at ILD Trade Centre, Sector 47,  
Sohna Road,  
Gurugram-122018

**Respondent**

**Complaint under Section 31  
of the Real Estate(Regulation  
and Development) Act, 2016**

**Argued by:**

**For Complainant:  
For Respondent:**

**Ms Maninder Kaur, Advocate  
Mr. Venket Rao, Advocate**

**ORDER**

This is a complaint under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to

Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and

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Development) Rules, 2017 (hereinafter referred as the Rules of 2017) filed by Shri Manoj Kumar seeking refund of Rs.52,70,655/- deposited with the respondent for booking a flat bearing No.D-902, Tower-D, measuring 1275 sq ft. in its project known as 'ARETE LUXURY PARK RESIDENCIES', situated in Sector 33, Sohna, Gurugram against a total sale consideration of Rs.72,30,725/- besides taxes etc on account of violation of obligations of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"ARETE LUXURY PARK RESEDECENCIES" Sector 33, Sohna, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	D-902 9 <sup>th</sup> floor
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 1275 sq ft
VII.	Size of the unit (carpet area)	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Residential
X.	Date of booking(original)	24.01.2014

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XI	Date of provisional allotment(original)	03.04.2014
XII	Date of execution of ABA (copy of ABA be enclosed as annexure-B)	12.08.2014
XIII	Due date of possession as per ABA	48months + six months grace period
XIV	Delay in handing over possession till date	More than 4 years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	

**Payment details**

XVI	Total sale consideration	Rs. 72,30,725/-
XVII	Total amount paid by the complainant	Rs.52,70,655/-

2. Brief facts of the case can be detailed as under.

A project known by the name of "ARETE LUXURY PARK RESEDENCIES" Sector 33, Sohna, Gurugram was to be developed by the respondent. The complainant coming to know about the same, booked a unit bearing No.D-902, 9<sup>th</sup> floor, measuring 1275 sq ft in its project known as "ARETE LUXURY PARK RESEDENCIES" Sector 33, Sohna, Gurugram for a sum of R.72,30,725/-besides taxes etc on 24.01.2014. A provisional allotment letter Annexure A/4 in this regard was issued in favour of the complainant by the respondent-builder and which also led to issuance of letter of allotment Annexure A/12 dated 03.04.2014. It is the case of the complainant that an Apartment Builder Agreement was also executed between the parties in dispute on 12.08.2014. In pursuance to

that he started depositing various amounts against the allotment of the

unit in question. He alongwith his wife also took a loan of Rs.55,60,000/- from ICICI Bank and the same was disbursed on 25.05.2016 vide Annexure P/20. So, in this way, he paid a total sum of Rs.52,70,655/- to the respondent upto 16.01.2017. The due date for completion of the project and offer of possession of the allotted unit as per clause 10 of Apartment Buyer Agreement was fixed as 48 months with a grace period of six months. It is the case of the complainant that despite paying more than 75% of the sale consideration, the respondent failed to complete the project and offer possession of the allotted unit. So, he withdrew from the project and sought refund of the amount deposited with the respondent besides interest and compensation.

3. But the case of the respondent as set up in the written-reply is that though the complainant booked the above mentioned unit for a total sale consideration of Rs.72,30,725/- but he did not comply with the payment schedule and committed default in the same. No doubt, the possession of the allotted unit was to be offered to the complainant within a period of 48 months with a grace period of six months but the construction of the project is going on at fast pace and its possession is likely to be offered soon. Moreover, the project is registered with the Hon'ble Authority, Gurugram and its validity has been extended upto 02.07.2022 vide Annexure R/5. So, if refund of the deposited amount is allowed, then it may jeopardise the project as well as the interest of other allottees. Lastly, it was pleaded that the complaint filed by the complainant is premature as the matter with regard to refund is sub-judice before the Hon'ble Apex Court of the land.

4. All other averments made in the complaint were denied in toto.

5. I have heard the learned counsel for both the parties and have also

perused the case file.

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6. It is not disputed that vide application Annexure A/3, the complainant applied for allotment of above mentioned unit in the project of the respondent detailed above through M/s D S Reality, Gurugram at the rate of Rs.4656/- per sq ft and was allotted the above mentioned unit provisionally vide Annexure A/4 on deposit of Rs.3,00,000/-. It led to the allotment of the unit in question on 03.04.2014 vide letter of allotment Annexure A/12 for a sum of Rs.72,30,725/-. The booking of the unit was made under the construction linked payment plan. The complainant opted for loan from ICICI Bank vide Annexure A/13 on 04.04.2014 and which led to sanction of loan of Rs.55,60,000/- alongwith Ms Ritu Gaur Vide P/20. An Apartment Buyer Agreement Annexure A/14 was executed between the parties on 12.08.2014 which provided the terms and conditions of allotment, payment plan, specifications of the allotted unit and various other terms and conditions, the due date for possession of the apartment to be 48 months with a grace period of six months. It is not disputed that in pursuant to various payment raised by the respondent, the complainant deposited a sum of Rs.52,70,655/- i.e. 70% of the total sale consideration upto 16.01.2017. Except sending some reminders prior to it, no letter with regard to remaining payment was ever sent by the respondent to the complainant. It is also a fact that the due date for completion of the project and offer of possession of the allotted unit with a grace period of six months has already expired in February, 2019. Though the booking of the allotted unit was made to the complainant under the construction linked payment plan but he had already paid more than 70% of the total sale consideration and an amount of Rs.19,60,070/- was due at the time of filing of the complainant. So, in such a situation and particularly in view of the stand taken on behalf of the respondent with regard to time being essence for payment of sums by the allottee and other terms and conditions of apartment buyer agreement Annexure

