

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

Complaint no. : 355 of 2020
First date of hearing: 20.03.2020
Date of decision : 09.12.2020

1. Shri Virendra Kumar Gandhi
2. Shri Sanjay Gandhi
Both RR/o: Flat no. 2/7, Hamelia Street,
Vatika city, Sector 49, Sohna Road, Gurgaon

Complainants

Versus

M/s International Land Developers Pvt. Ltd.
Regd. Office at: B-418, New Friends Colony,
New Delhi, 110025
Also at: ILD Trade Centre, 9th Floor
Sector 47, Sohna Road, Gurugram 122018

Respondent

CORAM:

Dr. K. K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Sanjeev Sharma
Shri Venkat Rao

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 24.01.2020 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of

section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the apartment buyer agreement executed inter-se them.

A. Project and unit related details

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

S.No.	Heads	Information
1.	Name and location of the project	"ARETE", Sector 33, Sohna, Gurugram
2.	Project area	11.6125 acres
3.	Nature of the project	Group housing project
4.	RERA registered/ not registered	Registered vide no. 06 of 2019 dated 08.02.2019 for 8.79 acres
5.	RERA registration valid Upto	02.07.2022
6.	DTCP license no. and validity status	44 of 2013 dated 04.06.2013 & valid upto 03.06.2019
7.	Name of the licensee	International Land Developers Pvt. Ltd. and 2 others
8.	Date of allotment letter	29.01.2015



		(As per page no. 23 of complaint)
9.	Apartment no.	C-1601, 15 th floor, Tower C (Page no. 23 of complaint)
10.	Apartment admeasuring	1325 sq. ft. (Page no. 23 of complaint)
11.	Date of apartment buyer agreement	06.04.2015 (Page no. 22 of complaint)
12.	Payment plan	Possession linked payment plan (Page no. 53 of complaint)
14.	Total consideration	Rs. 78,49,425/- (Page no. 53 of complaint)
15.	Total amount paid by complainants as per receipt information at page no. 59 to 66 of complaint	Rs. 28,14,128/-
16.	Due date of delivery of possession as per clause 10.1 of apartment buyer agreement within 48 months + 6 months grace period from the date of execution of agreement	06.10.2019
17.	Offer of possession	Not offered
18.	Delay in handing over possession till date of decision i.e. 09.12.2020	1 year 2 months 3 days

B. Facts of the complaint

3. The complainants submitted that they booked an apartment in group housing colony, "Arete", Sector 33, Sohna, Gurgaon by paying booking amount of Rs.1,00,000/- and Rs.4,00,000/- through cheques dated 14.11.2014 and 01.12.2014 respectively. The respondent issued an allotment letter dated

29.01.2015 to complainants against the apartment no. 1601 admeasuring a super area of 1325 sq. ft. at the rate of Rs.4836/- per sq. ft. amounting to Rs.64,07,700/- plus other charges amount i.e. total price of Rs.78,49,425/- on the assurance that construction shall be completed in time and possession would be handed over in time.

4. That the apartment buyer's agreement was signed between the parties on 06.04.2015 on the terms and conditions as laid down by the company. That as per clause 10.1 of apartment buyer's agreement, the possession of the unit in question was to be handed over within 48 months from the date of the said agreement with a grace period of 6 months. That as per the apartment buyer agreement the possession of the unit in question was to be handed over lastly by October 2019, however at that time the construction of the project was far from completion. That further while entering into the above said agreement, the respondent further sold one car parking space for consideration of Rs.3,50,000/-. That all instalments were paid as demanded by the company and total amount of Rs. 28,14,128/- was paid to promoter/developer by them. That after repeated visits by the complainants, the respondent has neither offered the possession nor any satisfactory reply is given in this regard.

C. Reliefs sought by the complainants

5. Complainants have filed this complaint for the following reliefs:
- i. The promoter shall be directed to pay interest for the delayed period of possession and further ordered to pay interest for each month till the possession is handed over.
 - ii. The promoter be ordered to recalculate the interest on equitable basis from the beginning and reimburse, if charged extra than MLCR.
6. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 filed by the respondent

7. The respondent has contested the complaint on the following grounds:
- i. That as per the clause 10.1 of the apartment buyer's agreement, the apartment was to be handed over to the complainants within 48 months from the date of the said agreement along with a grace period of 6 months which is further subject to other terms and conditions of the agreement. The clause 10.2 of the apartment buyer's agreement clearly states that no claim whatsoever by way

of damages/compensation shall lie against the respondent if there is delay in handing over the possession for reasons beyond the control of the respondent, including without limitation force majeure. It is submitted that the 60% of development work of the project has been completed and the remaining work at the site of the project is being done on full swing.

