

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

Complaint no. 2381 of 2018
Date of first hearing 09.04.2019
Date of decision 09.04.2019

1. Mr. Sudhakar Chawla
2. Mr. Samarth Chawla

Both r/o E-179, Second floor,
Greater Kailash-II, New Delhi:
110048.

Complainants

versus

M/s IREO Grace Realtech Pvt. Ltd.,
Office at: 304, Kanchan House,
Karampura Commercial Complex,
New Delhi.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Chetan Dhingra Advocate for complainants

Shri M.K. Dang Advocate for the respondent

ORDER

1. A complaint dated 16.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read

with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Sudhakar Chawla and Mr. Samarth Chawla against the promoter M/s IREO Grace Realtech Pvt Ltd on account of violation of clause 13.3 of the apartment buyer's agreement executed on 24.04.2014 for unit no. 402 on 4th floor, C3 tower, measuring super area of 1295.78 sq. ft. in the project "The Corridors" for not giving possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement was executed on 24.04.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under :

1.	Name and location of the project	The Corridor, Sector 67-A, Gurgaon, Haryana
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2.	Nature of real estate project	Residential group housing colony
3.	Area of the project	37.5125 acres
4.	DTCP license no.	23.07.2013
5.	Unit no.	402, 4 th floor, C3
6.	Unit area	1295.78 sq. ft
7.	Registered/not registered	Registered (Phase1, Phase 2 and Phase 3)
8.	RERA registration no.	377 of 2017 (Phase 2) 378 of 2017 (Phase 1) 379 of 2017 (Phase 3)
9.	Completion date as per RERA registration certificate	30.06.2020
10.	Environment clearance received on	12.12.2013
11.	Fire scheme approval received on	27.11.2014
12.	Applied for occupation certificate on	06.07.2017
13.	Date of apartment buyer's agreement	24.04.2014
14.	Total consideration as per statement of account	Rs. 1,43,40,195/-
15.	Total amount paid by the complainant as per statement of account	Rs. 1,41,48,452.32/-
16.	Payment plan	Installment payment plan
17.	Date of delivery of possession (as per 13.3 of apartment buyer's agreement: 42 months + 180 days	27.11.2018

	from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder) (Due date of delivery of possession is calculated from the date of approval of fire scheme i.e. 27.11.2014)	
18.	Delay up to date of decision	4 months 13 days
19.	Penalty clause (as per clause 13.4 of the agreement)	Rs. 7.50/- per sq. ft. per month of the super area for every month of delay till the actual date fixed by the company for offering possession of the said apartment to the allottee

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 24.04.2014 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered to the complainant by 27.11.2018. But the respondent has failed to fulfil its contractual obligation till date, which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority has issued notice to the respondent for filing reply and for appearance. The respondent appeared on 09.04.2019. The case came up for hearing on 09.04.2019. The reply filed by the respondent has been perused by the authority.

FACTS OF THE CASE

6. The complainants submitted that they applied for the booking in the project of the respondent vide their application dated 22.03.2013 for an apartment no. 402, 4th floor, tower C3.
7. The complainants submitted that respondent on 07.08.2013 served an allotment letter on the complainants, allotting them a residential apartment no. CD-C3-04-402.
6. The complainants submitted that apartment buyer agreement was executed between the parties on 24.04.2014 under which the complainants were constrained to accept various arbitrary and unilateral clauses made in favour of the respondent as they had paid a considerable amount towards the booking of apartment.

7. The complainants submitted that the building plan of the respondent had been approved by the Directorate of Town & Country planning, Haryana on 23.07.2013 and the respondent was supposed to deliver the possession of the unit to the allottees within 42 months of 23.07.2013 i.e. by 23.01.2017.
8. The complainants also submitted that as per the agreement the respondent had the authority to impose an exorbitant rate of interest on the complainants to the tune of 20% on delayed payments whereas, the respondent was only liable to pay a meagre amount in case of delayed possession to the tune of Rs. 7.50 per sq. ft. of the super built up area of the flat.
9. The complainants submitted that the respondent has also wielded power to the extent of being the sole authority for making any changes to the allotment of the complainant. That as per the agreement the number of flats, area, location and other crucial details are to be managed by the respondent solely without obtaining consent of the complainants. This does not leave any scope of negotiation or consent from the complainants and they either have to make the payment or get

a refund without any interest which is liable to put them in a difficult situation, as they are forced to accept the changes or get their allotment cancelled.

