

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

Complaint no. : 6802 of 2019
First date of hearing: 05.02.2020
Date of decision : 24.08.2022

1. Naresh Kumar Aggarwal
R/o H.no. 617, Near Hanuman Mandir,
Sector-14, Gurgaon, Haryana-122001
2. Aditi Khanna
R/O: H.no. F-002, Park View City-I, Sohna Road, **Complainants**
Gurgaon, Haryana-122001

Versus

Ireo Grace Realtech Private Limited
Registered Office: - C-4, 1st Floor,
Malviya Nagar, New Delhi-110017

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri S. Nanda
Shri M.K Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 13.01.2020 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Licensed area	37.5125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	05 of 2013 dated 21.02.2013
	License valid up to	20.02.2021
	Licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
5.	RERA registered/not registered	Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017(Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2)

		Vide 379 of 2017 dated 07.12.2017 (Phase 3)
	Validity	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
6.	Unit no.	1004, 10 th Floor, C-11 Tower (annexure C-4 on page no. 37 of complaint)
7.	Unit measuring	1295.78 sq. ft. (annexure C-4 on page no. 37 of complaint)
8.	Date of approval of building plan	23.07.2013 (annexure R-14 on page no. 80 of reply)
9.	Date of allotment	07.08.2013 (annexure R-3 on page no. 66 of reply)
10.	Date of environment clearance	12.12.2013 (annexure R-15 on page no. 84 of reply)
11.	Date of execution of builder buyer's agreement	Not executed
12.	Date of fire scheme approval	27.11.2014 (annexure R-16 on page no. 90 of reply)
13.	Reminders	For Executing Agreement: 28.05.2014, 17.07.2014 For Second Instalment: 14.05.2013, 28.05.2013 For Third Instalment: 13.04.2014, 04.05.2014 Final Notice: 29.08.2014

14.	Date of cancellation letter	17.11.2014 (annexure R-17 on page no. 91 of reply)
15.	Total consideration	Rs. 1,27,90,442/- (as per payment plan on page no. 78 of complaint)
16.	Total amount paid by the complainants	Rs. 24,57,908/- (as per statement of account paid annexed with cancellation letter)
17.	Due date of delivery of possession	23.01.2017 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
18.	Possession clause	13. Possession and Holding Charges Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or

		<p>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 building plans and/or fulfilment of the preconditions imposed thereunder(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.</p> <p>(Emphasis supplied)</p>
19.	Occupation certificate	27.01.2022 (as per project details)
20.	Offer of possession	Not offered but cancelled

B. Facts of the complaint

The complainants have submitted that:

- That the respondent painted an extremely rosy picture of the said project "The Corridor". The complainants lured by such assurances

booked a residential apartment and paid a booking amount of Rs. 12,50,000/-. They further made a payment of Rs. 12,07,908/- through cheque. Thus, till date the complainants made a total payment of Rs. 24,57,908/-.

4. That the respondent upon such payments issued the offer of allotment letter dated 07.08.2013 to the complainants along with standard draft of the apartment buyer agreement allotting the unit bearing no. CD-C11-10-1004 on 10th floor, admeasuring 1295.78 sq. ft. in tower C-11 for a total sale consideration of Rs. 1,27,90,442/-.
5. That the complainants were shocked when they perused the draft of the apartment buyer agreement. The agreement was drafted completely in favour of the respondent. There was no scope for the complainants to seek compensation for the delay, but on the other hand, respondent had entitled itself to charge huge rate of interest @ 20% p.a.
6. That the complainants were not allowed to make any alterations in the agreement. The options were limited for the complainants, either to sign the agreement or lose the entire paid amount. The complainants had already made the payment of Rs. 25 lakhs and therefore, could not take the risk of making alterations.
7. That such unilateral agreements have already been held to be illegal and arbitrary and inapplicable while deciding the compensation for the allottees by several courts. It is submitted that the complainants were lay men and had no idea that the respondent company would indulge in such illegal malpractices.

