

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

Complaint No. : 326 of 2018  
Date of First Hearing: 27.07.2018  
Date of Decision : 27.11.2018

Mr. Ashok Jaipuria  
s/o. Late Sh. Sita Ram Jaipuria  
R/o House No. 1/27, Shanti Niketan,  
New- Delhi- 110021

...Complainant

Versus

M/s Ireo Private Limited  
Office at: A-11, 1<sup>st</sup> floor, Niti Bagh,  
New - Delhi-110049

...Respondent

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

Member  
Member

**APPEARANCE:**

Sh. Sanjeev Sahay  
Sh. M.K. Dang

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 24.05.2018 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 complainant Mr. Ashok Jaipuria, against the promoter





M/s Ireo Pvt. Ltd. on account of violation of clause 14.3 of apartment buyer's agreement executed on 26.10.2012 for apartment no. B18-41, 17<sup>th</sup> floor, tower B with a super area of 6388.05 sq. ft. in project "Ireo Gurugram Hills", located at sector 2, Gwal Pahari, Gurugram. The violation is being done by the promoter for not giving possession on due date i.e. 17.05.2017 which is an obligation under section 11 (4) (a) of the Act ibid.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Ireo Gurugram Hills" in Tower- B, sector 2, Gwal Pahari, Gurugram
2.	Apartment/ Unit no.	B18-41, 17 <sup>th</sup> floor, tower B
3.	Project area	11.07 acres
4.	RERA Registered/ unregistered	Applied on 08.08.2018, status pending
5.	Nature of real estate	group housing colony
6.	DTCP license	36 of 2011
7.	Date of apartment buyer agreement	26.10.2012
8.	Total consideration	Rs. 5,78,37,788/-
9.	Total amount paid by the complainant	Rs. 5,16,34,616/-
10.	Payment plan	Construction linked





		payment plan
11.	Due date of delivery of possession  Note: as per clause 14.3 of agreement – 42 months from date of approval of building plan, whichever is later + 180 days (6 months') grace period	<b>21.08.2017</b>  (Note – consent to establish was granted on 21.08.2013)
12.	Delay of number of months/ years upto 27.11.2018	3 months
13.	Penalty clause as per apartment buyer agreement dated 26.10.2012	Clause 14.4- If company fails to offer possession of the said apartment, it shall be liable to pay compensation@ Rs. 10/- per sq. ft. of the super area.
14.	Status of the project	Application for grant of part occupation certificate made by the respondent on 24.09.2018.

3. The details provided above have been checked as per record of the case file available, an apartment buyer agreement as provided by the complainant, is available on record for apartment no. B18-41, 17<sup>th</sup> floor according to which the possession of the aforesaid unit was to be delivered by 21.08.2017. The promoter has failed to deliver the possession of the said unit to the complainant.



Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 24.07.2018. The case came up for hearing on 24.07.2018, 06.09.2018, 16.10.2018 and 05.11.2018. The reply has been filed by the respondent on 18.07.2018. The rejoinder was filed by the complainant dated 30.08.2018.

#### **Facts of the complaint**

5. The complainant booked an apartment measuring 6388 sq. ft. in the project named "Ireo Gurugram Hills" in Sector 2, Gwal Pahari, Gurugram. Accordingly, the complainant were allotted an apartment bearing B18-41 on the 17<sup>th</sup> floor.
6. On 26.10.2012, an apartment buyer agreement was entered into between the parties wherein as per clause 14.3, the possession should have been delivered within 42 months from date of approval of building plans or the





date of agreement, whichever is later + 6 months' grace period also including 12 months extended grace period. The payment was made on several occasions as and when asked by the respondent. Thus, the due date of possession along with the grace period is 17.05.2017. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 51,634,616/- as against the total consideration of Rs. 5,78,37,788/-.

7. The complainant submitted that an offer of allotment letter was issued by the respondent on 22.08.2012 and that during the period of 2012-2017, as per the payment schedule various payments were made by cheque by the complainant to the respondent, who issued acknowledgment of payment receipts.

