

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

Complaint no. 800 of 2019
Date of first hearing 24.07.2019
Date of decision 24.07.2019

1. Mr. Mandeep Singh Johar
R/o: C-53, Sushant Lok, Phase-1,
Gurugram-122009, Haryana
2. Smt. Smriti Malhotra
R/o: J-24, Saket, New Delhi- 110017
3. Mr. Gurjeet Johar
R/o: C-53, Sushant Lok, Phase-1,
Gurugram, Haryana- 122009
Versus

Complainants

1. M/s Ireo Grace Realtech Private Limited,
Address: C-4, 1st floor, Malviya Nagar,
New Delhi- 110017
2. M/s Precision Realtors Pvt. Ltd.
Address: 305, 3rd floor, Kanchan House,
Karampura Commercial Complex, New
Delhi - 110015

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Mandeep Singh Johar
Shri Shiva Kapur
Shri Garvit Gupta

Complainant in person
Advocate for complainants
Advocate for the respondents

AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER



ORDER

1. A complaint dated 13.03.2019 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. Mandeep Singh Johar, Smt. Smriti Malhotra and Mr. Gurjeet Johar against the respondents M/s IREO Grace Realtech Pvt Ltd and M/s Precision Realtors Pvt. Ltd. for not giving possession on 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 was executed on 02.06.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoters/respondents 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, Sector 67-A, Gurugram, Haryana
2.	Nature of real estate project	Group housing colony
3.	Area of the project	37.5125 Acres
4.	Unit no.	102, 1 st floor, tower-C9
5.	Area of unit	1483.57 sq. ft
6.	Registered/not registered	Registered
7.	RERA registration no	377 of 2017 (Phase 1) dated 07.12.2017 378 of 2017 (Phase 2) dated 07.12.2017 379 of 2017 (Phase 3) dated 07.12.2017
8.	Completion date as per RERA registration certificate	30.06.2020
9.	DTCP licence no.	05 of 2013 dated 21.02.2013
10.	Date of agreement	02.06.2014
11.	Firefighting scheme	27.11.2014
12.	Total consideration	Rs. 1,63,82,206.66/- (page-68) Annex IV
13.	Total amount paid by the complainant	Rs. 1,54,62,867/- (as alleged by complainant in the complaint)
14.	Payment plan	Instalment payment plan
15.	Date of building plans approval	23.07.2013
16.	Date of environment clearance	12.12.2013
17.	Due date of delivery of possession	27.11.2018

	Clause 13.3 – 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder) + 180 days grace period.	(Fire-fighting scheme dated 27.11.2014)
18.	Delay in handing over possession till date 24.07.2019	7 months 27 days
19.	Penalty clause	Clause 13.4 – Rs. 7.50 per sq. ft per month of super area

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 24.07.2019. The reply filed on 12.04.2019 on behalf of the respondents and has been perused.

FACTS OF THE CASE

5. The complainants submitted that they are law-abiding citizen and are the part of the same family. Wherein, the complainant no2 is sister-in-law of the complainant no.1 and the complainant no. 3 is the father of complainant no. 1 for the purpose of filing the present complaint, the complaint no. 3 has authorized his son/ the complainant no. 1 as his attorney



holder, vide power of attorney by Sh. Gurjeet Johar in favour of Sh. Mandeep Singh Johar.

6. The complainants submitted that the respondent no.1 represented that their money is safe and assured that the delivery of the apartment, ready in all aspects shall be given on/ before early 2017. Based on the assurances, they were induced to invest their hard-earned money.
7. The complainants submitted that they have paid advanced 3 cheques dated 25.01.2013, 25.01.2013 and 29.01.2013, amounting to Rs. 5,00,000/- each respectively, for a sum, totaling Rs. 15,00,000/- , towards the provisional application of a '2 BHK + Study' apartment, having a super area of 1483.57 sq. ft.
8. The complainants submitted that they were provided with the allotment offer letter dated 07.08.2013 and on 02.06.2014 executed the buyer's agreement for apartment no. CD-C9-01-102, FF, tower-C9. They were again assured by representative / associates of the respondent no. 1 that all requisite permissions are taken, and the possession of the apartment will be given within period of 42 months from the date of approval of the building plan.



9. The complainants submitted that the building plan having been approved on 23.07.2013, by the Directorate of town & Country Planning, Haryana (DTCP), according to which the apartment was to be handed over on/before 22.06.2019 as per the agreement dated 02.06.2014.
10. The complainants submitted that they have recently discovered that contrary to law and despite receiving 41 objections, the respondents illegally and clandestine manner, got revised the building plan vide memo no. ZP-871/AD(RA)/2016/15053 dated 25.07.2016 which is even prior to the letter sent by the respondent seeking the consent to revise the building plan showing the absolute disdain to law.
11. The complainants submitted that on the inquiries made with the office of RERA, they were shocked to learn that the Project "The Corridors" was not even registered with RERA.
12. The complainants submitted that due to the gross failure of the respondent in adhering to their commitments and promises to hand over the possession 22.01.2017, which the respondent failed, they have left with no faith in the respondent, whatsoever and despite various communications, letters and



personal visits, no end in the ordeal of the complainants appears in sight.