8. That the complainants have paid the consideration amount in two instalments to the tune of around 25,00,000/-. Thereafter the complainants went to the project site to inspect the development of the project and were astonished to find that the project work had not yet started and that the work seemed too slow to be completed within the stipulated time.
9. That keeping in mind the tall promises made by the respondent company and also after having inspected the project site on their own, the complainants felt duped and cheated. Hence, they reserved their payment of further instalments on the apprehension that all their money might go down the drain. With the passage of time the complainants and their apprehensions have proved to be correct.
10. The abovementioned apprehensions along with the unilateral and arbitrary terms and conditions of the buyer's agreement restrained the complainants from making further payments and also from signing the buyer's agreement.
11. That with the passage of time, the complainants and their apprehensions have only proved to be correct. Even after having executed the buyer's agreement and made complete payments, several buyers have not been handed over the possession of what is rightfully theirs. Even after the completion of 42 months from the day of the building plan being sanctioned, as stipulated in the buyer's agreement, the respondent company has not been able to transfer the possession and rather has extended the date of delivery to 2021 from the stipulated 2017.

12. That instead of addressing the issues so raised by the complainants, the respondent company rather cancelled the allotment so made to them and also forfeited the amount paid till date.
13. That the respondent company had illegally and malafidely forfeited the money paid by the complainants. That due to the illegal and non-cooperative attitude of the respondent, the complainants are constrained to file the present complaint. The respondent company cannot expect the complainants to wait endlessly for the possession of their unit. The cancellation of the unit was made on 17.11.2014.
14. That the cancellation and forfeiture of the complainant's money made by the respondent was bad in the eyes of law. The complainants are entitled to refund the amount forfeited by the respondent company primarily on two grounds: The apartment buyers' agreement so drafted by the respondent company was highly unilateral in nature. The respondent company has itself committed an inordinate delay in delivering the possession of the apartment to the complainants. As of today, there has been a delay of almost two years in delivering the possession of the apartment. The respondent company wants to evade from its duties. The hands of the respondent company are themselves not clean. Hence, the complainants are entitled to a complete refund of the amount forfeited by the respondent.

C. Relief sought by the complainants:

15. The complainants have sought following relief(s):

- (i) Direct the respondent to refund the money paid by the complainants till date i.e., Rs. 24,57,908/- along with prescribed rate of interest from the date of payment till realization of the amount.
 - (ii) Direct the respondent to pay a lump sum compensation of Rs. 10,00,000/- as compensation for mental agony and harassment caused to the complainants.
 - (iii) Direct the respondent to pay a sum of Rs. 50,000/- as litigation expenses to the complainants.
16. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent.**
- The respondent has contested the complaint on the following grounds: -
17. 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 parties prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
 18. That there is no cause of action to file the present complaint.
 19. That the complainants have no locus standi to file the present complaint.

20. That the complainants are estopped from filing the present complaint by their own acts, omissions, admissions, acquiescence's, and laches.
21. That the present complaint is barred by limitation.
22. 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 54 of the booking application form.
23. That the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. It been filed 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:
24. That the complainants, after checking the veracity of the project namely, 'Corridor; sector 67-A, Gurugram applied for allotment of an apartment vide booking application form and agreed to be bound by the terms and conditions of the same.
25. That based on the application for booking, respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainant's apartment no. CD-C-11-10-1004 having tentative super area of 1295.78 sq. ft. for a total sale consideration of Rs. 1,27,90,442/-. Vide letter dated 18.03.2014 respondent sent 3 copies of apartment buyers' agreement to the complainants. However, they failed to execute the same despite reminders dated 28.05.2014 and 17.07.2014 respectively.

26. That the complainants made certain payment towards the instalment demands on time and as per the terms of the allotment. However, they started committing defaults. Vide payment request dated 14.04.2013 the respondent had raised the demand of second instalment for net payable amount of Rs. 12,07,910/-. However, the said sum was paid by the complainants only after issuance of reminders dated 14.05.2013 and 28.05.2013 issued by the respondent.
27. That vide payment request dated 18.03.2014 the respondent raised the demand of third instalment for net payable amount of Rs. 14,71,382/-. The complainants failed to remit the demanded amount despite reminders dated 13.04.2014 and 04.05.2014 and final notice dated 29.08.2014.
28. That from the aforesaid terms of the booking application form, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise the 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 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 last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, would have expired only on 27.11.2019. However, the same was subject to force majeure conditions and the fulfilment of contractual obligations of the complainants. Furthermore, the revised date of offering the possession is 30.06.2020.

