

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

Complaint no. : 2045 of 2018
**Date of First
hearing :** 25.04.2019
Date of decision: 25.04.2019

Mrs. Chitralkha Gupta
R/o: W-11/10, DLF Phase-III,
Gurgaon, Haryana -122002

...Complainant

Versus

M/s Ireo Grace Realtech Pvt. Ltd.
Office at: 304, Kanchan House, Karampura
Commercial Complex, New Delhi - 110015

...Respondent

CORAM:

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

APPEARANCE:

Mr. Rit Arora

Advocate for the complainant

Mr. Vinod Kumar (AR of the
respondent) alongwith

Mr. M K Dang

Advocate for the respondent

ORDER

1. A complaint dated 04.12.2018 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 Mrs. Chitrlekha Gupta against the promoter M/s Ireo Grace Realtech Pvt. Ltd. in respect of unit described below in the project 'The Corridors', on account of non-fulfilment of obligations of the promoter under section 11(4)(a) of the Act *ibid.*

2. Since the apartment buyer's agreement was executed on 12.01.2015, 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: -

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| 1. | Name and location of the project | "The Corridors" in Sector 67-A, Gurugram |
| 2. | Nature of real estate project | Group housing colony |
| 3. | Project area | 37.5125 acres |
| 4. | Unit no. | 502, Fifth floor, tower A9 |
| 5. | Unit area | 1891.51 sq. ft. |

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| 6. | Registered/ not registered | Registered separately in 3 phases For Phase I- 378 of 2017 (13.25 acres) For Phase II- 377 of 2017 (13.152 acres) For Phase III- 379 of 2017 (8.628 acres) |
| 7. | Registration valid up to | 30.06.2020(Phase I and II) 31.12.2023(Phase III) |
| 8. | DTCP license | 05 of 2013 dated 21.02.2013 |
| 9. | Date of booking | 22.03.2013 |
| 10. | Date of allotment offer letter | 07.08.2013 |
| 11. | Date of apartment buyer's agreement | 12.01.2015 |
| 12. | Environmental clearance | 12.12.2013 |
| 13. | Date of approval of building plan | 23.07.2013 |
| 14. | Date of firefighting scheme | 27.11.2014 |
| 15. | Total consideration as per statement of accounts page no.76 | Rs. 2,06,42,842.18/- |
| 16. | Total amount paid by the complainant (as per statement of accounts) page no.76 | Rs. 1,86,41,899.30/- |
| 17. | Payment plan | Construction linked plan |
| 18. | Date of delivery of possession Clause 13.3: 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 | 27.11.2018 Note: calculated from the date of firefighting scheme dated 27.11.2014 |

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| | fulfilment of the preconditions imposed therein plus 180 days grace period | |
| 19. | Delay of number of months/ years | 4 months 29 days |
| 20. | Occupation certificate application applied on | 06.07.2017 |
| 21. | Penalty clause as per buyer's agreement | Clause 13.4 Rs. 7.50/- per sq. ft of the super area for every month of the delay |

4. The details provided above have been checked on the basis of the record available in the case file. An apartment buyer's agreement dated 12.01.2015 is available on record for the aforesaid unit. As per clause 13.3, of the apartment buyer's agreement dated 12.01.2015, the due date of handing over possession was 27.11.2018, however the respondent has failed to deliver the possession till date and has also not paid any interest for the period he delayed in handing over the possession. Therefore, the promoter has not fulfilled their 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 25.04.2019. The reply filed on behalf of the respondents on has been perused.

Facts of the complaint

6. The complainant submitted 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 no.1 company has its registered office at 304, Kanchan House, Karampura Commercial Complex, New Delhi-110015 and its Corporate office at 5th Floor, Orchid Center, Golf Course Road, Sector-53, Gurgaon-122002, Haryana, India and had launched the project 'IREO THE CORRIDOR' located at the Sector- 67-A, Gurgaon, Haryana, India. The respondent company had launched the mentioned project somewhere in the year 2012- 2013.
7. The complainant submitted that it is submitted that the complainant was approached by the respondent company's agents and representatives who made tall claims regarding their project, its viability, various amenities it promised etc. It is submitted that the complainant was lured into by the respondent's representations and decided to apply in the

project of the respondent company. It is submitted that the respondents claimed that the 'IREO THE CORRIDOR' is one of their most prestigious projects the respondent company promised various facilities and lured the complainant with various features including that the project has connectivity point to Sohna Road and Golf Course Extension Road and also that IGI Airport is at just 20 minutes' drive and also that Huda City Centre Metro Station is 10 minutes away and also other facilities like city bus stand and railways station are on easy ride away and are neighbourhood of a world class university, Global Business Park, DLF City. The complainant was lured into investing by the respondent company and hence decided to make application for the booking in the project of the opposite party for the unit.