10. The complainants submitted that they have been diligently paying the instalments as per the demand of the respondent believing that the money was being used to construct the apartment. Much to the shock and disappointment of the complainants their money was only being retained by the respondent as they have till date failed to construct the apartment and provide any details on the date of possession. That the respondent is liable to refund an amount of Rs.1,41,48,452.32/- to the complainants along with the prescribed rate of interest.
11. The complainants submitted that in above circumstances, it is absolutely just and necessary that this hon'ble authority be pleased to declare that the respondent was bound to deliver the possession of the apartment by January, 2017. It is submitted that the complainants cannot be expected to endlessly wait for the possession. This principle has been

settled by the hon'ble apex court in the case of the Fortune Infrastructure and Ors V/s Trevor D'lima and Ors.

12. The complainants submitted that it is absolutely just and necessary that this hon'ble authority be pleased to direct the respondent to refund the amount of Rs. 1,41,48,452.32/-. To the complainants along with a prescribed rate of interest.

ISSUES RAISED BY THE COMPLAINANTS:

10. The issues raised by the complainants are as follows: -
- Whether there has been failure on the part of the respondent in delivering the apartment to the complainants within the stipulated time period?
 - Whether the complainants are entitled to refund their money along with compensation?

RELIEF SOUGHT:

11. The reliefs sought by the complainants are as follows: -
- Direct the respondent to refund the amount paid by the complainants till date i.e. Rs. 1,41,48,452.32/- along with

prescribed rate of interest from the date of payment till actual realisation of the amount.

REPLY BY THE RESPONDENT:

12. The respondent submitted 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 complainants 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. That there is no cause of action to file the present complaint.
13. The respondent submitted that the complainants have no locus standi to file the present complaint.
14. The respondent submitted 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 complainants has not yet elapsed and the complaint has been filed pre-maturely by them.

15. The respondent submitted that it has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.
16. The respondent submitted that t this hon'ble authority does not have the jurisdiction to decide on the imaginary interest as claimed by the complainants. It is submitted that in accordance with section 71 of the Real Estate Regulatory Authority Act read with Rules 21(4) and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, the authority shall appoint an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard. It is submitted that even otherwise it is the adjudicating officer as defined in Section 2(a) of the Real Estate Regulatory Authority Act who has the power and the authority to decide the claims of the complainants.
17. The respondent submitted 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.

18. The respondent submitted that the complainants have not approached this hon'ble authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:

A. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Grand Arch', 'Victory Valley', 'Skyon' and 'Uptown' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.

- B. That the complainants, after checking the veracity of the project namely, 'Corridor, Sector 67A, Gurugram had applied for allotment of an apartment vide their booking application form. The complainants agreed to be bound by the terms and conditions of the booking application form agreed upon by them.
- C. That based on the said application, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainants apartment no. CD-C3-04-402 having tentative super area of 1295.78 sq. ft. for a total sale consideration of Rs. 1,43,40,195.10. Vide letter dated 14.03.2014, the respondent sent 3 copies of the apartment buyer's agreement to the complainants. It is submitted that the complainants signed and executed the apartment buyer's agreement on 24.04.2014
- D. That the respondent kept on raising payment demands from the complainants in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan and the complainants made the payment of the part-amount of the total sale consideration. It is pertinent to

mention herein that the complainants had committed defaults in making timely payments of some of the instalment demands and from third instalment onwards started committed defaults in making payments .

- E. That the possession of the unit is supposed to be offered to the complainants 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 states 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 fulfilment 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)...'*. It is pertinent to mention here that the complainants vide clause 13.5 of the apartment buyer's agreement and clause 44 of the schedule - i of the booking

application form had further agreed to the 'extended delay period' of 12 months from the end of grace period.

