

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

**Complaint no.** 1951of 2018  
**Date of First Hearing:** 02.05.2019  
**Date of Decision** 02.05.2019

1.Mr. Ashish Batra  
2.Mrs. Pooja Batra

R/o:2101, Serenity Lane, Woodstock,  
Illinois USA-60098  
Also, R/o 216 Sector 21C Faridabad

**Complainants**

Versus

M/s Ireo Grace Realtech Pvt Ltd  
Office : 5<sup>th</sup> floor, Orchid Center, Golf Course  
Road, Sector 53, Gurugram-122002

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri. Sushil Yadav Advocate for complainants  
Shri. Vinod Kumar with A.R.  
Shri. Garvit Gupta Advocate for the respondent

**ORDER**

1. A complaint dated 26.11.2018 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. Ashish Batra and Mrs. Pooja Batra against the promoter M/s Ireo

Grace Realtech Pvt. Ltd. with respect to the apartment described below, on account of violation of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 08.07.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be 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: -

- **Nature of the project** : Group housing colony
- **RERA Registered/not registered** : Registered

1.	Name and location of the project	The Corridors, sector 67-A, Gurugram, Haryana
2.	Nature of real estate project	Group housing colony
3.	Area of the project	37.5125 acres
4.	Unit no.	C10-303, 3 <sup>rd</sup> floor
5.	Area of unit	1483.57 sq. ft
6.	Registered/not registered	Registered (Phase1, Phase2 and Phase 3)
7.	RERA registration no.	378 of 2017 (Phase 1)

		377 of 2017 (Phase 2) 379 of 2017 (Phase 3)
8.	Completion date as per RERA registration certificate	30.06.2020 phase 1 30.06.2020 phase 2 31.12.2023 phase 3
9.	Date of apartment buyer's agreement as per alleged by the complainants	08.07.2014
10.	Total consideration as per payment plan (annexure-IV)	Rs. 1,46,07,856/-
11.	Total amount paid by the Complainants (as alleged by complainants)	Rs. 1,43,78,889/-
12.	Due date of possession Clause 13.3- 42 months plus 180 days grace period from date of approval of buildings plans and fulfilment of preconditions No date mention for building plan so according to firefighting scheme i.e. 27.11.2014	27.11.2018  Note: (as per date of approval of firefighting scheme i.e. 27.11.2014)
13.	Payment plan	Instalment payment plan
14.	Delay in handing over the possession	5 months 5 days
15.	Approval of firefighting scheme (from similar cases)	27.11.2014
16.	Penalty Clause (as per clause 13.4 of apartment buyer's agreement)	Rs 7.50 per sq. ft of super area for every month of delay

4. The details provided above have been checked as per records available in the case file which has been provided by the complainants. An apartment buyer's agreement dated

08.07.2014 is available on record for the aforesaid unit. As per clause 13.3 of the said agreement, the due date for handing over possession was 27.11.2018. Thus, the respondent has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 02.05.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceeding had been initiated against the respondent.

**Facts of the case:**

6. The complainants submitted that the respondent claim themselves as reputed builders and developers and big real estate player. The respondent gave advertisement in various leading newspapers about their forthcoming project named “The Corridors” in Sector67-A Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the

promise and undertakings given by the respondent in the aforementioned advertisements the complainants, booked an flat admeasuring super area 1483.57 sq. ft in aforesaid project of the respondent for total sale consideration is Rs. 1,46,07,856 /- which includes BSP, car parking, IFMS, club membership, PLC etc including taxes, and the apartment buyer's agreement was executed on 08.07.2014. Out of the total sale consideration amount, the complainants made payment of Rs.1,43,78,788/- to the respondent vide different cheques on different dates.

7. The complainants submitted that as per apartment buyer's agreement the respondent had allotted a unit bearing no. CD-C10-03-303 having super area of 1483.57 sq. ft. to the complainants.
8. The complainants submitted as per clause 13.3 of the apartment buyer's agreement, the respondent had agreed to deliver the possession of the flat within 42 months from the date of approval of building plan i.e. 23.07.2013 /or fulfilment of preconditions with an extended period of 180 days and according to that the flat was to be deliver till 23.07.2017.

9. The complainants submitted that as per clause 13.5 ,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 ,then the allottee shall become entitled to opt for termination of the allotment agreement and refund of the actual paid up installment paid by it against the said apartment after adjusting the interest on delayed payments along with delay compensation for 12 months and such refund shall be made by the company within 90 days of receipt of information to this effect from the allottee.
10. The complainants submitted that the complainants regularly visited the site but was surprised to see that construction was very slow. It appears that respondent have played fraud upon the complainants. Even the respondent themselves were not aware that by what time possession would be granted. Also the respondent constructed the basic structure which was linked to the payments and majority of payments were made too early. However, subsequent to this there has been very little progress in construction of the project. The only intention of the respondent was to take payments for the flat without

completing the work. The structure was being erected at great speed since the structure alone was related to the vast majority of the payments in the construction linked plan. Since the respondent have received the payments linked to the floor rise. This shows that respondent mala-fide and dishonest motives and intention to cheat and defraud the complainants.