29. That timely payment of instalments within the agreed time schedule was the essence of allotment. 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, their calculations went wrong on account of slump in the real estate market and the complainants did not possess sufficient funds to honour their commitments. There was no readiness to make the payment of the due instalments amount. On account of non-fulfilment of the contractual obligations by the complainants despite several opportunities extended by the respondent, their allotment was cancelled and the earnest money was forfeited vide cancellation letter dated 17.11.2014 in accordance with clause 7 read with clause 11 of booking application form.
30. That despite non-fulfilment of the contractual obligation by the complainants the respondent has not only completed the

construction of the tower in which the unit allotted to them was located but also applied for grant of occupation certificate vide application dated 10.09.2019.

31. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

32. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

33. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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 deal with the present complaint.

E. II Subject matter jurisdiction

34. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides 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.

35. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings regarding relief sought by the complainants.

(i) Direct the respondent to refund the money paid by the complainants till date i.e., Rs. 24,57,908/- along with prescribed rate of interest from the date of payment till realization of the amount.

36. The complainants booked a residential apartment in the project of the respondent named as "Corridors" situated at Sector-67-A,

Gurugram, Haryana for a total sale consideration of Rs. 1,27,90,442/-. The allotment of the unit was made on 07.08.2013.

37. The respondent sent three copies of buyers agreement to the complainants, but they failed to execute the same. Thereafter, respondent sent reminders on 28.05.2014 and 17.07.2014 respectively.
38. The respondent vide letter dated 14.04.2013 raised demand towards second instalment and due to non-payment from the complainants it sent reminder on 14.05.2013 and 28.05.2013 and thereafter third instalment for payment was raised but the complainants also failed to pay the same. Further, the respondent sent final notice dated 29.08.2014. Thereafter, the respondent cancelled the allotment of the unit vide letter dated 17.11.2014 and forfeited the paid up amount and supplied calculation sheet of the details of forfeiture amount and reasons thereof and copy placed on record. The authority is of the view that cancellation is as per the terms and conditions of agreement as the allottees failed to pay despite a number of reminders.
39. Now the question for consideration arises as to after a gap of more than 5 years, the authority can reopen the matter of cancellation of the allotted unit and payment of remaining amount due if any against the builder. It is not disputed that after cancellation of unit on 17.11.2014 the complainants did not move any authority challenging cancellation of the allotted unit and seeking refund. They were at liberty to move civil/consumer forum seeking the

desired relief but no such effort in this regard was made which shows that they slept over their right qua the allotted unit.


40. Secondly, the cancellation of unit was made on 17.11.2014 and the complaint to challenge that action was filed on 13.01.2020 i.e., after gap of more than 5 years and which is barred by limitation. The cause of action for the complainants to challenge cancellation and refund arose on 17.11.2014 and the complaint in this regard was filed on 13.01.2020 i.e., after more than 5 years. No doubt there is no provision in the Act of 2016 providing limitation to file a complaint, but the period of limitation would definitely be attracted in case in hand. A reference in this regard will be made to the ratio of law laid down in cases of **Central Coal Fields vs. Lilawati Devi, 2001(1) LLJ 1477** wherein was held that in terms of section 3 of the Limitation Act, 1963 a court cannot pass a decree if the suit is barred by limitation.
41. Similarly, in **Smt. Mira Madhubani vs. Ireo Grace Realtech Pvt. Ltd.(HRERA- Gurugram Complaint Case No. 242/2018 dated 05.09.2018** it was observed by the Authority that when a complaint was filed after more than three years from the date of cause of action then the same is not maintainable being barred by limitation and is not maintainable.
42. Thus, keeping in view the factual and legal position discussed above, the complaint seeking refund of the paid-up amount is not maintainable being barred by limitation is ordered to be rejected.

(ii) Direct the respondent to pay a lump sum compensation of Rs. 10,00,000/- as compensation for mental agony and harassment caused to the complainants.

(iii) Direct the respondent to pay a sum of Rs. 50,000/- as litigation expenses to the complainants.

43. In view of the findings on issue no. 1 this issue becomes redundant.
44. So, keeping in view the findings on issue no.1 as discussed above, there is no merit in the complaint being barred by limitation and the same is hereby ordered to be rejected.
45. Complaint stands disposed of.
46. File be consigned to the registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.08.2022

HARERA
GURUGRAM