8. The complainant further submitted that since the construction was not being carried on and possession



was not handed over in May 2017 within the stipulated time of 60 months (including the grace period) from the approval of building plan in May 2012, the complainant decided for termination of agreement and requested the respondent to refund the entire amount paid by the complainant.

9. The complainant submitted that despite repeated calls, meetings and emails sent to the respondent, there was no response from the complainant and so the complainant was constrained to send a legal notice to the respondent seeking refund of the entire amount paid along with interest and the respondent by reply to the legal notice took false and frivolous defence to deny its liability and stated that the period of 60 months with grace period was to be compounded from 26.12.2013 and not May, 2012.



### **Issues to be decided**

- I. Whether the complainant is entitled for refund of the entire amount of Rs. 51,634,616/- paid by it to the respondent alongwith interest on the ground of failure



by the respondent in handing over the possession without any reasonable justification?

### Relief sought

- I. Direct the respondent to refund the entire amount of Rs. 51,634,616/- with an interest of 18% from the date of receipt to the date of realization.

### Respondent's reply

10. The respondent submitted that the alleged frail allegations levelled under the guise of the present complaint, are totally false, incorrect, baseless and misconceived.
11. The respondent submitted that as per clause 54 of schedule I of the booking application and clause 14.3 of the agreement, the complainant was to receive possession of the apartment within a period of 42 months from the date of approval of the building plan or fulfilment of preconditions imposed thereunder. The parties had also agreed under the clause that a grace period of 6 months would be provided to the respondent



for any unforeseen delay and a period of 12 months at the end of grace period in the event of delay by the respondent in offering possession of the apartment. Thus, the building plan was approved on 17.05.2018 and consent to establish was granted on 21.08.2013, therefore, as per the clause 14.3 of the agreement, the proposed time for handing over the possession of the apartment to be computed from 21.08.2013 (Annx 2 of the reply), which would expire only on 21.08.2017.

12. The respondent submitted that as per the provisions of Real Estate (Regulation and Development) Act, 2016 the promoter is liable to compensate the allottee only in the event that the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement for sale. Thus, the present complaint seeking compensation is pre-mature and without case.

13. A reference to recital 'F' and clause 29 of the agreement shows that the complainant had itself inspected all relevant documents and conducted its due diligence





before signing the agreement. The fact that the complainant had access to such documents, because of which it could conduct its requisite due diligence, shows that the respondent was transparent with the complainant and did not misrepresent any information.

14. Before entering into the agreement, the complainant had every opportunity to raise the issue of the pre-conditions under the building plan, which was approved on 17.05.2012. The complainant cannot, at this belated stage, raise the issue about pre conditions under the building plan approval to harass the respondent, claim unwarranted reliefs and benefit from its own wrong.

15. The respondent has filed an application for amendment of reply which was allowed vide order dated 16.10.2018 and amended reply was taken on record. In the amended reply the respondent has stated that the complainant has concealed material fact i.e. the respondent has completed the construction and applied for part occupation certificate before the concerned authority on 24.09.2018 prior to offering possession to the allottees.



15. The complainant makes a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

***"34 (f) Function of Authority -***

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

16. 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 which is reproduced below:

***"37. Powers of Authority to issue directions-***

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."*



**Rejoinder by the complainant**

17. That the complainant denies each and every averment and allegation made in the reply of the respondent. The respondent has raised unsustainable, contradictory inconsistent pleas which are contrary to record.



18. That the building plan in terms of clause 14.3 was approved on 17.05.2012. It is relevant to mention that a bare reading of the building plan approval letter would demonstrate that it does not contain any pre-condition at all. The respondent on 19.02.2018 in his reply to the legal notice of the complainant had stated the proposed time of handing over the possession is to be computed from 26.12.2013 which will expire on 26.12.2018. Here, in the present reply before the Hon'ble RERA, the respondent has taken a different stand and stated that the proposed time for handing over possession of the apartment was to be computed from 21.08.2013, which would expire only on 21.08.2017, which is not even close to completion as of now.

