

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

Complaint no. : 3414 of 2020
First date of hearing: 01.12.2020
Date of decision : 09.03.2022

International Land Developers Pvt. Ltd.
Address: - 9th Floor, ILD Trade Center, Sector-
47, Sohna Road, Gurgaon

Complainant

Versus

1.Col. Baldev Raj Arora
2.Mrs. Prema Arora
Address: - H.no. 167, sector-17,
Defence Colony, Gurgaon

Respondents

CORAM:
Dr. K.K Khandelwal
Shri V.K. Goyal

**Chairman
Member**

APPEARANCE

Sh. Pankaj Chandola
Shri Rakesh Mittal

Advocate for the complainant
Advocate for the respondents

ORDER

17. The present complaint dated 16.10.2020 has been filed by the complainant/promoter in Form CRA 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 19(6) (7) and (10) of the Act.

A. Project and unit related details

18. The particulars of the project, the details of sale consideration, the amount paid by the respondents, 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", village Dhunela, sector-33, Gurugram, Haryana
2.	Nature of the project	Group housing complex
3.	Project Area	11.6125 acres
4.	RERA registration status	Registered Registered vide no. 06 of 2019 issued on 08.02.2019 valid up to 02.07.2022
5.	DTCP license no.	44 of 2013 dated 04.06.2013 valid upto 03.06.2019
6.	Name of licensee	International land Developers Pvt. Ltd.
7.	Unit no.	C-904, 9 th floor, Tower-C [Annexure C-7 on page no. 59 of complaint]
8.	Unit area	1275 sq. ft. [Annexure C-7 on page no. 59 of complaint]
9.	Date of booking	28.12.2013 [page no. 43 of complaint]
10.	Allotment letter	13.09.2014 [annexure C-6 on page no. 51 of complaint]
11.	Date of builder buyer agreement	01.11.2014

		[annexure C-7 on page no. 55 of complaint]
12.	Total sale consideration	Rs. 71,05,775/- [As per statement of account on page no. 115 of reply]
13.	Amount paid by the respondents	Rs. 39,79,536 /- [As per statement of account on page no. 115 of reply]
14.	Percentage of amount paid	56%
15.	Payment plan	Construction linked payment plan [as per page no. 112 of complaint]
16.	Due date of possession	01.05.2019 [calculated from the date of agreement including the grace period of 6 months]
17.	Possession clause 10.1	10.1 <i>Subject to the timely grant of all approvals (including revision thereof), permissions certificates, NOCs, permission to operate, full /part occupation certificate etc. and further subject to the buyer having complied with all its obligations under the terms and conditions of this agreement, and subject to all the buyers of the apartments in the project making timely payments including but not limited to the timely payment of the total sale consideration, stamp duty and other charges, fees, IAC, levies and taxes or increase in levies and taxes IFMSD, Escalation charges, deposits</i>

		<i>additional charges to the developer and also subject to the buyer having complied with all formalities or documentation as prescribed by the developer, the developer shall endeavour to complete the construction of the said apartment within 48 months from the date of execution of this agreement and further extension/grace period of 6 months.</i>
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint

19. That the complainant is a private limited company, registered and incorporated under the companies act, 1956 and having its registered office at B-418, New friends Colony, New Delhi - 110025 and Head office ILD Trade Centre, sector -47, Sohna road, Gurgaon, Haryana -122001.
20. That the DTCP, Haryana granted a license bearing no. 44 of 2013, in favour of M/s. International Land Developers Pvt. Ltd and others for setting up a group housing colony at sector 33, Dhunela, Sohna, Gurugram for the purpose of selling, marketing and development of the project, "ARETE" located at sector 33, Dhunela, Sohna, Gurugram, Haryana.
21. That the respondents made an application for booking as stated above in the complainant's project, "ARETE" subject to other terms and conditions including the 'payment schedule'

thereof for the basic sale price of Rs.58,75,200/- excluding other charges and made a payment of Rs.3,00,000/- as booking amount on 14.12.2013 at the time of booking as per the payment Schedule. The complainant raised acknowledgement receipts dated 28.12.2013 against the payment paid by the respondents.

22. That as per the payment schedule the respondents were supposed to make the payments within sixty days of application. The complainant raised a demand dated 06.02.2014 amounting Rs. 9,61,822/- which was payable by 15.02.2014 against which complainant received payment on 20.02.2014.
23. That as per the payment schedule, respondents were supposed to make the payment on account of start of excavation and due of allotment. The complainant raised a demand invoice dated 1.05.2014 amounting Rs. 6,52,399/- which was payable latest by 31.05.2014 against which complainant issued a reminder notice dated 23.06.2014 requested to pay the outstanding of Rs. 6,52,399 and intimating the respondents to pay latest by 05.07.2014, to which they did not give any heed to pay. Subsequently, the complainant issued another reminder notice against the respondents dated 21.07.2014 requested to pay the outstanding which was stated in above mentioned previous reminder and demand invoice, to which they did not give any heed to pay.