8. The complainant submitted that it is submitted that on the application being made by the complainant on 22.03.2013, the respondent company issued the confirmation of unit selected for allotment. The details of the unit allotted to the

complainant company are unit no.- CD-A9-05-502, Tower- A-9 for total sale consideration:- Rs. 20,642,842.21.

9. The complainant submitted it is submitted that the prime attraction given by the respondent company was the metro connectivity and all other attractions mentioned above. It is submitted that it was only due to the said reason the complainant applied for the unit in the respondent and thereafter the respondent company after a gap of almost 2 years for the reason best known to them had delayed in executing the buyers agreement, that on 12.01.2015 the respondent company executed the flat buyers agreement and entered into agreement with the complainant.

10. The complainant submitted that it is submitted prior to this booking the complainant had already booked for a unit i.e. CD-C3-06-603 in the same project of the respondent company. It is submitted that soon after the booking and allotment of the unit no. CD-A9-05-502 the complainant realized that she and her family won't be able to sustain and continue the payment of both the Units together. Therefore, the complainant

requested the respondent company for surrender of allotment of the unit booked prior to this i.e. CD-C3-06-603 vide letter/email dated 02.12.2014 and asked for transferring and adjusting the amount already paid that is Rs.23,84,174/- with the present unit. It is submitted that the respondent company duly accepted the request of the complaint and transferred and adjusted the money of the complainant after deducting an amount of Rs.1,69,705/- as delayed payment interest and thereafter cancelled the allotment of the unit no. CD-C3-06-603 and adjusted its balance with unit no. CD-A9-05-502. The Copy of acceptance letter dated 24.12.2014 and payment receipt dated 30.12.2014 issued by the respondent company.

11. The complainant submitted that it is submitted that the complainant made most of its payments on time and the respondent company had intimated and had charged interest at the rate of 20% p.a., in cases where the payments were delayed. It is submitted that the complainant, nevertheless, duly made the payments to the respondent company as and when demanded. It is submitted that despite making of

payment on time the respondent company had miserably failed to fulfil its promise of delivering the possession of the flat by January 2017.

12. The complainant submitted that it is submitted that despite the payment of approximately Rs 1,86,41,899.30/- by the complainant, including the basic sale price and other charges, the respondent company has failed to deliver the possession of the flat to the complainant. It is submitted that the complainant till date has already made the payment of Rs 1,86,41,899.30/- to the respondent but the respondent has failed to complete the construction of the apartment and deliver the same within 42 months.

13. The complainant submitted that it is submitted that the complainant had requested the respondent to deliver the possession of the apartment several times personally and also over telephonic conversation but the respondent has failed to adhere to the request of the complainant. It is submitted that on the other hand, the respondent continued to delay in giving possession of the unit. The complainants are aggrieved since

there was already delay in the possession but over it, the respondent was not answering to the several requests which were made personally by the complainant. It is the case of the complainant that the respondent's failed miserably to construct and hand over the possession of the unit booked by the complainants. The respondent was already in receipt of Rs. 1,86,41,899.30/- of the total sale consideration but had not completed the construction which shows that the respondent had failed to deliver the possession of the unit and thus this amounts to deficiency in service and unfair trade practice on the part of the respondent. Further, the respondent was also guilty of not issuing the construction updates to inform the complainant of the stage of the construction.

14. The complainant submitted that it is submitted that it is submitted that the complainant who is an old women is suffering double jeopardy as she has availed bank loan to the tune of Rs.1.1Crore and for that she has to pay huge EMIs and this is putting financial strain over her and her family and secondly she has made most of the payments to the

respondent but the respondent had miserably failed in giving the possession of the unit booked by the complainant. The complainant is made to suffer both mentally and financially by the respondent and that too without any default from complainant side.

15. The complainant submitted that it is submitted that, the respondent company had illegally and malafidely withheld the compensation of the complainant. It is submitted that due to the illegal and non-cooperative attitude of the respondent, the complainant has been constrained to file the present complaint.

16. Issues raised by the complainant

The relevant issues raised in the complaint are:

- I. Whether there has been failure on the part of the respondent in delivering the apartment to the complainant within the stipulated time period?
- II. Whether the complainant are entitled to refund of their money along with compensation, and at what rate?