19. It is relevant to submit that in the reply to legal notice and the present reply, the respondent had deliberately and wilfully withheld the following vital information:

- i. The respondent had not given any reasonable ground for delay in completing project;
- ii. The date by which the project is likely to be completed had nowhere been stated in the reply;



- iii. The stage of construction i.e. what percentage of project is complete has deliberately not been given by the respondent;
- iv. Further, nowhere in the reply it has been stated by the respondent how it utilized the funds which was given by the complainant and other home buyers for construction of the project.

20. As such, the complainant has already terminated the agreement by his letter dated 08.01.2018 and by way of the present complaint is seeking refund of the entire amount paid by him along with interest and other reliefs.

21. The complainant further submits that the period of 42 months was to commence from 17.05.2012 as represented by the respondent and after adding grace period and extended period the possession was to be handed over within 60 months, which expired on 17.05.2018. Instead of finishing construction and handing over possession the respondent has repeatedly taken false and flimsy grounds to evade its liability. It is clear that the money paid by the complainant and other similar placed home buyers was not utilized by the





respondent in completing the construction of project and the complainant has a reasonable belief that this fund has been illegally siphoned away by the respondent.

### Determination of issues

22. As regards the **issues** raised by the complainant, from the perusal of record it is found that as per clause 14.3 of the agreement dated 26.10.2012, the possession of the unit was to be handed over to the complainant within a period of 42 months plus 180 days (6 months') grace period from the date of approval of building plans and/or fulfilment of the pre-conditions imposed thereunder. The consent to establish was received by the respondent on 21.08.2013, hence, the due date for delivery of possession comes to be 21.08.2017. Clause 14.3 of the agreement be read read as under :-



*"subject to force majeure and further subject to the applicant having complied with all its obligations under the terms and conditions of this agreement, and the applicant not being in default under any part of this agreement including but limited to the timely payment of the total sale consideration, stamp duty and other charges/fees/taxes/levies and also subject to the applicant having complied with all the formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the applicant within a period of 42 months*

*from the date of approval of the building plans and/or fulfilment of the pre-conditions imposed thereunder.*

23. The respondent has got approval of building plan from DTCP on 17.05.2012 and consent to establish from municipal corporation, Gurugram on ~~26.12.2013~~ <sup>21.08.2013</sup>, the authority is of the view that date of handing over the possession should have been counted from the date they received the consent to establish and other approvals which is of cardinal importance to the builder and if we count the date of offer of possession i.e. 42 months + 6 months + consent to establish then the date of possession comes out to be ~~26.12.2017~~ <sup>21.08.2017</sup>. However, no possession has been delivered to the complainant till date. Hence, the authority is of the view that there is a delay of one year approx. on the part of the respondent in offering possession of the subject apartment.



24. Other contentions raised by the complainant have not been substantiated by virtue of any substantial evidence, as such they are *non est* for the purpose of taking any decision at the moment.

#### Findings of the authority

*Corrected vide order dated 05/07/19.*



22. Keeping in view the present status of the project and intervening circumstances, awarding of refund of the paid amount to the complainant with the termination of agreement dated 26.10.2012 at this belated stage would not serve the ends of justice and this will also hamper the very purpose of completion of project and interest of existing allottees who wishes to continue with the project.

23. As such complainant is entitled for delayed possession charges @ 10.75% p.a. as per the provision of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project.

**Decision and directions of the authority**

24. Accordingly, the authority hereby issues the following direction to the respondent-

- i. The respondent shall pay interest @ 10.75% p.a. on the paid amount of Rs. 5,16,34,616/- to the complainant as delayed possession charges as per the provision of section 18(1) of the Real Estate



(Regulation and Development) Act, 2016 from due date of delivery of possession i.e. ~~26.10.2018~~ <sup>21.08.2017</sup> till actual handing over of possession, failing which the complainant is entitled to withdraw from the project.