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A/14, whether he is entitled to seek refund or is bound to continue with the project and wait for its completion by July, 2022.

7. A perusal of the factual position detailed above shows that upto Jan, 2017, the complainant had already paid about 70% of the total sale consideration of the allotted unit. The booking of the unit in question was made under the construction linked payment plan. He alongwith Ms Ritu Gaur also raised a sum of Rs.23,32,765/- against the sanctioned loan of Rs.55,60,000/- as is evident from Annexure P/20. Though that amount alongwith from some other to the tune of Rs.30,66,416/- was due towards the allottee and Ms Ritu Gaur as is evident from document E/20 but that has been paid to the financial institution as is evident from letter Annexure A/21 dated 28.01.2020 issued by ICICI Bank. Now, the only question for consideration arises as to whether the complaint being an allottee of the above mentioned project is bound to wait till July, 2022 for completion of the project and offer possession. The answer is in the negative. In cases **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors, 2018(5) SCC 442** and followed by another judgement in case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, it was held by the Hon'ble Apex Court of the land that a person cannot be asked to wait indefinitely for possession of the unit allotted to him and is entitled to seek refund of amount paid by him alongwith compensation. Moreover, when the due date has already expired then, the allottee cannot be made to wait to seek refund of the amount deposited with the respondent and offer of possession. Then, Section 18 of Real Estate (Regulation and Development) Act, 2016 provides for return of the amount with interest and compensation to an allottee when the developer fails to complete the construction and offer possession as per agreement of sale. So, the plea

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of the respondent that the complainant should wait for completion of the project and offer of possession by July, 2022 is untenable.

8. The second plea advanced on behalf of the respondent is that the complainant committed default in making various payments. Moreover, 30% of the amount of the sale consideration is still due against him. So, he failed to pay that amount despite various reminders and is not entitled to seek refund of the amount deposited with it. But again the plea advanced in this regard is devoid of merit. The booking of the unit was made by the complainant under the construction linked payment plan after the execution of ABA on 12.08.2014. He alongwith Ms Ritu Gaur was sanctioned an amount of Rs.55,60,000/- by the ICICI Bank. A sum of Rs.30,66,416/- was paid to the respondent as is evident from letter A/20 upto January, 2017. There is nothing on the record to show that after that date any reminder was issued by the respondent to the allottee. In fact, 30% of the total sale consideration was due to be paid and the due date for possession was February, 2019. So, it cannot be said that due to default committed by the complainant in making various payments, the construction of the project as well as of the allotted unit could not be completed.

9. Lastly, the respondent took a plea that the complaint filed by the complainant seeking refund is premature and the same is liable to be dismissed. In fact, the vires of rules framed by the State of Haryana are under challenge before the Apex Court of the land. So till pendency of that writ petition, the complaint filed by the complainant against the respondent is not maintainable. But again the plea advanced in this regard is devoid of merit. No doubt, the vires of rules framed by the State of Haryana under the Act of 2016 were challenged before the Hon'ble

Punjab & Haryana High Court who affirmed the same. But the orders

passed in this regard by the Hon'ble High Court were challenged before the Hon'ble Apex Court of the land and that matter is still pending. So, it means that there is status qua ante and the jurisdiction of this forum to proceed [with this complaint cannot be said to be barred in any manner. Thus, the plea advanced in this regard on behalf of the respondent is devoid of merit.

10. Thus, in view of my discussion above, the complaint filed by the complainant is hereby ordered to be accepted. Consequently, the following directions are hereby ordered to be issued:

- i) The respondent is directed to refund a sum of Rs.52,70,655/- to the complainant with interest @ 9.30% p.a. from the date of each payment till the whole amount is paid;
- ii) The respondent is also directed to pay a sum of Rs.10,000/- as compensation inclusive of litigation charges to the complainant;
- iii) The above mentioned directions be complied with by the respondent-builder within a period of 90 days and failing legal consequences would follow.

11. File be consigned to the Registry.

31.03.2021

  
(S.C. Goyal)  
Adjudicating Officer,  
Haryana Real Estate Regulatory Authority  
Gurugram 31.3.2021

Judgement uploaded on 02.04.2021