

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

Complaint no. : 382 of 2019
First date of hearing : 25.04.2019
Date of decision :

1. Mr. Tarun Bajaj
2. Mrs. Usha Bajaj

Both R/o 601, Tower-03, Orchid Petals, Shona Road, Sector – 49, Gurugram-122001, Haryana **Complainants**

Versus

M/s Ireo Grace Realtech Pvt. Ltd.
Office: 5th Floor, Orchid Centre,
Golf course Road, Sector-53,
Gurugram-122002, Haryana.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Advocate for the complainant
Shri Advocate for the respondent

BRIEF

1. A complaint dated 25.01.2019 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. Tarun Bajaj and Mrs. Usha Bajaj, against the promoter M/s Ireo Grace Realtech Pvt. Ltd. on account of violation of the clause

13.3 of apartment buyer's agreement executed on 03.04.2014 in respect of apartment described as below in the project "The Corridors" for not handing over 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 has been executed on 03.04.2014 i.e. prior to the commencement of the Act *ibid*, 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 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: -

- **DTCP license no.:** - 05 of 2013 date 02.01.2013
- **DTCP license valid up to:**
- **RERA Registered:** - Registered (Phase1, Phase2 and Phase 3)

1.	Name and location of the project	"The Corridors", Sector 67A, Gurugram
2.	Project area	37.5125 acres
3.	RERA registration no.	378 of 2017 (Phase 1) 377 of 2017 (Phase 2) 379 of 2017 (Phase 3)

4.	Date of completion of project as per registration certificate	30.06.2020 (Phase 1 and 2); and 31.12.2023 (Phase 3)
5.	Apartment/unit no.	702, 7 th Floor, Tower-B1
6.	Unit measuring	1892.09 sq. ft.
7.	Shifted to unit	803, 6 th Floor, Tower-B1 (as per annexure C-6, pg. no. 122 of the complaint)
8.	Date of execution of apartment buyer's agreement	03.04.2014
9.	Payment plan	Construction linked plan
10.	Total consideration as per payment plan annexed. (Page 60 of complaint)	Rs. 1,77,85,646/-
11.	Total amount paid by the complainant as per the receipts annexed by the complainant	Rs.1,59,79,100/-
12.	Building plan approved on	23.07.2013 (as per Annexure C4, pg. no. 105 of complaint)
13.	Environmental clearance	12.12.2013 (as per annexure R-20, pg. no. 101)
14.	Fire scheme approval	27.11.2014 (as per annexure R-21, pg. no. 112)
15.	Date of delivery of possession as per apartment buyer's agreement (as per clause 13.3 of the said agreement, 42 months from the date of approval of building plans and/or fulfilment of precondition	27.11.2018 (date of possession is counted on the basis of last approval taken by the developer i.e. fire scheme

	imposed thereunder + 180 days grace period)	approval dated 27.11.2014
16.	Delay in handing over possession till date of decision i.e. 25.04.2019	4 months 29 days
17.	Penalty clause as per clause 13.4 of apartment buyer's agreement dated 03.04.2014	Rs. 7.50 per sq. ft. of the super area for every month of delay.

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 respondents. An apartment buyer's agreement dated 03.04.2014 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 27.11.2018. Neither the respondent has delivered the possession of the said unit as on date to the complainant nor they have paid any compensation for the delayed period as per clause 13.4 of the apartment buyer's agreement duly executed between the parties. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent through its counsel appeared on 25.04.2019. The case came up for hearing on 25.04.2019. The reply filed on behalf of the respondents has been perused.

Facts of the complaint

6. Briefly stated, the facts of the complaint are that the respondent M/S IREO Grace Realtech Pvt. Ltd. is a company incorporated under the Companies Act 1956 and claims to be one of the leading real estate companies in the country. The respondent launched the project "The Corridors" located at sector-67A, Gurugram, Haryana, India.
7. The respondent made representations pertaining to the architecture and the landscape of their project to the complainants alluring him to book a flat. The Complainants applied for booking in the project vide their application dated 22.03.2013 and was allotted vide allotment letter offer dated 07.08.2013 apartment no. 702, 7th Floor, Tower B1 having super area 1892.09 sq. ft. The payment was to be made as per

the Construction Linked Payment Plan of the Respondent Company.