13. The complainants submitted that they have been under tremendous mental stress and agony due to the conduct of the respondent, none of the commitments of the respondent has come true. In these facts and circumstances, the complainants is now left with no option but to file the present complaint for which, he has sought for legal advice and has approached this hon'ble authority, seeking justice and relief *inter-alia* in terms of a time bound/immediate possession of the apartment along with interest as this hon'ble authority may deem deserving in the present case and its circumstances and also for seeking justice, which, they so urgently and ardently deserves.

ISSUES RAISED BY THE COMPLAINANT

14. The issues raised by the complainant are as follows: -
1. Whether the complainants are entitled for a possession along with the prescribed interest on the money paid to the respondent, which is due, because of complete failure on the part of respondent no. 1 to hand over the apartment to the complainants?



RELIEF SOUGHT

15. The reliefs sought by the complainant are as follows: -

1. Direct the respondent to provide immediate/time bound possession of the apartment of the complainants;
2. Direct the respondent to pay the prescribed interest for the period calculated from the time, the complaints have paid the monies to the respondent no. 1;

REPLY BY THE RESPONDENTS

16. The respondents submitted that the complainants, after checking the veracity of the project namely, 'Corridor; Sector 67A, Gurugram had applied for allotment of an apartment vide their booking application form dated 04.03.2013. The complainants agreed to be bound by the terms and conditions of the booking application form.
17. The respondents submitted that in accordance with the agreed payment plan and the terms of the allotment raised the payment demand towards the second installment demand dated 14.04.2013. However, the complainant the payment of the demanded amount was received by respondent no.1 only



after a reminder dated 14.05.2013 was issued by respondent no.1 to the complainants.

18. The respondents submitted that vide its allotment offer letter dated 07.08.2013 allotted to the complainants apartment no. CD-C9-01-102 having tentative super area of 1483.57 sq.ft for a total sale consideration of Rs. 1,63,82,206.66 It is submitted that the complainants signed and executed the apartment buyer's agreement on 02.06.2014 only after a reminder dated 28.05.2014 was sent to them and the complainants agreed to be bound by the terms contained therein.

19. The respondents submitted that respondent no.1 kept on raising 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 the payment of the earnest money and part-amount of the total sale consideration and are 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.

20. The respondents submitted that 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) ..."

Furthermore, the complainants have 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.

21. 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.

22. The respondent submitted that 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 complainants have filed the present complaint prematurely prior to the due date of possession and no cause of action had accrued till date. The complainants are trying to mislead this hon'ble authority by making baseless, false and frivolous averments. They have 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.

DETERMINATION OF ISSUES

23. With respect to the **sole issue**, raised by the complainants as per clause 13.3 of apartment buyer's agreement dated 02.06.2014, the possession of the flat was to be handed over



within 42 months + 180 days grace period from the date of approval of building plans and/or fulfilment of the preconditions imposed. Therefore, the due date of handing over the possession shall be computed from date of firefighting scheme approvals 27.11.2014. Thus, complainants are entitled to get delay possession charges.

24. Accordingly, the due date of possession was 27.11.2018 and the possession has been delayed by 7 months 28 days till date. Therefore, under section 18(1) proviso respondents are liable to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. As the promoters have failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act *ibid* read with rule 15 of the rules *ibid*, to pay interest to the complainants, at the prescribed rate, for every month of delay till offer of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.60% per annum on the amount deposited by the



complainants with the promoter from the due date of possession i.e. 27.11.2018 till offer of possession.

Findings of the Authority

25. 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.***

26. 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.

27. Occupation certificate has not been received so far by the respondent. Arguments heard. As per clause 13.3 of apartment buyer's agreement dated 02.06.2014 for unit no. 102, 1st floor, tower no. C9, in project "The Corridor" sector 67-A, Gurugram,



possession was to be handed over to the complainant within 42 months + 180 days grace period from the date of approval of building plans and/or fulfilment of the preconditions imposed which comes out to be 27.11.2018. However, the respondent has failed to deliver the unit in time to the complainant.

28. Local Commissioner was appointed in complaint no. 623/2018 titled Mr. Sandeep Bansal Versus M/s Ireo Grace Realtech Pvt. Ltd. vider order dated 10.04.2019 which may be tagged with this case also so that a view w.r.t status of the project may be distinctly evolved. Revised due date of completion of project is 30.06.2020. Counsel for complainant has stated at bar that project is not being pursued seriously and there is no hope to complete the project in time i.e. by 30.06.2020. In view of the facts and circumstances that the project is registered with the authority and the revised due date as per registration certificate is 30.06.2020. It is advisable to wait till that 30.06.2020. Respondent is directed to complete the project by the date given in the RC and handover the physical possession of the unit to the complainant by



30.06.2020. However, the complainant is entitled for delayed possession charges at the prescribed rate of interest @ 10.60% per annum.

29. Complainant has already paid Rs. 1,54,62,867/- to the respondent against the total sale consideration of Rs. 1,63,82,206/-.

Decision and directions of the authority

30. 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 respondents in the interest of justice and fair play :


- i. Complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 27.11.2018 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.





- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not part of builder buyer agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.60% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

31. Complaint stands disposed of.
32. The order is pronounced.
33. The file is consigned to the registry


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated: 24.07.2019

AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER