



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**

**Complaint No.4475/2019
Date of Decision: 31.03.2021**

**Nitin Suri & Priyanka Suri
R/o 1035, Ground Floor, Sector 31
Gurugram.**

Complainants

Vs

**M/s International Land Developers Ltd.
R/o B-41B, New Friends Colony,
New Delhi-110025**

Respondent

II

**Complaint No.1073/2020)
Date of Decision: 31.03.2021**

**Aditi Chauhan
R/o E-1203, Tulip Ivory, Sector 70
Gurugram,**

Complainant

Vs

**M/s International Land Developers Ltd.
R/o B-41, New Friends Colony,
New Delhi-110025**

Respondent

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31/3/2021*

III

Complaint No.1080/2020)
Date of Decision: 31.03.2021

Nitin Mathur & Geetanjali Mathur,
R/o I-1306, Maple Crescent, Sushant Lok,
Block C, Phase-I,
Gurugram

Complainants

Vs

M/s International Land Developers Ltd.
R/o B-41, New Friends Colony,
New Delhi-110025

Respondent

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

Argued by:

For Complainants- Nitin Suri
& Priyanka Suri

For Complainants- Aditi Chauhan,
Nitin Mathur &
Geetanjali Mathur

Sh. Rishab Gupta Advocate
Sh. Rajeev Virmani, Advocate

For Respondent:

Sh. Venket Rao, Advocate

ORDER

This common order of mine seeks to dispose of above mentioned three complaints filed by the complainants detailed above seeking refund of deposited amount of Rs.37,13,649/-, Rs.148,49,864/- and Rs. 50,49,387/respectively deposited with the respondent-builder against total sale consideration of Rs.71,66,975/- besides interest and compensation.

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2. The above mentioned complaints filed 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) by Mr Nitin Suri & Priyanka Suri, Ms Aditi Chauhan and Mr. Nitin Mathur and Geetanjali Mathur seek refund of amount as mentioned in their respective tabulated form below deposited with the respondent-builder against the booking of residential units in the project known as "ILD ARETE" situated in Sector 33, Sohna (Gurugram) besides taxes etc on account of violation of obligations on the part of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

Project related details Complaint No.4475 of 2018		
I.	Name of the project	"ILD ARETE" 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-304, Super Area 1275 sq ft.
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 1150 sq ft Super Area 1275 sq ft.
VII	Size of the unit (carpet area)	-DO-

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VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	19.11.2013
XI	Date of provisional allotment(original)	04.04.2014
XII	Date of Execution of BBA	20.05.2014
XIII	Due date of possession as per BBA	
XIV	Delay in handing over possession till date	More than two 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. 71,66,975/-
XVII	Total amount paid by the complainant	Rs.37,13,649/-

II

Project related details Complaint No.1073 of 2020

I.	Name of the project	"ILD ARETE" Sector 33, Sohna Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential

Unit related details

IV.	Unit No. / Plot No.	2002
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V.	Tower No. / Block No.	Tower C, 19 th Floor
VI	Size of the unit (super area)	Measuring 118.45 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)	04.04.2014
XI	Date of provisional allotment(original)	08.06.2015
XII	Date of execution of BBA	20.06.2015
XIII	Due date of possession as per commitment made at the time of booking	48 months + six months grace period
XIV	Delay in handing over possession till date	More than two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	Rs.5/- per sq ft per month for the delayed period

Payment details

XVI	Total sale consideration	Rs. 71,16,975/-
XVII	Total amount paid by the complainant	Rs. 48,19,,864/-

III

Project related details Complaint No.1080 of 2020

I.	Name of the project	"ILD ARETE" Sector 33, Sohna Gurugram
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II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	C-2001
V.	Tower No. / Block No.	19 th Floor
VI	Size of the unit (super area)	Measuring 123.10 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)	10.04.2014
XI	Date of provisional allotment(original)	30.06.2014
XII	Date of execution of BBA	01.07.2014
XIII	Due date of possession as per commitment made at the time of booking	
XIV	Delay in handing over possession till date	More than two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA as per clause 10.11.	Rs.5/- per sq ft per month for the delayed period

Payment details

XVI	Total sale consideration	Rs. 71,16,975/-
XVII	Total amount paid by the complainant	Rs. 50,49,387/-

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3. Brief facts of the case as mentioned in the above tabulated form for deciding the controversy in question are that a project known by the name of "ILD Arete' Sector 33, Sohna(Gurugram) was to be developed by the respondent-builder. The complainants coming to know about the same, booked residential units detailed above for a total sale consideration of Rs.71,66,975/- and deposited different amounts detailed above. It is the case of the complainants that the Builder Buyer Agreement between the parties were executed on **20.05.2014, 20.06.2015 and 01.07.2014** respectively. The due date for completion of the project and offer of possession of the allotted unit was four years with a grace period of six months. But despite deposit of different amounts with the respondent, it failed to complete the project and offer possession of the allotted units to them. So, after the due date, they withdrew from the project and filed the present complaints seeking refund of the amount deposited with the respondent-builder besides interest and compensation.

4. But the case of the respondent-builder as set up in separate written replies is otherwise and who took a plea that though the complainants were allotted residential units in its project detailed above but they did not adhere to the schedule of payment and committed default in making timely payments. It was denied that the project is not going to be completed in the near future. Though the builder buyer agreements were executed between the parties to the dispute but the allottees failed to comply with their contractual obligations and committed default in making scheduled payments. Moreover, the complainants are investors and who just want to earn profit from booking of the units in question. It was pleaded that the construction of the project in which the units have been allotted to the complainants is going at a fast pace and more than 40% of the work has been completed. It was denied that the respondent-builder is not going to

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complete the project by the due date and offer possession of the allotted unit to the complainants including other allottees. There is an obligation on the respondent to complete the first phase of the project by July, 2022 and construction of the whole project by July, 2024 as per registration with the Hon'ble RERA Authority, Gurugram(R/2). Lastly, it was pleaded that the complaints filed against the respondent are premature as the matter is sub-judice before the Hon'ble Apex Court of the land.

5. All other averments made in the complaints were denied in toto.

6. I have heard the learned counsel of both the parties and have perused the case file.

7. It is not disputed that the complainants booked the respective unit detailed above in the project of the respondent-builder known as ILD Arete, situated in Sector 33, Sohna(Gurugram) for a total sale consideration of Rs.71,66,975/- and deposited different amounts detailed above with it. Though the builder buyer agreements were executed between the parties on 20.05.2014, 20.06.2015 and 20.06.2015 respectively but the time for completion of the project and handing over possession of the allotted units as per clause 10.1. of that document ^{was} ~~is~~ 48 months with a grace period of six months. It is not disputed that upto now neither the project is complete nor possession of the allotted units has been offered to the complainants by the respondent-builder. The due date for completion of the project and offer of possession of the allotted unit to the complainants has already expired. The complaints seeking refund of the amount deposited with the respondent-builder were filed in the years 2019 and 2020 respectively. The plea of the respondent-builder is that its project is already registered with the RERA Gurugram and the first phase of the same is likely to be completed by July, 2022 and the possession of the allotted units would be

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offered to the complainants and other allottees by that date. Now, the question arises, as to whether the complainants can be asked to wait upto that period for completion of the project and offer of possession of the allotted unit, the answer is in the negative. First of all, the respondent-builder failed to comply with the contractual obligations. Secondly, even the construction of the project is stated to be in full swing but whether the respondent-builder filed any quarterly progress report with the Hon'ble Authority and a copy of the same was annexed with the written statement. The answer is in the negative. Then, while filing the written statement, a copy of registration certificate of real estate project 'ILD Arete' Annexure R/5 has been placed on the file. But a perusal of Annexure R/6 attached with that document does not depict the true picture, ^{i.e.} the stage and extent of construction of the project at the site. If the project of the respondent-builder is complete upto 40% or upto 75% as per averments made in paras 4 and 5 of the written reply, then the best evidence would have been an affidavit of a responsible person connected with the construction activities. But no such effort was made which shows that the oral pleas taken by the respondent-builder is just after thought to defeat the claim of the allottees. 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 dates have 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

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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 of the respondent that it would complete the construction by July, 2022 and hand over possession of the allotted unit to the complainants is devoid of merit.

8. The second plea advanced on behalf of the respondent is that though there is delay in completion of the project but that is due to various reasons such as delayed payments by the complainants as well as other allottees, demonetisation, levy of new taxes and enactment of new laws and various other factors. Moreover, the project is at an advanced state and after completion, possession of the allotted units would be handed over to the complainants and other allottees by July, 2022. But again the plea advanced in this regard is devoid of merit. The due date for completion of the project and offer of possession of the allotted units to the complainants was Oct/Nov. 2018. The complainants waited for more than two years for completion of the project and to get possession of the allotted units. Even, the respondent-builder failed to place on record the latest stage of the project and the units to the complainants. So, ultimately, that led to filing of complaints seeking refund of the amount deposited with the respondent. There may be demonetisation and levying of new taxes etc but that could not be ground to condone delay in completion of the project. It could have been understandable if there is delay of one year in completion of the project. A period of more than two years is going to expire after the due date. Even during the course of arguments, it is pleaded that the construction of the project would be completed by July, 202 and then possession of the allotted units would be offered to the complainants. So, all this shows that the respondent failed to fulfil its contractual obligations

to complete the project and hand over possession of the allotted units to the

complainants by the due date. So, in such a situation, no fault in this regard could be found on the part of the complainants. All this shows that the respondent miserably failed to fulfil its contractual obligations to complete the project and offer possession of the allotted unit to the complainants by the due date.

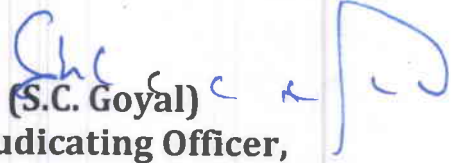
9. Thus, in view of my discussion above, the complaints filed by the complainants are hereby ordered to be accepted. Consequently, the following directions are hereby ordered to be issued:

- i) The respondent is directed to refund a sum of Rs.37,13,649/- and Rs.48,49,864/- and Rs. 50,49,387/- respectively to the complainants 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 each of 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.

10. A copy of this order be placed in the connected case files No.1073/2020 and 1080/2020.

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