17. Relief sought(as per amendment of application filed by the complainant)

- a. Pass an appropriate award directing the respondent party to pay delay possession charges to the complainant alongwith interest at an appropriate rate on the money paid by the complainant.

Respondent's reply

18. The respondent submitted that the complainant, after checking the veracity of the project namely, 'Corridor; Sector 67A, Gurugram had applied for allotment of an apartment vide her booking application form dated 22.03.2013. A copy of the booking application form dated 22.03.2013. The complainant agreed to be bound by the terms and conditions of the booking application form.

19. The respondent submitted that based on the said application, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainant apartment no. CD-A9-05-502 having tentative super area of 1891.51 sq.ft for a total sale consideration of Rs. 2,06,42,842.24. It is submitted that the

complainant signed and executed the apartment buyer's agreement on 12.01.2015 only after a reminder dated 28.05.2014 was sent to her by the respondent and the complainant agreed to be bound by the terms contained therein. It is pertinent to mention herein that when the complainant had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be applied retrospectively.

20. The respondent submitted that the respondent in accordance with the agreed payment plan and the terms of the allotment raised the payment demand towards the third instalment demand dated 18.03.2014. However the complainant failed to make the payment towards the due amount despite reminders dated 13.04.2014 and 04.05.2014.

21. The respondent submitted that vide letter dated 02.12.2014, the complainant, on account of paucity of funds, requested the respondent to merge the unit no. CD-C3-06-603 which was already allotted by the respondent in the name of Mr.

Jagmohan Gupta who is the husband of the complainant with the unit of the complainant. The respondent being a customer oriented company acceded to the request of the complainant vide letter dated 24.12.2014 and intimated to her that after deducting the delayed interest accrued towards the unit no. CD-A9-05-502 and CD-C3-06-603, the balance amount of Rs. 18,87,644/- will be adjusted towards the instalment of the retained unit no. CD-A9-05-502.

22. The respondent submitted that the respondent kept on raising payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and the complainant made some payments in time and then started delaying and committing default from fifth instalment onwards. It is pertinent to mention herein that the respondent had raised the fifth instalment demand on 16.09.2015 for the net payable amount of Rs. 15,37,550.15. However, the respondent received the part of the demanded amount and accordingly a reminder dated 05.11.2015 was issued to the complainant from the respondent to pay the

remaining due amount. The complainant made the payment towards the sixth and seventh payment instalment demand raised by the respondent as per the terms of the allotment.

23. The respondent submitted that vide payment demand dated 11.09.2017, the respondent raised the payment demand towards the twelfth instalment for net payable amount of Rs. 19,31,640.83. However, the complainant till date has not made the payment of the due instalment amount despite reminder letter dated 22.12.2017. It is submitted that the complainant has made the payment of the earnest money and part-amount of Rs. 1,83,15,075/- out of the total sale consideration of Rs. 2,06,42,842.24 and is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.

24. The respondent submitted that the possession of the unit is supposed to be offered to the complainant 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)...’. Furthermore, the complainant has further agreed for an extended delay period of 12 months from the date of expiry of the grace period as per clause 13.5 of the apartment buyer's agreement.

25. The respondent submitted that from the aforesaid terms of the buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub- clause (iv) of clause 17 of the

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.

26. The respondent submitted that 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, will expired only on 27.11.2019. However, the complainant has filed the present complaint prematurely prior to the due date of possession and no cause of action had accrued till date. The complainant is trying to mislead this Hon'ble authority by making baseless, false and frivolous

averments. The respondent has already completed the construction of the tower in which the unit allotted to the complainant is located and the photographs of the same. It is pertinent to mention herein that the respondent has already applied for the grant of occupation certificate on 06.07.2017.

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

Written arguments on behalf of the respondent:

28. The respondent further submitted that no representations whatsoever were made by the respondent and all prospective buyers including the complainant had approached them on

their own free will and only after checking the veracity of the project.

29. The respondent submitted that the complainant herself has acknowledged in clause “N” of the agreement that she has been provided with complete information and clarifications as required by her and has ultimately relied upon her own independent investigations and judgement without being influenced by any representations, statements whether written or oral to purchase the said apartment.

30. The respondent submitted that the construction of the tower in which the unit allotted to the complainant is located is complete and the respondent has already applied for grant of the Occupation Certificate dated 06.07.2017.

31. The respondent submitted that according to clause 22.1 of the agreement, the complainant has a limited right to cancel the allotment i.e. only in the case of clear and unambiguous failure of the respondent company. There is no fault on the part of the respondent. Apart from this limited right, the complainant does not have any other right to cancel the agreement.

32. The respondent submitted that there has been no deficiency on the part of the respondent in any manner. The malafide tactics adopted by the complainant cannot be allowed to succeed.

The respondent has placed reliance on the following authorities.

- 2017(3) CLT 101
- 2014(4) PLR 167
- 2015(2) C.P.R 254
- 1993 C.P.C 311
- 2017(4) PLR 737
- 2018 AIR Madras 14
- 2011(1) RCR(Civil) 373
- 2018(1) L.A.R 119

However, the same is not applicable to the facts of the case.

Determination of issues

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

- i. In respect of the **first issue**, the apartment buyer's agreement was executed on 12.01.2015, i.e. prior to the commencement of the Real Estate (Regulation and

Development) Act, 2016, as per clause 13.3 of the apartment buyer agreement the possession of the said unit was to be delivered within 42 months plus 180 days grace period from the date of approval of building plans/ sanctions. In present case, the due date is taken from approval of firefighting scheme i.e 27.11.2014, the due date comes out to be 27.11.2018. Clause 13.3 is reproduced below;

“within a period of 42 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder....additionally be entitled to a period of 180 days(grace period)”

Accordingly, the due date of possession was 27.11.2018 and the possession has been delayed by 4 months 29 days till the date of decision. As the respondent has failed to fulfil his obligation under section 11(4)(a), therefore the promoter is liable under section 18(1) proviso read with rule 15 of the rules ibid, to pay interest to the complainant at prescribed rate i.e. 10.70% per annum for every month of delay from the due date i.e. 27.11.2018 till the handing over of possession to the complainant.

- ii. With respect to **second issue** raised by the complainant, the project is registered with the authority vide registration no. 377 of 2017, 378 of 2017 and 379 of 2019 which is valid till

30.06.2020(377 of 2017, 378 of 2017) and 31.12.2023(379 of 2019). Thus keeping in view the interest of other allotted who wish to continue with the project refund at this stage cannot be allowed.

Findings of the authority

33. Jurisdiction of the authority- The project “The Corridors” is located in Sector 67-A, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

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

adjudicating officer if pursued by the complainant at a later stage.

35. Arguments heard: By virtue of this complaint, the complainant seeks directions against the respondent to refund an amount of Rs. Rs. 1,86,41,899/- paid to the respondent for purchase of flat/unit no.CD -A9-05-502 alongwith interest.

36. As per clause 13.3 of the apartment buyer's agreement dated 12.01.2015 executed inter se the parties for unit No.CD-A9-05-502 in project "The Corridors", Sector 67A, Gurugram, possession of the booked unit was to be handed over to the complainant within a period of 42 months+ 180 days grace period from the date of approvals of building plans and/or fulfilment of the pre-conditions imposed thereunder. As per Annex C-5, the building plans for the project were approved on 23.07.2013 by the Directorate of Town and Country Planning. Accordingly, the period of 42 months+180 days grace period to deliver the unit period shall be counted w.e.f. 27.11.2014. Accordingly, the due date to hand over the possession of unit comes out to be 27.11.2018. However, the respondent has not

delivered the unit in time. Complainant has already paid Rs. 1,86,41,899.30/- to the respondent against a total sale consideration of Rs.2,06,42,842.18/-.

37. The complainant is invoking the directions passed in Civil Appeal No. 12238 of 2018 in case title Pioneer Urban Land and Infrastructure Limited Vs Govindan Raghavan by the Hon'ble Supreme where the Hon'ble Supreme Court has upheld the order dated 23.10.2018 passed by the National Consumer Disputes Redressal Commission wherein the National Commission has ordered the appellant/Pioneer Urban Land and Infrastructure Limited to refund the amount with interest.

But the authority keeping in view the interests of other allottees and in the interest of real estate projects and particularly the progress of work of the present project is not inclined to order refund of the amount.

Directions of the authority

38. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- i. Complainant is entitled for 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 & Development) Act, 2016 till offer of possession.
- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent is directed not to charge anything from the complainant which is not part of the apartment buyer's agreement.
- iv. The respondent is directed to pay the arrears of interest accrued so far to the complainant within a period of 90 days

from the date of this order and thereafter on 10th of subsequent months till the offer of possession to the complainant.

- v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.70% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

39. The order is pronounced.

40. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 25.04.2019

Judgement Uploaded on 31.05.2019

HARERA
GURUGRAM