F. That from the aforesaid terms of the buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub-clause (iv) of clause 17 of the memo of approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. It is submitted that the environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-a of the environment clearance dated 12.12.2013 it was stated that fire safety plan duly was to be duly approved by the fire department before the start of any construction work at site. A copy of the building plan dated 23.07.2013 is attached as annexure r-7 and a copy of environment clearance dated 12.12.2013 is attached as annexure r-8. It is submitted that the

fire scheme approval was granted on 27.11.2014 and the time period for calculating the date for offering the possession, according to the agreed terms of the buyer's agreement, would have commenced only on 27.11.2014. Therefore, 60 months from 27.11.2014 (including the 180 days grace period and extended delay period) shall expire only on 27.11.2019. There cannot be any delay till 27.11.2019. The time period for offering the possession of the unit has not yet elapsed and the complainants have pre-maturely filed the present baseless and false complaint. The complainants are trying to re-write the agreed terms and conditions of the agreement. It is submitted that even as per the terms and conditions of the agreement, no defaults or illegalities have been committed by respondent with respect to offering the possession of the unit to the complainants and the complainants have made false averments in order to unnecessarily harass and pressurize the respondent to submit to their unreasonable demands.

G. The respondent submitted that the respondent company has already completed the construction of the tower in which the

unit allotted to the complainants is located and the photographs of the same.

H. The respondent submitted that the complainants are real estate investors who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainants now wants to somehow get out of the concluded contract made by them on highly flimsy and baseless grounds. Such malafide tactics of the complainants cannot be allowed to succeed.

DETERMINATION OF ISSUES:

19. After considering the facts submitted by the complainant, respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

- i. With respect of the **first issue** raised by the complainants, the authority came across that as per clause 13.3 of the apartment buyers agreement the respondent has agreed to offer the possession of the said apartment within a period of

42 months from date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtained clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 4 months and 13 days till the date of decision. As the promoter has failed to fulfil its obligation under section 11(4)(a) of the act *ibid*, therefore, the respondent is liable under proviso to section 18 of the Act *ibid* to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the

promoter on the due date of possession i.e. 27.11.2018 up to the date of offer of possession.

- ii. With respect to **second issue** raised by the complainants, the project is registered with the authority and the revised date of completion as per the registration certificate is 30.06.2020. The respondent has also applied for grant of OC on 06.07.2017 for the tower in question. Thus, keeping in view the status of the project and the interest of other allottees, the authority is of the consistent view that refund cannot be allowed at this stage. However, the complainant is entitled to interest at 10.75% per annum for delay in handing over the possession i.e. 27.11.2018 till the offer of possession.

FINDINGS OF THE AUTHORITY:

20. **Jurisdiction of the authority-** The project “The Corridors” is located in Sector 67-A, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and

Country Planning) dated 14.12.2017 to entertain the present complaint.

21. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

22. 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.

23. 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.
24. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter under section 11 of the Act *ibid*. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions of the Act and to fulfil its obligations.
25. As per clause 13.3 of the apartment buyer's agreement dated 24.04.2014 for unit no. 402, C3 tower, in project "The

Corridors” Sector-67A, Gurugram, possession was to be handed over to the complainant within a period of 42 months plus 180 days grace period from the date of approvals of building plans and/or fulfilment of preconditions imposed thereunder. The fire scheme approval was received on 27.11.2014. Thus, the due date is calculated from the said date and the due date comes out to be 27.11.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,41,48,452/- to the respondent against a total sale consideration of Rs. 1,43,40,195/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 27.11.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

DECISION AND DIRECTIONS OF THE AUTHORITY:

26. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate

(Regulation and Development) Act, 2016 hereby issues the following directions to the parties in the interest of justice and fair play:

- i. Complainant shall pay the outstanding dues, if any, after adjustment of interest for the delayed period.
- ii. The promoter shall not charge anything from the complainant which is not a part of the builder buyer agreement.
- iii. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as being granted to the complainant in case of delayed possession
- iv. The respondent is directed to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter from the due date of possession i.e. 27.11.2018 up to the date of offer of possession.

v. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

27. The complaint is disposed of accordingly.

28. The order is pronounced.

29. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2019

Judgement uploaded on 18.04.2019