



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

Complaint No. 1314 of 2019

Complaint no. : 1314 of 2019
Date of first hearing : 27.08.2019
Date of decision : 25.02.2020

Mr. Premjit Dugal
R/o.C2/1002, Uniworld City, Sector-30,
Gurugram-122001.

Versus

M/s Ireo Grace Realtech Pvt. Ltd.
Office at: C-4, 1st floor, Malviya Nagar,
New Delhi- 110017.

Complainant

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Rit Arora and Shri Pawan Kumar Ray Advocates for the complainant
Shri M.K Dang and Shri Garvit Gupta Advocates for the respondent

ORDER

1. The present complaint dated 26.03.2019 has been filed by the complainant/allottee 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 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions to the allottee as per the apartment buyer's agreement executed inter se them.

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

1.	Name and location of the project	"The Corridors" in Sector 67-A, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	601, 6 th floor, Tower C5
4.	Unit area	1592.70 sq. ft.
5.	Project area	37.5125 acres
6.	DTCP license	05 of 2013 dated 21.02.2013 valid/renewed upto 20.02.2021
7.	Name of the licensee	Precision Realtors Pvt. Ltd. and other (as per apartment buyer's agreement dated 30.04.2014 and also DTCP record)
8.	RERA Registered/ not registered	Registered vide no. 378 of 2017 (for phase I) dated 07.12.2017 Registered vide no. 377 of 2017 (for phase II of 13.152 acres of project land of 13.25 acres) dated 07.12.2017 Registered vide no. 379 of 2017 (for phase III of 8.628 acres of project land) dated 07.12.2017
9.	Revised date of completion as per RERA registration certificate	30.06.2020 (for Phase I and II) 31.12.2023 (for Phase III)
10.	Date of building plan approval	23.07.2013 (Annx R24, Pg. 72 of the reply)



11.	Date of environmental clearance	12.12.2013 (Annx R 15, Pg. 80 of the reply)
12.	Date of Fire scheme approval	27.11.2014 (Annx R 16, Pg. 91 of the reply)
13.	Date of apartment buyer's agreement	30.04.2014 (Pg. 37 of the complaint)
14.	Total consideration	Rs. 1,79,68,592/- /- (as per SOA dt. 11.06.2019, copy filed by the respondent)
15.	Total amount paid by the complainant	Rs. 1,53,57,180/- (as per SOA dt. 11.06.2019, copy filed by the respondent)
16.	Payment plan	Construction linked plan
17.	Occupation certificate received on	31.05.2019 (filed by the respondent)
18.	Date of offer of possession letter	11.06.2019 (copy filed by the respondent)
19.	Due date of delivery of possession as per the agreement Clause 13.3 - 42 months from date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days' grace period	27.11.2018 Note - Due date of delivery of possession has been calculated from the date of fire NOC.
20.	Delay in handing over possession till offer of possession	6 months and 15 days.
21.	Relief sought (in specific terms)	<ul style="list-style-type: none">• Direct the respondent to handover the possession of the apartment alongwith delay possession charges at the prescribed rate of interest.

3. As per the apartment buyer's agreement in question vide clause no. 13.3 the possession was to be handed over within a period of 42 months from the date of sanction of building plans and/or



fulfilment of the preconditions imposed thereunder + 180 days' grace period. The relevant clause of the apartment buyer's agreement reads as under:-

*".....the Company proposes to offer the possession of the said apartment to the Allottee within a period of 42 (Forty Two) months from the date of approval of the Building plans and/or fulfilment of the preconditions imposed thereunder. ("**Commitment Period**"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days' ("**Grace Period**")....."*

4. On the basis of documents made available by the respondent, the building plans were approved by the competent authority vide letter no.46743 dated 23.07.2013 with a condition under clause 17 (iv) that the colonizer shall obtain the clearance/NOC as per the provisions of notification no.S01533 © dated 14.09.2006 issued by the Ministry of Environment & Forest, Government of India, before starting the construction/execution of development works at site. The environment clearance has been obtained on 12.12.2013 wherein under clause 39 there is pre-requisite compliance regarding fire safety approval from the fire department before the start of construction. The fire approval from the competent authority has been obtained by the promoter on 27.11.2014. As per clause 35 of environment clearance certificate dated 12.12.2013, the project proponent shall obtain permission of Mines & Geology Department for excavation of soil before the start of construction. Requisite permission from the Department of Mines and Geology Department has been

obtained on 4.3.2014 (copy of the same placed on record). As such, the date of start of construction comes out to be 27.11.2014.

5. Possession of the apartment has been offered on 11.06.2019 i.e. after a delay of more than six months. Hence, this complaint for the aforementioned reliefs.
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.
7. The respondent contests the complaint on the following grounds:-
 - i. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 35 of the buyer's agreement;
 - ii. That when the complainant had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be applied retrospectively;
 - iii. That the respondent had raised payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and the complainant made some payments in time and then started delaying and committing defaults;

- iv. That the complainant has made the payment of the earnest money and part-amount of Rs. 1,53,57,179.64/- out of the total sale consideration of Rs.1,56,64,007.26/- and is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage;
- v. That the possession of the unit is supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 13.3 of the buyer's agreement and clause 43 of the schedule - I of the booking application form stated that '*...subject to the allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the preconditions imposed thereunder (Commitment Period). The allottee further agrees and understands that the company shall be additionally be entitled to a period of 180 days (Grace Period)...*'. Furthermore, the complainant has further agreed for an extended delay period of 12 months from the date of expiry of the grace period as per clause 13.5 of the apartment buyer's agreement. Clause 13.5 reads as under: -

