



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
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. : 4215/2019

Date of Decision : 24.03.2021

**Deep Nath Sharma
R/o Flat No.E-637, Ganesh Nagar, Part-II
Delhi-110092**

Complainant

V/s

**M/s International Land Developers Pvt Ltd.
B-418, New Friends Colony, New Delhi-110065
And also at
9th Floor,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:

Ms. Sujata Rao, Advocate

For Respondent:

Shri 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 Development) Rules, 2017 (hereinafter referred as the Rules of 2017) filed by Shri Deep Nath Sharma seeking refund of Rs.27,54,677/- deposited with the respondent-builder against booking of unit bearing No. 1203, Blocxk No. C, 12th Floor, measuring

Chic - 24/3/2021

1325 sq. mtr in its project known as 'ARETE' situated at Village Dhunela, Sector 33, Sohna(Gurugram) against a total sale consideration of Rs.72,87,975/- 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 Residences' Sector 33,Sohna (Gurugram)
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	1203
V.	Tower No. / Block No.	C
VI	Size of the unit (super area)	Measuring 1325 sq mtr
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)	28.12.2013
XI	Date of Allotment(original)	04.04.2014
XII	Date of receipt of ABA (copy of ABA enclosed)	16.09.2014 but not executed
XIII	Due date of possession as per ABA	
XIV	Delay in handing over possession till date	

Handwritten signature and date: 24/12/2014

XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	
Payment details		
XVI	Total sale consideration	Rs.27,54,677/-
XVII	Total amount paid by the complainant	Rs.72,87,975/-

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

A project known by the name of 'ARETE' situated in Sector 33, Sohna(Gurugram) was to be developed by the respondent-builder. So, coming to know about the project of the respondent-builder, the complainant laid his hands on brochure Annexure C/1 and wherein the respondent-builder was offering construction by using **Monolithic Aluminium Form Work Technology alongwith using of Building Information Model(BIM)** for construction of the project detailed above. Believing the information contained in the above mentioned brochure, the complainant booked a unit in it on 28.12.2013 by paying a sum of Rs.3,00,000/- against a total sale consideration of Rs.72,87,975/-. A letter of allotment Annexure C/4 dated 04.04.2014 was issued in favour of the complainant. A Flat Buyer Agreement Annexure C/5 dated 16.05.2014 containing terms and conditions of allotment was to be executed between the parties in dispute. It is the case of the complainant that Apartment Buyer Agreement could not be executed between the parties as he objected to certain clauses contained in it. However, he deposited a sum of Rs.27,54,677/- upto 30.08.2015 against a total sale consideration of Rs.72,87,977/-. It is further the case of the complainant that after

Sheela
24/3/2014

depositing that amount he visited the construction site in Jan. 2016 and was surprised to find the actual construction technology being used at the project was traditional one contrary to the mentioned in the brochure. So, vide email dated 01.02.2016, he protested against the use of technology and demanded explanation from the respondent-builder. When he failed to get any response from the respondent-builder, two other emails dated 09.02.2016 and 25.02.2016 were followed. Though a reply vide email dated 14.03.2016 was received but the respondent was adamant to compromise on the quality standards and save money on the construction. The complainant also found the pace of construction was much more slow even after passage of two years. So, keeping all these facts, the complainant requested for cancellation of his booking. Then, he got certificate Annexure C/8 dated 16.06.2016 from the expert architect named Sh. Afsheen Khan with regard to use of conventional technology in the construction. When all these things fail to move the respondent in the right direction, then the complainant send a legal notice dated 15.12.2016 and withdrew from the project and sought refund of the amount deposited with it besides interest and compensation.

3. But the case of the respondent as set up in the written reply is that the complainant booked a unit in its above mentioned project on 28.12.2013 and deposited different amounts upto 30.07.2015. The total sale consideration to be paid against that unit was Rs.72,87,975/-. The FBA was to be executed between the parties on 16.09.2014 but the complainant did not intentionally sign that document. It was denied that the construction of the project in which the unit of the complainant is located is going at slow. It was also pleaded that the complainant booked a unit in the above mentioned project after satisfying himself about the terms and conditions of booking. It was pleaded that the respondent is using best

Shree C/8
24/1/2016

technology for developing the project. However, due to slow down in the real estate sector and the complainant being an investor wants to withdraw from the project. It was denied that the complaint was cheated at any time by the respondent and rather has intentionally filed this complaint levelling false allegations against the terms and conditions of agreement. Lastly, it was pleaded that the complaint is premature and only the Hon'ble Authority has jurisdiction to deal with the issue in the case.

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.