*Corrected  
vide  
order  
dated  
05/07/19.*


- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month. Amount, if any, due from the complainant may be adjusted mutually.

26. The order is pronounced.

27. Case file be consigned to the registry.



  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

Date : 27.11.2018

**Corrected Judgement uploaded on 08.07.2019**



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**CORAM:**

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**Member**  
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**APPEARANCE:**

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2. The particulars of the complaint are as under: -

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3. The details provided above have been checked as per record of the case file available, an apartment buyer agreement as provided by the complainant, is available on record for apartment no. B18-41,17<sup>th</sup> floor according to which the possession of the aforesaid unit was to be delivered by 21.08.2017. The promoter has failed to deliver the possession of the said unit to the complainant.



Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 24.07.2018. The case came up for hearing on 24.07.2018, 06.09.2018, 16.10.2018 and 05.11.2018. The reply has been filed by the respondent on 18.07.2018. The rejoinder was filed by the complainant dated 30.08.2018.

#### **Facts of the complaint**

5. The complainant booked an apartment measuring 6388 sq. ft. in the project named "Ireo Gurugram Hills" in Sector 2, Gwal Pahari, Gurugram. Accordingly, the complainant were allotted an apartment bearing B18-41 on the 17<sup>th</sup> floor.
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date of agreement, whichever is later + 6 months' grace period also including 12 months extended grace period. The payment was made on several occasions as and when asked by the respondent. Thus, the due date of possession along with the grace period is 17.05.2017. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 51,634,616/- as against the total consideration of Rs. 5,78,37,788/-.

7. The complainant submitted that an offer of allotment letter was issued by the respondent on 22.08.2012 and that during the period of 2012-2017, as per the payment schedule various payments were made by cheque by the complainant to the respondent, who issued acknowledgment of payment receipts.

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was not handed over in May 2017 within the stipulated time of 60 months (including the grace period) from the approval of building plan in May 2012, the complainant decided for termination of agreement and requested the respondent to refund the entire amount paid by the complainant.

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### Issues to be decided

- I. Whether the complainant is entitled for refund of the entire amount of Rs. 51,634,616/- paid by it to the respondent alongwith interest on the ground of failure



by the respondent in handing over the possession without any reasonable justification?

### Relief sought

- I. Direct the respondent to refund the entire amount of Rs. 51,634,616/- with an interest of 18% from the date of receipt to the date of realization.

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for any unforeseen delay and a period of 12 months at the end of grace period in the event of delay by the respondent in offering possession of the apartment. Thus, the building plan was approved on 17.05.2018 and consent to establish was granted on 21.08.2013, therefore, as per the clause 14.3 of the agreement, the proposed time for handing over the possession of the apartment to be computed from 21.08.2013 (Annex 2 of the reply), which would expire only on 21.08.2017.

12. The respondent submitted that as per the provisions of Real Estate (Regulation and Development) Act, 2016 the promoter is liable to compensate the allottee only in the event that the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement for sale. Thus, the present complaint seeking compensation is pre-mature and without case.

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before signing the agreement. The fact that the complainant had access to such documents, because of which it could conduct its requisite due diligence, shows that the respondent was transparent with the complainant and did not misrepresent any information.

14. Before entering into the agreement, the complainant had every opportunity to raise the issue of the pre-conditions under the building plan, which was approved on 17.05.2012. The complainant cannot, at this belated stage, raise the issue about pre conditions under the building plan approval to harass the respondent, claim unwarranted reliefs and benefit from its own wrong.

15. The respondent has filed an application for amendment of reply which was allowed vide order dated 16.10.2018 and amended reply was taken on record. In the amended reply the respondent has stated that the complainant has concealed material fact i.e. the respondent has completed the construction and applied for part occupation certificate before the concerned authority on 24.09.2018 prior to offering possession to the allottees.