- ii. That the said project is a registered project under Act vide no. RC/REP/HRERA/GGM/312/44/2019/06. It is submitted that as per the RERA registration, the respondent has to complete the phase construction by July 2022 and construction of the whole project by July 2024. Therefore, it is pertinent to note that the present complaint is premature as the project is ongoing project and as per the RERA registration the respondent has to complete the construction work of the phase by July 2022 and of the complete project by July 2024.
- iii. That the complainants never adhered the payment schedule duly agreed upon by the complainants and always made payment after termination of stipulated time. It is pertinent to mention here that the complainants are themselves defaulters as they have committed default in making payments as per the schedule of payment and

trying to shift their onus of failure upon the respondent company.

- iv. That the project got delayed due to the reasons beyond the control of the respondent, thus, clause 10.2 and 18 are enforced. That the said project got delayed due to the non-payment of the instalments by the various allottees on time. The non-payment of instalments as per the payment schedule hampered the development/construction work of the project. That the project was delayed due to the reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the hon'ble High Court of Punjab & Haryana in CWP no. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April 2015 and again in November 2016, adversely effected the progress of the project. Meanwhile, when the respondent company was proceeding with the advance level, demonetization happened in the month of November 2016 which led to an acute crunch of liquid money and thereafter, on 01.07.2017, the new tax regime GST came into force due to which all the developmental

activities had a great setback. the government of India imposed the nationwide lockdown due to the pandemic of Covid-19 and therefore, the development of project has come of a halt. In this hard-hitting time of Covid-19, the respondent is facing severe hardship due to the lack of workforce/ labour and building materials. These circumstances, in a way led to the delay in the completion of the said project. The project "Arete" of the respondent is registered with the Real Estate Regulatory Authority, Gurugram as per which date of completion of the project falls in the year 2022. However, the respondent has bona fide intention to complete the project at the earliest for which the company is making every possible effort and also taking the legal action against the defaulters who have delayed or stopped making the payments.

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

E. Findings on the objections raised by the respondent

- E.I Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of RERA Act**

9. The respondent submitted that the present complaint is premature as the project is ongoing project and as per the RERA registration the respondent has to complete the construction work of the phase by July 2022. Therefore, question of determination is whether the respondent is liable to handover possession as per date committed in registration certificate where buyer's agreement is executed prior to coming into force of the Act.
10. The authority is of the view that it is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act. Section 4(2)(1)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(1)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

*(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —
.....*

(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be...."

11. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(I)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of

the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.*** and has observed as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

F. Findings of the authority

12. **Relief sought by the complainants:** The promoter shall be directed to pay interest for the delayed period of possession and further ordered to pay interest for each month till the possession is handed over. Also, the promoter be ordered to recalculate the interest on equitable basis from the beginning and reimburse, if charged extra than MLCR.
13. In the present complaint, the complainants intend 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."

14. Clause 10.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below:

"10 POSSESSION OF APARTMENT:

10.1 "....., the Developer shall endeavour to complete the construction of the Said Apartment within 48 (Forty-Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months."

15. On consideration of the documents and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the apartment buyer agreement executed between the parties on 06.04.2015, possession of the booked unit was to be delivered within a period of 48 months plus 6 months grace period from the date of execution of agreement. The grace period of 6 months is allowed to the respondent due to exigencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 06.10.2019. The complainants have not received the offer of possession. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement dated 06.04.2015 to hand over the possession within the stipulated period.

16. 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 respondent is established. As such the complainants-allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 06.10.2019 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
17. Also, 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;"*



Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.

18. 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 respondent is directed to pay interest at the prescribed rate of 9.30 % p.a. for every month of delay from the due date of possession i.e. 06.10.2019 till the handing over of possession of the allotted unit.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% by the

promoter which is the same as is being granted to the complainants in case of delayed possession charges.

19. Complaint stands disposed of.
20. File be consigned to the registry.


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram


(Shri Samir Kumar)

Member

Dated: 09.12.2020

Judgement uploaded on 08.06.2021.