6. Some of the admitted facts of the case are that on the basis of brochure Annexure C/1, the complainant booked a unit in the project of the respondent known as 'Arete Luxury Park Residences" situated at village Dhunela, Sector 33, Sohna, Gurugram on 28.12.2013 for a total sale consideration of Rs.72.87.975/- by paying a sum of Rs.3,00,000/-. A provisional allotment cum- acceptance letter Annexure C/3 was issued in favour of the complainant by the respondent. The booking of the unit was made by the complainant under the construction linked plan. So, vide letter of allotment dated 04.04.2014 Annexure C/4, he was issued a detailed payment schedule and on the basis of which he deposited a total sum of Rs.27,54,677/- upto 31.08.2015 against total sale consideration of Rs.72,87,975/- of the allotted unit. It is the case of the complainant that when he booked an apartment in the above mentioned project of the respondent, then he believed the brochure C/1 wherein it was mentioned that the construction of the project would be made by using Monolithic Aluminium Form Work Technology alongwith using of Building

Shree C C S
24/3/2021

Information Model(BIM). But when visited the site in Jan, 2016, he found that conventional technology ~~was~~ being used in the construction of the project and it was far inferior from the technology detailed above. Though, he wrote a a number of emails dt. 01.02.2016, 09.02.20-16 but did not get any reply and which ultimately led to cancellation of his unit and withdrawal from the project by writing email dated 15.12.2016 as C/9. Though a reply to the same C/10 dated 02.01.2017 was received but the same was not found satisfactory and which led to initially filing a consumer complaint before the Hon'ble Consumer Disputes Redressal Commission(State Commission),New Delhi and withdrawal of the same on 17.08.2018 vide Annexure C/11. So, keeping in view the matrix of facts detailed above, it is to be seen as to whether the complainant was justified in withdrawing from the project and is entitled to seek refund of the amount deposited with the respondent against the allotted unit.

7. The brochure Annexure C/1 is the first document to be relied upon by the complainant and on the basis of which he booked a unit with the respondent in its project known as 'Arete Luxury Park Residences' Sector 33,Sohna (Gurugram) for a sum of Rs.72,87,975/- by paying a sum of Rs.27,54,677/- upto 31.08.2015. A perusal of this document at Page 38 provides as under:

Building information Model (BIM)

ILD has gone a step ahead by bringing internationally adopted 4D Building information Modelling (BIM) in their projects. BIM is the latest way of approaching the design and documentation of building projects.

The model manages information that allows the automatic generation of accurate drawings and reports, design analysis, schedule simulation, facilities management and more – ultimately enabling the building team to make better-informed decisions. The BIM approach saves time and enhances productivity for a superior delivery of the final product.

Shree 24/3/2021

Monolithic Aluminium Formwork Technology.

It is an excellent replacement of the conventional technology with marked advantages in terms of structural stability, both on lateral movements, seismic forces, higher carpet area, uniform quality of construction, negligible maintenance and effect of wind forces on high rise buildings.

8. A further perusal of Annexure C/2 shows the difference between the use of conventional/ Monolithic Aluminium Form Work Technology alongwith using of Building Information Model(BIM) which may be detailed as under:

S.No	Conventional System used at ILD Arete	Building with Aluminium Formwork
1.	<i>Beam and Columns with infill walls. Cracks will develop on joints of dissimilar material</i>	<i>Monolithic construction. No dissimilar material.</i>
2.	<i>Internal walls made of fly ash bricks. Strength far less as compared to concrete walls, costs less than Rs. 3,000/- a cum.</i>	<i>Internal walls made of concrete. High strength is the characteristic. Costs in excess of Rs. 20,000/- a cum.</i>
3.	<i>Shuttering form work with wood and ply. High level of manual labour and thus more likelihood of errors</i>	<i>Factory fabricated members made of Aluminium which are pre marked. Very less manual labour and get high finish.</i>
4.	<i>All members casted separately, increasing number of joints. More the number of joints more the potential points of weakness.</i>	<i>All members are casted at the same time. There is practically no joint in the structure thus eliminating all potential area of weaknesses.</i>
5.	<i>Slow construction. Time taken to cast subsequent slab is typically up to ONE MONTH. Poor bonding of old concrete with new concrete.</i>	<i>Very fast construction. Majority of elements being pre designed, it is possible to achieve subsequent slab within SEVEN DAYS.</i>
6.	<i>More labour intensive. More chances of mistakes. Comparatively inferior quality.</i>	<i>Less involvement of labour. High quality finish achieved.</i>

9. It is the case of the respondent that best technology for the development of the project is being used. It is not its case that the technology as

Shree
24/3/2024

mentioned in the brochure C/1 i.e. Monolithic Aluminium Form Work Technology alongwith ~~using~~^{use} of Building Information Model(BIM) by depicting 4-D building information that shuttering form work ~~and~~ with wood is being used at the site. While filing the complaint, the complainant placed on file Annexure C/2 giving comparison between conventional system used at ILD Arete and building with aluminium form work system with conventional construction. The respondent has not been able to rebutt that version by producing any written material or authenticated works of any author on the subject. Then, there is certificate Annexure C/8dated 16.06.2016 given by architect Shri Afsheen Khan who observed as under: -

Sheen atelier
Ar. Afsheen Khan
COA No. 2009/44804
Date- 16-06-2016

To whom so ever it may concern

*I have studied the brochure that you have submitted for ILD Arete at Sector - 33, Sohna, Gurgaon and have visited the project site. On visiting the project site it is observed that Construction technology used at site is conventional using props and wooden shuttering. This technology is different from the **Monolithic Aluminum Form Work** mentioned in the brochure provided.*

