

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

**Complaint no.** 5976 of 2019  
**Date of First Hearing:** 07.01.2020  
**Date of Decision** 25.02.2020

**Mrs. Kamal Nain Swanni**

**R/o:** R-5, 2<sup>nd</sup> floor, Greater Kailash- I,  
New Delhi- 110018.

**Complainant****M/s Ireo Pvt. Ltd.**

**Office at:** Ireo Campus, Archview Drive,  
Ireo City, Golf Course Extension Road,  
Gurugram- 122101.

**Respondent****CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Kuldeep Kumar Kohli Advocate for the complainant  
Shi M.K. Dang and Garvit Gupta Advocates for the respondent

**ORDER**

1. The present complaint dated 27.11.2019 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	'Gurgaon Hills', sector-2, village-Gwal Pahari, Gurugram, Haryana
2.	Nature of real estate project	Group housing colony
3.	Area of the project	11.07 acres
4.	Apartment no.	A 08-31, 8th floor, tower A
5.	Area of unit	4786.83sq. ft. (super area)
6.	DTCP License No.	36 of 2011 dated 26.04.2011
7.	Registered/not registered	<b>Not Registered</b>
8.	Date of apartment buyer's agreement	13.06.2013 ( <b>Pg. 76 of the complaint</b> )
9.	Total consideration	Rs.5,78,62,052/- <b>(As per payment plan, Pg. 50 of the complaint)</b>
10.	Total amount paid by the complainant	Rs. 3,71,86,345/- <b>(As per final notice of termination letter dt. 04.01.2017, Pg. 95-97 of the reply)</b> • <b>Note - Rs. 4,76,50,165/- is the amount paid as alleged by the complainant.</b>
11.	Due date of delivery of possession as per the agreement. <b>Clause 14.4- 42 months</b>	26.12.2017 <b>Note :- the due date of possession is calculated from date of fire approval NOC i.e.</b>



	plus 180 days grace period from date of approval of buildings plans and fulfilment of preconditions imposed thereunder.	<b>26.12.2013 annexed as Annexure R-32 on Pg. 107 of the reply</b>
12.	Payment plan	Construction linked payment plan ( <b>Annexed on Pg. 70 of the complaint</b> )
13.	Status of project	ongoing Note - Applied for occupation certificate on 24.09.2018 ( <b>Annx R 35, Pg. 112 of the reply</b> )
14.	Date of issuance of cancellation letter by the respondent	10.02.2017 ( <b>Annx R29, Pg. 96 of the reply</b> )
15.	Delay in handing over the possession till 25.02.2020	2 years, one month and 30 days
16.	Relief sought (in specific terms)	<ul style="list-style-type: none"> <li>• Direct the respondent to procure the occupation certificate and handover the possession of the apartment after receipt of occupation certificate.</li> <li>• Direct the respondent to pay delay possession charges at the prescribed rate of interest for every month of delay.</li> <li>• Direct the respondent not to raise any demand from the complainant and to first adjust the amount of interest payable from any future legal demand.</li> <li>• Direct the respondent to allow inspection of the allotted apartment in the project.</li> </ul>

3. As per the apartment buyer agreement in question vide clause no. 14.4 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.8582 dated 17.05.2012 (Annexure R30 of the reply) with a condition under cause 17 (v) that the colonizer shall obtain the clearance/NOC as per the provisions of notification no.SO1533 (E) 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 26.06.2013 (Annexure R31 of the reply) wherein under clause 22 there is pre-requisite compliance regarding fire safety approval from the fire department before the start of construction.

5. The fire approval from the competent authority has been obtained by the promoter on 26.12.2013 (Annexure R32 of the reply). As per clause 35 of environment clearance certificate dated 26.06.2013, 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 26.12.2013.

6. Possession of the apartment has not been offered till date. Hence, this complaint for the aforementioned reliefs.

7. 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.

8. The respondent contests the complaint on following grounds:-

- i. That the complainants, after checking the veracity of the project namely, 'Ireo Gurgaon Hills', had applied through their channel partner for allotment of an apartment vide their booking application form dated 15.05.2013. The complainants agreed to be bound by the terms and conditions of the booking application form.
- ii. That respondent had raised payment demands from the complainants in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and the complainants made some payments in time and then started delaying and committing defaults.
- iii. That the complainants have been continuous defaulters in making timely payments as per the terms of the booking application form and the apartment buyer's agreement. It is

submitted that the complainants have made the part-payment out of total sale consideration amount. However, it is submitted that the complainants are 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.

- iv. That on account of defaults committed by the complainant, the respondent was constrained to terminate the allotment on 10.02.2017. However, on request of the complainant, the allotment of the complainant was restored.
- V. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the complainant and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively.
- vi. That there is no cause of action to file the present complaint.
- vii. That the complainant has no locus standi to file the present complaint.
- viii. That according to the booking application form and the apartment buyer's agreement, the time period for offering the possession of the unit to the complainant has not yet



elapsed and the complaint has been filed pre-maturely by them.

ix. 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 apartment buyer's agreement.

x. That the construction of the project was delayed due to the order passed by NGT regarding stoppage of construction activity which was beyond the control of the respondent.

9. 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.

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

11. As regards the issue of arbitration clause is concerned, the Authority is of the considered opinion that 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, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

12. 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.



13. 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 (v) that the colonizer shall obtain the clearance/ NOC as per the provisions of notification no. SO1533 (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 26.06.2013 wherein under clause 35, 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 27.12.2013. 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.

14. As such, the date of start of construction comes out to be 26.12.2013 which is the date when 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 14.4 of the apartment buyer's

agreement dated 13.06.2013 the due date of delivery of possession has been worked out to be 26.12.2017. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 13.06.2013 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.


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

1. The respondent is directed to pay delayed possession charges at the prevalent prescribed rate of interest of 10.15% p.a. with effect from 26.12.2017 (due date of delivery of possession) till the date of offer of possession 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 90 days from this order.
2. The arrear of interest so accrued from due date of delivery of possession i.e. 26.12.2017 till the date of this order be paid at the prescribed rate of interest of 10.15% per annum by the respondent to the complainant within 90 days of this order and thereafter monthly interest be paid on or before 10<sup>th</sup> of each subsequent English calendar month.



3. The complainant is also directed to make payment of outstanding dues at the prescribed rate of interest of 10.15% per annum.
  4. The respondent is further directed not to charge any amount from the complainant which is not the part of the apartment buyer's agreement.
16. Since the project is not registered so the Authority has decided to take suo moto cognizance of this fact and directed the registration branch to take necessary action against the respondent under section 59 of the Act. A copy of this order be endorsed to the registration branch.
17. Complaint stands disposed of.
18. Case file be consigned to the registry.

  
**Samir Kumar**  
(Member)

  
**Subhash Chander Kush**  
(Member)

**Haryana Real Estate Regulatory Authority, Gurugram**

Date- 25.02.2020.