15. The complainant makes a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

***“34 (f) Function of Authority –***

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

16. 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 which is reproduced below:

***“37. Powers of Authority to issue directions-***

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”*



**Rejoinder by the complainant**

17. That the complainant denies each and every averment and allegation made in the reply of the respondent. The respondent has raised unsustainable, contradictory inconsistent pleas which are contrary to record.



18. That the building plan in terms of clause 14.3 was approved on 17.05.2012. It is relevant to mention that a bare reading of the building plan approval letter would demonstrate that it does not contain any pre-condition at all. The respondent on 19.02.2018 in his reply to the legal notice of the complainant had stated the proposed time of handing over the possession is to be computed from 26.12.2013 which will expire on 26.12.2018. Here, in the present reply before the Hon'ble RERA, the respondent has taken a different stand and stated that the proposed time for handing over possession of the apartment was to be computed from 21.08.2013, which would expire only on 21.08.2017, which is not even close to completion as of now.

19. It is relevant to submit that in the reply to legal notice and the present reply, the respondent had deliberately and wilfully withheld the following vital information:

- i. The respondent had not given any reasonable ground for delay in completing project;
- ii. The date by which the project is likely to be completed had nowhere been stated in the reply;



iii. The stage of construction i.e. what percentage of project is complete has deliberately not been given by the respondent;

iv. Further, nowhere in the reply it has been stated by the respondent how it utilized the funds which was given by the complainant and other home buyers for construction of the project.

20. As such, the complainant has already terminated the agreement by his letter dated 08.01.2018 and by way of the present complaint is seeking refund of the entire amount paid by him along with interest and other reliefs.

21. The complainant further submits that the period of 42 months was to commence from 17.05.2012 as represented by the respondent and after adding grace period and extended period the possession was to be handed over within 60 months, which expired on 17.05.2018. Instead of finishing construction and handing over possession the respondent has repeatedly taken false and flimsy grounds to evade its liability.

It is clear that the money paid by the complainant and other similar placed home buyers was not utilized by the





respondent in completing the construction of project and the complainant has a reasonable belief that this fund has been illegally siphoned away by the respondent.

### **Determination of issues**

22. As regards the **issues** raised by the complainant, from the perusal of record it is found that as per clause 14.3 of the agreement dated 26.10.2012, the possession of the unit was to be handed over to the complainant within a period of 42 months plus 180 days (6 months') grace period from the date of approval of building plans and/or fulfilment of the pre-conditions imposed thereunder. The consent to establish was received by the respondent on 21.08.2013, hence, the due date for delivery of possession comes to be 21.08.2017. Clause 14.3 of the agreement be read read as under :-

*“subject to force majeure and further subject to the applicant having complied with all its obligations under the terms and conditions of this agreement, and the applicant not being in default under any part of this agreement including but limited to the timely payment of the total sale consideration, stamp duty and other charges/fees/taxes/levies and also subject to the applicant having complied with all the formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the applicant within a period of 42 months*



*from the date of approval of the building plans and/or fulfilment of the pre-conditions imposed thereunder.*

23. The respondent has got approval of building plan from DTCP on 17.05.2012 and consent to establish from municipal corporation, Gurugram on 26.12.2013, the authority is of the view that date of handing over the possession should have been counted from the date they received the consent to establish and other approvals which is of cardinal importance to the builder and if we count the date of offer of possession i.e. 42 months + 6 months + consent to establish then the date of possession comes out **to be 26.12.2017**. However, no possession has been delivered to the complainant till date. Hence, the authority is of the view that there is a delay of one year approx. on the part of the respondent in offering possession of the subject apartment.

24. Other contentions raised by the complainant have not been substantiated by virtue of any substantial evidence, as such they are *non est* for the purpose of taking any decision at the moment.

### **Findings of the authority**



22. Keeping in view the present status of the project and intervening circumstances, awarding of refund of the paid amount to the complainant with the termination of agreement dated 26.10.2012 at this belated stage would not serve the ends of justice and this will also hamper the very purpose of completion of project and interest of existing allottees who wishes to continue with the project.