"Subject to Clause 13.3, in the event of delay by the Company in offering the possession of the said Apartment beyond a period of 12 months from the end of the Grace Period (such 12 month period hereinafter referred to as the "**Extended Delay**

Period”), then the Allottee shall become entitled to opt for termination of the Allotment/Agreement and refund of the actual paid up instalment (s) paid by it against the said Apartment after adjusting the interest on delayed payments along with Delay Compensation for 12 month. Such refund shall be made by the Company within 90 days of receipt of intimation to this effect from the Allottee, without any interest thereon. For the removal of doubt, it is clarified that the Delay Compensation payable to the Allottee who is validly opting for termination, shall be limited to and calculated for the fixed period of 12 months only irrespective of the date on which the Allottee actually exercised the option for termination. This option may be exercised by the Allottee only up till dispatch of the Notice of Possession by the Company to the Allottee whereupon the said option shall be deemed to have irrevocably lapsed. No other claim, whatsoever, monetary or otherwise shall lie against the Company and/or the Confirming Parties nor be raised otherwise or in any other manner by the Allottee”;

- vi. That the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that his calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to somehow get out of the concluded contract made by him on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed;
- vii. That the construction could not be completed within time due to the reasons described in the reply (force majeure) which

were beyond the control of the respondent. Hence, it is prayed that the complaint be dismissed.

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 on the basis of these undisputed documents.

9. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of the considered view that there is no need of further hearing in the complaint.

10. Arguments heard.

11. Counsel for the respondent has submitted that due to force majeure i.e. restriction/ban on construction activity by the order of NGT and other authorities, they could not complete the project within the stipulated period as per clause 13.3 of the apartment buyer agreement and hence the benefit of extended delay period as provided in clause 13.5 must be given to the respondent. However, counsel for the complainant has raised an issue that six months' grace period beyond 42 months has already been given in this case as per clause 13.3 of the agreement and therefore, additional grace period due to ban imposed by the NGT or any other authorities may not be allowed in case such total ban does not exceed six months' period. The Authority is also of the considered opinion that after having availed the grace period of 180 days' the respondent must not be allowed further time much less the said so-called extended delay period as stipulated in

clause 13.5. Hence, keeping in view the facts and circumstances of the matter, the additional extended grace period of 12 months due to the ban imposed by the NGT or any other authorities is not allowed to the respondent in terms of clause 13.5 of the agreement. The stipulation made in clause 13.5 of the BBA is too vague to understand. It has not been clarified under which circumstance additional extended delay period was required to be availed by the respondent.

12. Clause 13.3 describes the period within which construction had to be completed and possession of the apartment handed over to the complainant. This clause granted 180 days' grace period to the respondent. Still not satisfied with this grace period the respondent again wants to availed 12 months' extended delay period in clause 13.5 and not in clause 13.4 of the agreement which deals with the award of delay compensation. In our considered opinion, clause 13.5 is onerous, one sided and gives undue benefit to the respondent and it amounts to unfair trade practice on the part of respondent. Hence, the contention raised on behalf of the respondent is rejected.

13. As regards issue of arbitration is concerned it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force.

14. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the

arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The same analogy shall apply to the complaint cases filed before the Authority under the Act. Section 89 of the Act makes the things crystal clear. Section 89 of the Act reads as under:-

"The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

Section 89 does not call for any interpretation. The Act being latter in time shall have overriding effect over the Arbitration and Conciliation Act, 1996. Consequently, the Authority is not bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

15. On consideration of the circumstances, the evidence and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority observes that the building plans were approved by the competent authority vide letter no. 46743 dated 23.07.2013 with a condition under clause 17 (iv) that the colonizer shall obtain the clearance/ NOC as per the provisions of notification no. S01533 (c) dated 14.09.2006 issued by the ministry of Environment and Forest, Government of

India, before starting the construction/ execution of development works at site. The environment clearance has been obtained on 12.12.2013 wherein under clause 39, there is pre - requisite compliance regarding fire safety approval from the fire department before the start of construction. The fire approval from the competent authority has been obtained by the promoter on 27.11.2014. Moreover, as per clause 35 of the environment clearance certificate dated 12.12.2013, the proponent is required to obtain permission of mines and geology department for excavation of soil before the start of construction. Requisite permission from the mines and geology department has been obtained in this case on 04.03.2014.

16. As such, the date of start of construction comes out to be 27.11.2014 which is the date when the permission from fire department has been obtained by the promoter in pursuance of clause 39 of the environment clearance before start of construction. As per clause 13.3 of the apartment buyer's agreement dated 30.04.2014 the due date of delivery of possession has been worked out to be 27.11.2018. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 30.04.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondents is established.

17. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act :-

- a. The respondent is directed to pay delayed possession charges at the prevalent prescribed rate of interest of 10.15% p.a. with effect from 27.11.2018 (due date of delivery of possession) till the offer of possession i.e. 11.06.2019 in terms of section 18(1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 90 days from the date of this order.
- b. The complainant is directed to take possession of the apartment within a period of one month from the date of order after paying outstanding dues, if any with the prescribed rate of interest of 10.15% per annum as awarded to him in the form of delayed possession charges.

18. The complaint is disposed of accordingly.

19. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 25.02.2020