8. The complainants submitted that an apartment buyer's agreement was executed between the parties on 03.04.2014 and by the agreement, unit no. CD-B1-07-702 was allotted to the complainants at a Basic Sale Price of Rs.1,77,85,646.00/- (Rs.9,400 x 1892.09Sq.Ft.) plus other charges viz PLC, IFMS and IBRS etc.
9. The complainants further submitted that the Complainants have paid around **85%** of the total consideration of the apartment but no signs of completion of the project or the delivery of the possession of the apartment has been shown by the respondent leading to a loss of confidence of the complainants on the respondent.
10. The building plans of the group housing colony (the respondent) measuring 37.5125 acres (license no. 03 of 2013 dated 21.02.2013) had been approved by the Directorate of Town & Country Planning, Haryana on 23.07.2013 after which the respondent was to commence construction and as per the agreement, was to deliver the possession of the units

to the allottees within 42 months from 23.07.2013, that, is by 23.01.2017. The relevant clause of the Apartment Buyer's Agreement has been produced below:

"13.3the Company proposes to apply for the grant of the Occupation Certificate within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the preconditions contained thereunder ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 (One Hundred Eighty) days ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."

11. The complainant submitted that the construction work of the apartment was not satisfactory, and the respondent kept on raising arbitrary payment demands from the complainants in the form of interest and other charges which was not in accordance to the construction work of the Apartment. The complainants in the year 2015 filed a consumer complaint before the Hon'ble National Consumer Disputes Redressal Commission bearing no. CC/1156/2015 titled as "Ms. Taruna Bajaj & Anr. Vs. M/s. Ireo Grace Realtech Private Ltd." The Respondent asked the complainants to settle the matter for which the complainants were called for a discussion at IREO campus. The respondent proposed to offer an alternate unit

to the complainants bearing no. **CD-B1-06-603** subjected to the fulfillment of certain conditions. some points were mutually agreed between the parties which were as follows:

- “- Unconditional withdrawal of the Consumer Complaint pending before the Hon’ble National Commission*
- Payment of interest amount*
- Adjustment of the amount paid for the old unit with the new unit.*
- Respondent to waive-off the delayed payment interest subject to the payment of all outstanding amount by the Complainants and also subject to timely payment of the 2 upcoming installments of the alternate unit.”*

12. As per the settlement between the parties the respondent is not to charge the complainants with any accrued interests as the same will be in contradiction with the settlement before the Hon’ble National Commission.

13. The complainant submitted that the respondent on 29.08.2016 shifted the allotment of the complainants from CD-B1-07-702 to CD-B1-06-603 having an area of 1892 Sq. ft. and the payment made towards the initial allotment was adjusted towards the new allotment. As per the construction linked payment plan, the cost of the new unit was scheduled at Rs.1,84,05,462/-.

14. The complainant submitted that till date the respondent is not in a position to deliver the possession of the apartment to the complainants. The possession was to be handed over to the Complainants by 23.01.2017 and the respondent has miserably failed to complete the construction of the project.

15. The complainant submitted that the respondent has the authority to impose an exorbitant rate of interest on the complainants to the tune of 20% on delayed payments whereas, the respondent is only liable to pay a meagre amount of Rs. 7.50 per Sq. Ft. of the super built-up area of the apartment. The relevant clauses have been produced below:

“7.4 The Allottee shall be liable to pay simple interest on every delayed payment, at the rate of 20% per annum from the date that it is due for payment till the date of actual payment thereof....”

“13.4 if the Company fails to apply for the grant of the Occupation Certificate by the end of the Grace Period, it shall be liable to pay to the Allottee compensation calculated at the rate of Rs. 7.50/- (Rupees Seven and Fifty Paise Only) per sq. ft. of the Super Area (“Delay Compensation”) for every month of delay.....”

The said clauses are unilateral and is in clear contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016.

16. The complainants seek the intervention of the hon'ble authority to grant them the immediate possession of the unit booked along with compensation for delay in handling over the possession.

17. Issues raised by the complainant

- i. Whether there has been failure on part of the respondent in the delivery of apartment to the complainant within the stipulated time period?
- ii. Whether the complainants are entitled to compensation for the period of delay in handling over the possession of the unit booked and what rate?

18. Reliefs sought by the complainant

- i. Direct the respondent to deliver immediate possession of the apartment CD-B1-06-603 in the project "The Corridors" located at Sector 67 A, Gurgaon, Haryana along with all the promised amenities and facilities and to the satisfaction of the complainant.
- ii. Direct the respondent to make the payment of compensation @18% p.a. on the amount already paid by the complainant to the respondent, from the promised

date of delivery of the flat till the actual delivery of the flat to the complainant.