23. As such complainant is entitled for delayed possession charges @ 10.75% p.a. as per the provision of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project.

#### **Decision and directions of the authority**

24. Accordingly, the authority hereby issues the following direction to the respondent-

- i. The respondent shall pay interest @ 10.75% p.a. on the paid amount of Rs. 5,16,34,616/- to the complainant as delayed possession charges as per the provision of section 18(1) of the Real Estate





(Regulation and Development) Act, 2016 from due date of delivery of possession i.e. 26.10.2018 till actual handing over of possession, failing which the complainant is entitled to withdraw from the project.

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month. Amount, if any, due from the complainant may be adjusted mutually.

26. The order is pronounced.

27. Case file be consigned to the registry.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Date : 27.11.2018

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 27.11.2018
Complaint No.	326/2018 Case titled as Mr. Ashok Jaipuria Vs M/s Ireo Pvt. Ltd.
Complainant	Mr. Ashok Jaipuria
Represented through	Ms. Jyoti Dixit, Company Secretary in person with Shri Sanjeev Sahay Advocate.
Respondent	M/s Ireo Pvt. Ltd.
Respondent Represented through	Shri M.K.Dang Advocate for the respondent.
Last date of hearing	5.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Written arguments filed by the respondent placed on record.

Arguments heard.

Brief facts of the case are that complainant had booked a unit No.B18-41, 17<sup>th</sup> Floor, Tower-B, "Ireo Gurgaon Hills" Village Gwal Pahari, Tehsil Sohna, District Gurugram and an Apartment Buyer Agreement inter-se the parties was executed on 26.10.2012. As per clause 14.3 of the agreement, possession of the unit was to be handed over to the complainant within a period of 42 months + 6 months+12(extended grace period) months which comes out to be 26.10.2017. As per para 54 of BBA which reads as under:-

***"Subject to Force Majeure and further subject to the Applicant having complied with all its obligations under the terms and conditions of this Agreement, and the Applicant not being in default under any part of this Agreement including but not limited to the timely payment of the total Sale***

***Consideration, stamp duty and other charges/fees/taxes/levies and also subject to the Applicant 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 Applicant within a period of 42 months from the date of approval of the building plans and/or fulfilment of the pre-conditions imposed thereunder***

***("Commitment Period"). The Applicant further agrees and understands that the Company shall additionally be entitled to a period of six months (180 days)("Grace Period"), after the expiry of said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company. Subject to the condition contained herein, if the Company fails to offer possession of the said Apartment to the Applicant by the end of the Grace Period, it shall be liable to pay to the Applicant compensation calculated at the rate of Rs.10/- (Rupees Ten Only) per sq. ft of Super Area("Delay Compensation") for every month of delay thereafter until the actual date fixed by the Company for offering possession of the said Apartment to the Applicant. The Applicant shall be entitled to payment/adjustment against such 'Delay Compensation' only at the time of 'Notice of Possession' or at the time of final instalment, whichever is earlier.***

The date for handing over the possession should have been counted from the date they received consent to establish and other approvals which is cardinal importance to the builder and if we count the date of offer of possession i.e. 42+6 months + consent to establish then the date of possession comes out to be 26.12.2017 whereas counsel for the respondent is impinging upon 42+12+6+consent to establish which is quite unfair and one sided for the purpose of computing the time line for delivery of possession of unit. Only 42+6+months+ consent to establish should have been counted for all intents and purposes. Accordingly, due date of delivery of possession comes out to be 26.12.2017. However, it has been alleged that no delivery of possession has been given as on date. As such complainant is entitled for delayed possession charges @ 10.75% per annum as per the provisions of Section 18 (1) of the Real Estate (Regulation & Development)



Act, 2016, till the actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month. Amount, if any, due from the complainant may be adjusted mutually.

Other contentions raised by the complainant have not been substantiated by virtue of any substantial evidence, as such they are *non est* for the purposes of taking any decision at the moment.

The matter is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)  
27.11.2018

Subhash Chander Kush  
(Member)  
27.11.2018