11. The complainants submitted that despite receiving of 95% payment of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent have failed to deliver the possession of the allotted flat to the complainants within stipulated period and lastly on dated 11.11.2018 the complainants has sent an notice via email to the respondent asking for refund as the conditions mentioned in clause 13.5 of agreement.

12. The complainants submitted that it could be seen that the construction of the project in which the complainants flat was booked with a promise by the respondent to deliver the flat by 23.07.2017 but was not completed within time for the reasons best known to the respondent; which clearly shows that

ulterior motive of the respondent to extract money from the innocent people fraudulently.

13. The complainants submitted that some of the clauses in the apartment buyer's agreement that the complainants/buyers were made to sign by the respondent are one sided. The complainants had signed already prepared documents and that some of the clauses contained therein were totally unreasonable and in favour of the respondent only.

14. The complainants submitted that as per clause 13.4 of the apartment buyer's agreement dated 08.07.2014, it was agreed by the respondent that in case of any delay, they shall pay to the complainants a compensation @ Rs.7.5/- per sq. ft. per month of the super area of the unit for the period of the delay. It is, however, pertinent to mention herein that a clause of compensation at such a nominal rate of Rs.7.5/- per sq. ft. per month for the period of delay is unjust and the opposite party has exploited the complainants by not providing the possession of flat on time.

### **Issues raised by the complainants**

15. The issues raised by the complainants are as follows: -



- i. Whether there has been failure on the part of the respondent in delivering the apartment to the complainants within the stipulated time period?
- ii. Whether the complainants are entitled to refund their money along with compensation?

### **Relief sought**

16. The relief sought by the complainants are as follows: -

- a. Direct the respondent to refund the amount paid by the complainants i.e. Rs.1,43,78,788 along with prescribed interest per annum on compounded rate from the date of booking of the flat in question.

### **Determination of issues:**

- i. With respect to the **first issue** raised by the complainants, as per clause 13.3 of apartment buyer's agreement, the possession of the unit was to be handed over within 42 months plus 180 days grace period from the from date of approval of buildings plans and fulfilment of preconditions thereunder. The date of approval of firefighting scheme was 27.11.2014 . Therefore, the due date of possession comes

out to be 27.11.2018. Thus, the promotor is failed to fulfil its obligation as per section 11(4)(a) of the Act *ibid*.

- ii. With respect to **second issue** raised by the complainants, it is pertinent to note that the project is registered and also from the perusal of the record it is seen that the project is almost near completion hence in the interest of justice, it is not advisable at this stage to allow the complainants to withdraw from the project and thus, they are not entitled to refund. However, the complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum from due date of possession till offer of possession.

Accordingly, the due date of possession was 27.11.2018 and the possession has been delayed by 5 months 5 days till the date of decision. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act *ibid* read with rule 15 of the rules *ibid*, to pay interest to the complainants, at the prescribed rate for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate

(Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.70% per annum on the amount deposited by the complainants with the promoter from the due date of possession i.e. 27.11.2018 till date of decision.

### **Findings of the Authority**

17. The authority has complete jurisdiction to decide the complaint in regard to 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 complainants at a later stage.
18. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.
19. Such notices were issued to the respondent on 01.12.2018 and on 12.12.2018 and on 26.12.2018.

20. The possession was to be handed over to the complainants within a period of 42 months from the date of signing of apartment buyer's agreement plus 180 days grace period and due date comes to be 27.11.2018.

21. As per clause 13.3 of the apartment buyer's agreement dated 8.7.2014 for unit No.C-10-303, in project "The Corridors" Gurugram, possession was to be handed over to the complainants within a period of 42 from the date of fire approvals i.e. 27.11.2014 + 180 days grace period which comes out to be 27.11.2018.

However, the respondent has not delivered the unit in time. As such, the complainants are entitled to delayed possession charges at the prescribed rate of 10.70% per annum w.e.f 27.11.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the date of offer of possession.

**Decision and Direction of Authority:**

22. After taking into consideration all the material facts produced by 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 in the interest of justice: -

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.70% 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 the offer of the possession on account of delay in handing over of possession to the complainants within 90 days from the date of issuance of this order.
- ii. Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid on or before 10<sup>th</sup> of subsequent month.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed not to charge anything from the complainants which is not the part of the apartment buyer's agreement.

v. The respondent is directed to charge interest on due payments from the complainants at the prescribed rate of interest i.e. 10.70% , which is same as is being granted in case of delayed possession.

23. The order is pronounced.

24. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander**

**Kush)** Member

Dated : 02.05.2019

Judgement uploaded on 28.05.2019



HARERA  
GURUGRAM