Reply on behalf of respondent

19. The respondent submitted that the complainant and the respondents had executed the apartment buyer's agreement prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions of the same cannot be enforced retrospectively. That according to the booking application form and the apartment buyer's agreement, the time period for offering the unit to the complainant has not yet elapsed and the complaint has been file pre-maturely by him.

20. 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 apartment buyer's agreement.

21. The respondent submitted that this authority does not have the jurisdiction. It is submitted that in accordance with section 71 of the Real Estate (Regulation and Development)

Act, 2016 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 (Regulation and Development) Act, 2016 who has the power and the authority to decide the claims of the complainant.

22. The respondent submitted that the complainants, after checking the veracity of the project namely, "The Corridor" Sector 67A, Gurugram applied for allotment of an apartment vide their booking application form. The respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainants apartment no. CD-B1-07-702 having tentative super area of 1892.09 sq.ft for a total sale consideration of Rs. 2,06,49,095.32.

23. It is submitted that the complainants executed the apartment buyer's agreement on 03.04.2014. On the request of the complainants, the respondent changed the payment plan to a

new plan opted by them and the same was intimated to them by the respondent vide its letter dated 11.06.2015. The respondent raised 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 some payments in time and then started delaying and committing default from seventh installment onwards. The respondent raised the instalment demands. However, the complainants failed to pay the due amount despite reminders and the amount was adjusted in the next payment demands as arrears.

24. The respondent vide email, acceded to the request of the complainants and offered them the alternate unit without any preferential location charges. It was intimated to the complainants by the respondent that the complainants are bound to pay the outstanding amount along with the interest on the delayed payment of installments and to withdraw the complaint filed by them before the Hon'ble NCDRC

25. 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 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)...”.

26. 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.

27. 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. 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 was to be duly approved by the fire department before the start of any construction work at site. 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

28. 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 are attached as annexure R-22 of the reply.

29. The respondent denied that the construction work of the apartment was not satisfactory or that the respondent kept on raising alleged arbitrary payment demands from the complainants in the form of interest and other charges or that the demands were not in accordance to the construction work of the apartment.

30. The respondent submitted that as per the terms and conditions of the agreement, no default or illegality has 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. The respondent has applied for the grant of Occupation Certificate vide application dated 06.07.2017 and shall offer the possession of the allotted unit to the complainants on receipt of the Occupation Certificate from the concerned authorities and the complainants are also bound to pay their dues.

Determination of issues

After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are as under:

31. With respect to the **first and second issue** raised by the complainant, as per clause 13.3 of the apartment buyer's agreement dated 03.04.2014 possession of the unit was to be handed over within 42 months from the date of approval of the building plans and/or fulfillment of the precondition imposed thereunder plus grace period of 180 days. The building plan was approved on 23.07.2013 and it contains a clause 17(iv) states that clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. The Environment clearance was obtained on 12.12.2013 and it contains further condition under clause 39 that fire safety plan was to be daily approved by the fire department before the start of any construction work at site. The said fire scheme on 27.11.2014.

32. Accordingly, the due date of possession is 27.11.2018 and the possession has been delayed by 4 months 29 days till date of decision. The respondent has failed in handing over the possession on or before the said due date, thereby breaching the terms and conditions stipulated in the agreement dated 03.04.2014. Further, the authority is of the view that the promoter has failed to fulfil its obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. As per photographs annexed with reply structure of tower in question is almost complete.

33. The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. per month on super area for period of delay as per clause 13.4 of the buyer's agreement is held to be very nominal and unjust. Some terms of the agreement have been drafted mischievously by the respondent and are completely one sided. It has also been observed in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

Findings of the authority

34. **Jurisdiction of the authority-** 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 complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town & Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. In the present case, the project in question

is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to entertain the present complaint.

35. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the act *ibid*. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

36. 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.

37. 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.

Directions of the authority

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 issue the following directions:

- i. The respondent is directed to hand over the possession of the said unit by 30.06.2020 as committed by the respondent in the registration certificate.

- ii. The respondent is directed to pay cumulative prescribed rate of interest i.e.10.70% accrued from due date of possession i.e. 27.11.2018 on account of delay in handing over of possession to the complainant within 90 days from the date of decision and subsequent interest to be paid by 10th of every succeeding month till handing over of possession.

38. The order is pronounced.

39. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:

Judgement Uploaded on 29.05.2019

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