*Overall quality of construction at the project can be improved considerably by using **Monolithic Aluminium Form Work**.*

*Thanking You,
Yours Sincerely
-sd-
(Architect)*

10. So, keeping in view the above mentioned facts, it is pleaded by the complainant that though he booked the unit in question with the respondent but cheated him by using another technology different from Monolithic Aluminium Form Work Technology alongwith using of Building

She c f c
24 J 31/2021

Information Model(BIM) So, in this way, he was not bound to proceed with the booking of the unit and so send a legal notice to withdraw from the project as per the provisions of Section 12 of the Real Estate(Regulation and Development) Act, 2016. The only plea advanced on behalf of the respondent is that though there is an averment of Monolithic Aluminium Form Work Technology alongwith using of Building Information Model(BIM) in the construction of the project but the best technology is being used to complete the project and the same cannot be said to be covered by the provisions of Section 12 of the Act, 2016. Secondly, on the basis of brochure, the complainant booked a unit and a letter of allotment Annexure C/4 dated 04.04.2014 was issued. Even, prior to that a provisional allotment letter C/3 was issued containing the terms and conditions of allotment, payment schedule, time for completion of the project etc. If the complainant was aggrieved against the averments mentioned in the brochure C/1, then it was not obligated for him to go for booking and the allotment of the unit in question and pay a sum of Rs.27,54,677/- upto 31.08.2015. Moreover, the project is complete upto 40% and if the complainant is allowed to withdraw from the project, then it would be detrimental for the health of ~~the real estate sector as well as~~ the project and interest of other allottees who are waiting for their dream homes.

11. I have duly considered the submissions made on behalf of both the parties. No doubt, vide Annexure R/3, the registration of the project has been extended upto 02.07.2022 but the case in hand is of withdrawal from the project by the complainant by relying upon the averments made in the brochure C/1 with regard to use of Monolithic Aluminium Form Work Technology alongwith using of Building Information Model(BIM) for construction of the project and the failure of the respondent to satisfy the

Shree
24/3/2024

conscience of the allottee. Section 12 of the Real Estate(Regulation and Development) Act, 2016 provide obligations of promoter relating to veracity of advertisement or prospectus. The wording contained in these provisions provide that if any information contained in the notice, advertisement or prospectus in incorrect or false then a person can withdraw from the proposed project and he shall be returned the entire investment alongwith interest at such rate as may be prescribed and the compensation in the manner provided under this Act. As already detailed above, the respondent has not been able to elaborate or specify the technology to be used in the construction of the project and the allotted unit in the brochure/1. It is specifically mentioned that Monolithic Aluminium Form Work Technology alongwith using of Building Information Model(BIM) would be there for the construction of the project. This technology is far beyond and superior technology of construction than the conventional technology as is evident from Annexure C/2 and various works. The renowned authors on the subject as such Ketan Shah, C S Poon, Robin C P YIP, Nuzul Azam, Ashok Mandl, D M Wijesekara, Nagi Reddy Sattigari, and the articles published in various journals authored by them prove that fact. Then, there is Certificate C/8 dated 16.06.2016 given by architect Mr Afsheen Khan clinching the matter in issue. So, when it is crystal clear that the respondent is not using the technology for construction mentioned in the brochure, then the complainant had an option to withdraw from the same as per provisions of Section 12 of the Act of 2016 and seek refund of the amount deposited with it besides interest and compensation. The plea of the respondent that under clause 19 of terms and conditions of allotment, it can use the technology for construction better than MAFW Technology is untenable and without any substance. No doubt, it is pleaded that the construction of the project is

Succceded
24/3/2021

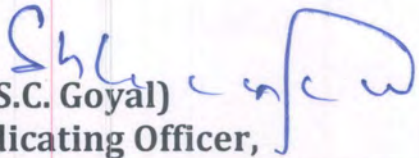
complete upto 40% and if the refund is allowed at this stage, then it would be detrimental to the interest of the project as well as other allottees but again the plea advanced in this regard is devoid of merit. When it is the specific case of the complainant that on the basis of averments made in the brochure with regard to use of technology under construction, he booked the unit in question and his faith was shattered by use of any other technology, then he was not obligated to continue with the project and is entitled to withdraw from the same and seek refund of the deposited amount besides interest and compensation.

12. 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 against the respondent:

- i) The respondent-builder is directed to refund a sum of Rs.27,84,677/-besides interest @ 9.30% p.a. from the date of each payment till the whole amount is made to the complainant.
- ii) The respondent is also directed to pay a sum of Rs.20,000/- as compensation inclusive of litigation charges.
- iii) The above mentioned directions be complied with by the respondent within a period of 90 days and failing which the legal consequences would follow.

15. File be consigned to the Registry.

24.03.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram 24-3-2021

Judgement uploaded on 16.04.2021