24. That as per the payment schedule, respondents were supposed to make the payment on account of start of excavation and due of allotment. Despite, of issuing a demand invoice and two reminder notices, the respondents did not give any heed to pay the said amount raised within the due intimated in the last reminder notice dated 23.06.2014 after the expiration of 30 days from the due date i.e., on 27.08.2014 received payment vide RTGS No. 654006 paid amount of Rs.6,52,399/-.
25. That the complainant issued an allotment letter on 13.09.2014 in favour of the respondents. Further on 01.11.2014 an agreement was executed between the parties and the respondents availed the construction linked plan.
26. That as per the payment plan the respondents were supposed to make the payment on completion of upper basement roof slab instalment for which demand invoice was raised amounting to Rs. 7,67,714/- dated 11st August 2015 which was still pending despite of issuing demand Letter dated 13.08.2015 by the complainant against them to pay the amount raised in the demand invoice and requested to pay by latest 30.08.2015 to avoid interest.
27. That the complainant issued a reminder notice and reminder letter via E-Mail dated 14.09.2015, 22.09.2015 for instalments against the above-mentioned unit C-904 allotted to the respondents on the "milestone of completion of upper basement roof slab" whose due date got exceeded by more

than 23 days and a sum of Rs. 5,15,911/- was still pending despite of sending prior demand letter, reminder notice requesting to pay the said instalments on or before 30.08.2015 to avoid interest but the prescribed time got exceeded which resulted in the accumulation of interest and the respondents did not give any heed to pay the outstanding.

28. That the complainant received a part payment of Rs. 2,60,000/- on 15.09.2015. The complainant did not receive the full amount which was raised by it in the previous demand letter. This caused financial turmoil to it and the respondents have to remit the remaining outstanding which created a big burden for complainant to rotate such big amount thus again it issued a reminder notice dated 13.10.2015 requesting the respondents to clear the remaining outstanding of Rs. 2,55,911/- which was pending despite of issuing various reminder notice prior to this notice.
29. That the complainant received a part payment of Rs. 2,47,714/- on 15.10.2015 and issued acknowledgement receipt on 23.10.2015.
30. That the complainant raised demand cum invoice dated 19.01.2016 and 27.04.2016 against the respondents for which they were supposed to make the payment on the milestone of "completion of fourth floor roof slab" instalment amounting of Rs.07,00,216 including the outstanding amount of Rs.8,197/- and milestone of "completion of eighth floor roof slab" instalment amounting to Rs.14,02,142/- as per the

payment plan including the previous outstanding amount to Rs.7,06,928/- which was still pending despite of issuing demand letter dated 22.01.2016 and 30.04.2016 by the complainant against the respondents to pay the amount raised in the demand Invoice and to pay by latest 10.02.2016 and 18.05.2016 to avoid interest .

31. That the complainant received a part payment of Rs. 5,00,000/- and Rs. 4,00,000 on 28.09.2016, 14.10.16 against the respondents on account of milestone "on completion of fourth floor roof slab and eighth floor roof floor slab".
32. That the complainant received a part payment of Rs. 4,00,000/- on 30.10.2017 against the respondents on account of milestone "on completion of fourth floor roof slab and eighth floor roof floor slab."
33. That due to non-payment of the outstanding payment the complainant faced financial agony as it had to pool its own financial sources as the respondents chose the construction linked plan and on non-payment it resulted in financial burden on the complainant.
34. That the respondents by failing in making payments as per the schedule have put the complainant to harm and also put to risk the execution of the whole project.

C. Relief sought by the complainant

35. The complainant has filed the present complaint for seeking following reliefs:

- i. Direct the respondents to pay the due instalment along with interest as per the agreement from the date of amounts became due for payment till the date of actual payment.

D. Reply by the respondents

36. That the respondents made a payment of Rs. 3,00,000/- on 14.12.2013 and made a booking of the above said unit. Respondents further stated that when booking was made no payment plan was discussed and only a formal application was signed by them.
37. That as and when the demand invoices were received by the respondents, they cleared the said dues within the time. The respondents made a payment of Rs. 4,61,822/- and 5,00,000/- on 14.02.2014 via two cheques.
38. That no such demand invoice dated 01.05.2014 was received by the respondents therefore they were unaware whether any kind of payment was to be made by them. The respondents made the payment of Rs.6,52,399 on 04.09.2015. The allotment letter was not issued to the respondents, so they were unaware as to how much payment is to be made and when it is to be made.
39. That the complainant did not issue the allotment to the respondents even after receiving the sum of Rs. 19,14,221/-.

40. That the allotment letter was issued by the complainant to the respondents on 13.09.2014 after passing almost 9 months when the advance was paid by them.
41. That the builder buyer agreement between the parties was signed on 01.11.2014.
42. That the respondents wrote letter to the complainant, requesting to make the payment in instalments. As per that letter, respondents made a payment of Rs. 7,67,714/- in instalments. The respondents never raised any objection with regard to the payment nor asked for any interest and accordingly, it accepted the payments.
43. That the respondent no. 1 got hospitalized on 14.04.2016 and remained there for about 2 months and finally could not recover and died on 02.06.2016. So, the demand invoice dated 22.01.2016, 30.04.2016 were not received by the respondents. The respondent no.2 informed about the sad demise of her husband (respondent no.1) to the complainant vide letter dated 21.07.2016.
44. That the respondents made the payments as soon as same were demanded. The respondents made the payments of Rs.2,50,000/- on 22.07.2016, Rs. 4,00,000/- on 20.08.2016, Rs. 5,00,000/- on 28.09.2016, Rs. 4,00,000/- on 14.10.2016.
45. That respondent no. 2 had applied for change of name of the owner. She had submitted all the relevant documents with the complainant to change the name of the owner but needful was not done by it till date. That Col. Baldev Raj Arora (respondent

no. 1) died intestate and is survived by his wife Mrs. Prema Arora and his two daughters namely Ms. Umang Arora and Ms. Binwa Sethi as his legal heirs. That on 13.11.2019, a letter was written to the complainant by respondent no.2 and Ms. Umang Arora to delete their name from the ownership of the flat bearing no. C-904 and replace their name with the name of Mrs. Binwa Sethi along with the requisite documents which were duly received in the office of the complainant. respondent no.2 has been trying her level best to get the same thing done but nothing has been done by the complainant in this regard.

46. That the respondents had made the payment of Rs.46,31,935/- and the construction is not complete yet and also the request for changing the name of the owner was not done by the complainant.

E. Jurisdiction of the authority

47. 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

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 entire Gurugram District for all purpose 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 completed territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of allottee as per section 19(6), (7) and (10) leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Finding on the relief sought by the complainant

48. Relief sought by the complainant:

- i. Direct the respondents to pay the due instalment along with interest as per the agreement from the date of amounts became due for payment till the date of actual payment.**

49. The complainant submitted that the respondents/allottees have failed to abide by the terms and conditions of the buyer's agreement by not making the payments in timely manner as per the payment plan opted by the allottees and by not taking the possession of the unit in question as per the terms and conditions of the buyer's agreement. Further cause of action also arose when despite repeated follow-ups by the complainant and the complainant having performed its contractual obligations, the respondents/allottees withheld to perform their contractual obligation. The respondents/allottees shall make the requisite payment as per the provision of section 19(6) of the Act and as per section

19(7) of the Act to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Proviso to section 19(6) and 19(7) reads as under:

"Section 19: - Right and duties of allottees. -

*19(6) states that every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.*

19(7) states that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

49. As per clause 8 of the buyer's agreement, the respondents/allottees were liable to pay the Installment as per payment plan opted by the respondents/allottees. Clause 8 reproduced as under:

Clause 8.1. It is hereby agreed by the parties that time is the essence under this agreement and the buyer shall timely payment of each instalment of the Total Sale Consideration as per the payment plan opted and other charges, taxes, escalation charges, securities, additional charges, deposits including any interest or penalty payable under this agreement in accordance with the timelines indicated herein and timely performance by the buyer of all his obligations under this agreement, and for the developer to complete the construction of the said apartment.

50. The respondents/ allottees took a plea that the allotment letter was not issued to them and so they were unaware as to

how much payment is to be made and when was to be made. The respondents till date have paid an amount of Rs. 39,79,536/- towards the total sale consideration of Rs. 71,05,775/- which constitutes the 56% of the total sale consideration. It is pertinent to note that no project completion status of particular tower is given in which the unit of the allottees is situated.

51. The counsel for the respondents has stated at bar that respondent no.1/allottee has passed away and even after making repeated requests to complainant/promoter, the unit was not transferred in the name of legal heirs of the deceased respondent. The complainant/ promoter in such a case is directed that it should endorse the transfer in the name of legal heirs within 7 days otherwise penalty on daily basis shall be imposed.
52. The payment plan is a construction linked payment plan and hence, the complainant/promoter is directed to submit the sufficient proof of raising payments from the allottees on the basis of construction as per the construction link plan.
53. The authority is of the view that there is no ground to allow the cancellation of the allotted unit till the transfer of the above flat in name of legal heirs of the allottee by the builder providing adequate and genuine justification of it.
54. Further the authority is of the view that the interest rate charged by the complainant/promoter on the delayed payment is one-sided and arbitrary. The rate of interest chargeable from the allottees by the promoter, in default, shall

be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. 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., 09.03.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%. Therefore, interest on the delay payments from the allottee shall be charged at the prescribed rate i.e., 9.30% by promoter.

28. In the present complaint, the respondents/allottees intends to continue with the project. Since there is a delay on the part of the complainant/ promoter to handover the physical possession of the unit to the legal heirs of allottees, so they are also entitled for delay possession charges as per the proviso of section 18(1) of the Act, 2016. 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."

27. Clause 10 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 10.1- Subject to the timely grant of all approvals (including revision thereof), permissions certificates, NOCs, permission to operate, full /part

occupation certificate etc. and further subject to the buyer having complied with all its obligations under the terms and conditions of this agreement, and subject to all the buyers of the apartments in the project making timely payments including but not limited to the timely payment of the total sale consideration, stamp duty and other charges, fees, IAC, levies and taxes or increase in levies and taxes IFMSD, Escalation charges, deposits additional charges to the developer and also subject to the buyer having complied with all formalities or documentation as prescribed by the developer, the developer shall endeavour to complete the construction of the said apartment within 48 months from the date of execution of this agreement and further extension/grace period of 6 months.

28. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the allottee not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
29. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both

builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The allottees does not intend to withdraw from the project, so they shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed 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 sub-section (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.

31. 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.
32. 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., 09.03.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% per annum.
33. The definition of term 'Interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

34. Therefore, interest on the delay payments from the allottees shall be charged at the prescribed rate i.e., 9.30% p.a. by the complainant/promoter which is the same as is being granted to the later in case of delay possession charges.

35. On consideration of the circumstances, the evidence, the record and submissions made by the parties, the authority observes that Mrs. Prema Arora being one of the allottee along with her deceased husband col. Baldev Raj Arora booked the subject unit with the complainant/ promoter for a total sale consideration of Rs.71,05,775/- .They were issued a letter of allotment on 13.09.2014. It also led to the execution of the buyer's agreement dated 01.11.2014. The allotment of the unit was made by the complainant/ promoter under the construction linked payment plan. The due date of possession was fixed as 01.05.2019. It has come on record that allottees have already paid Rs. 39,79,536/- i.e., 56% of the total sale consideration upto now. However, one of the allottee col. Baldev Raj expired and the complainant/builder failed to transfer the subject unit in the name of his legal heirs despite making a request in this regard vide letter dated 21.06.2016. As period of more than 5 years has expired so, in such a

situation, the complainant/ builder is directed to first of all endorse/transfer the unit in the name of legal heirs of the one of the deceased allottee within 7 days otherwise penalty on daily basis would be imposed. Since, the subject unit was booked under a construction linked payment plan. So, that the builder is directed to submit the sufficient proof of construction as per the plan before making its payment by the legal heirs of the allottee.

36. There is also no ground to allow cancellation of the allotted unit till transfer of it in favour of legal heirs of one of the allottee providing adequate & genuine justification of it.
37. The due date of possession for handing over of possession of the allotted unit was fixed as 01.05.2019. There is delay of more than 2^{1/2} year in completing the project and offering the possession of the allotted unit to the allottees. So, they are also entitled for delay possession charges as per the proviso to section 18 (1) of the Act, 2016. Similarly interest for delayed payment for the allotted unit would also attract interest at prescribed rate but only as per construction linked payment plan and if the same has not been paid accordingly.

G. Directions of the authority: -

55. 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) of the Act:

- i. The respondent/allottees shall make the requisite payments and take the possession of the subject apartment as per the provisions of section 19(6), (7) and (10) of the Act, as per the construction linked payment plan failing which the complainant/builder shall be free to proceed as per the terms of the buyer's agreement and as per provisions of law.
- ii. The complainant/builder also shall pay interest at the prescribed rate i.e., 9.30% per annum for every month of delay on the amount paid by the allottees from due date of possession i.e., 01.05.2019 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 9.30% which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The complainant/builder shall not charge anything from the allottees which is not the part of buyer's agreement.
- v. The complainant/ builder is directed to endorse/ transfer the ownership of the allotted unit in the name of legal heirs of the allottee col. Baldev raj arora within 7 days otherwise penalty shall be imposed on daily basis.

56. Complaint stands disposed of.

57. File be consigned to registry.


(V.K. Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 09.03.2022



HARERA
GURUGRAM