

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

Complaint No. : 1083 of 2019
First date of Hearing : 24.07.2019
Date of Decision : 24.07.2019

Mr. Deepak Kumar,
R/o Farm No. 1, Grand Westend Green,
Rajokari, New Delhi-110038

Complainant

Versus

1. M/s IREO Victory Valley Private Limited,
through its Directors/Authorized Signatory,
having its
Corporate Office at Ireo Campus, Archview
Drive, Ireo City, Golf Course Extension Road,
Gurugram-122101
Registered Office at: 305, 3rd Floor,
Kanchan House, Karampura Commercial
Complex, New Delhi-110015
2. M/s K.S.S Properties Pvt. Ltd.,
Through its Director(s), having its
Registered Office at 305, 3rd Floor,
Kanchan House, Karampura Commercial
Complex, New Delhi-110015
3. M/s High Responsible Realtors Pvt. Ltd.,
Through its Director(s), having its
Registered Office at A-11, 1st Floor, Neeti
Bagh, New Delhi-110049

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Dhruv Dutt Sharma
Shri Garvit Gupta

Advocate for the complainant
Advocate for the respondents

AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER

ORDER

1. A complaint dated 26.03.2019 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. Deepak Kumar against promoter M/s IREO Victory Valley Private Limited, on account of violation of the clause 13.3 of apartment buyer's agreement executed on 31.12.2010 in respect of unit described as below for not handing over possession by the due date which is an obligation under section 11(4)(a) of the Act *ibid*.
2. Since, the apartment buyer's agreement has been executed on 31.12.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for noncompliance 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 case are as under: -

1.	Name and location of the project	"Ireo Victory Valley", Golf Course Extension Road, Sector-67, Gurugram
2.	RERA registered/ not registered	Not Registered



3.	Unit no.	A4001, 39 th floor, tower A
4.	Unit measuring	4322 sq. ft.
5.	Apartment buyer's agreement executed on	31.12.2010
6.	Basic sale price as per apartment buyer's agreement (page 72)	Rs.3,39,27,700/-
7.	Total sale price as per apartment buyer's agreement (page 72)	Rs.3,70,90,406.64/-
8.	Total amount paid by the complainants till date [as per receipts annexed]	Rs.3,66,97,184/-
9.	Payment plan	Construction link plan
10.	Date of booking	03.06.2010
11.	Allotment letter	18.06.2010(Annx. C4)
12.	Building plan approval date	29.11.2010(Annx. R7)
13.	Environment clearance date	25.11.2010(Annx. R8)
14.	Firefighting scheme approval	28.10.2013(Annx. R9)
15.	Due date of delivery of possession as per agreement (36 months from the date of approval of building plan and/or approval of preconditions + 180 days grace period)[clause 13.3]	28.04.2017 [Firefighting approval date 28.10.2013]
16.	Occupation certificate	28.09.2017
17.	Delay in handing over possession till date of decision	2 year 2 months 26 days
18.	Penalty clause as per apartment buyer's agreement dated 03.05.2013	Clause 13.4 of the agreement i.e. Rs.7.50 per sq. ft. of the super area.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondents. An apartment buyer's agreement dated 31.12.2010 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 28.04.2018. The respondents have

not delivered the possession of the said unit till date to the complainant as per clause 13.3 of said agreement duly executed between the parties. Therefore, the promoters have not fulfilled its committed liability as on date.

5. 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 23.04.2019 on behalf of the respondent has been perused.

BRIEF FACTS OF THE COMPLAINT

6. The complainant submitted that the respondents represented that the respondent no. 2 and 3 are the absolute owners in possession of freehold land admeasuring approximately 24.6125 acres in the revenue estate of Village Maidawas, Badshahpur, Tehsil and District Gurgaon and are well and sufficiently entitled to develop, sell and deal with the residential apartments. Further, the respondent no. 2 and 3 have separately vested the respondent no. 1 with the complete authority and appropriate powers inter alia to undertake on its behalf marketing, sale and administration of all the constructed units comprising project and also to act on its behalf and in its name if and whenever required.

7. The complainant submitted that the respondents induced the complainant with tall claims and believing their representations to be true and correct, the complainant vide application dated 03.06.2010 applied for allotment of apartment no. A-4001 on 39th Floor, A tower having a super area of 4322 sq. ft. together with 3 nos. parking spaces, which shall form an indivisible part thereof (hereinafter collectively referred to as the "apartment") and accordingly paid Rs. 25,00,000/- towards the booking amount. The total cost of the apartment was Rs. 3,70,90,407/- including external development charges (EDC), infrastructure development charges (IDC), RFMS and parking.
8. The complainant submitted that within 45 days of booking, another demand of Rs. 26,67,780/- was made by the respondents which was duly paid by the complainant and an allotment offer letter dated 18.06.2010 was issued by the respondent no. 1 towards the said apartment in the above said project in favour of the complainant.
9. The complainant submitted that the respondents executed apartment buyer's agreement (hereinafter referred to as the "agreement") dated 31.12.2010 with the complainant.

10. The complainant submitted that subsequently the respondent no. 1 raised various demands from the complainant from time to time which were regularly paid by the complainant and have also been acknowledged by various receipts issued by the respondent no. 1. As such till date, the complainant had paid a sum of Rs. 3,66,97,184/- out of the aforesaid total cost of Rs. 3,70,90,407/-.
11. The complainant submitted that as per clause 13.3 of the agreement, the possession of the apartment was to be offered within a period of 36 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder (hereinafter referred to as the "commitment period") with a grace period of 180 days after the expiry of the said commitment period.
12. The complainant submitted that the last payment was made by the complainant on 24.12.2016 and thereafter the complainant has made numerous calls and visits to the respondents asking them to give the possession of the apartment, but the respondents have been avoiding the complainant on one pretext or the other.
13. The complainant submitted that after getting no satisfactory reply from the respondent no. 1 of the email, he visited the said



project to enquire about the status of the project. The complainant submitted that he was shocked to see that construction of the project had not even been completed and the entire project is lying unfinished and far away from completion.

14. That as per clause 13.4 of the agreement, if the respondent fails to offer possession of the said apartment to the complainant by the end of the grace period, it shall be liable to pay compensation for every month of delay until the actual date fixed by the respondent for handing over of possession of the apartment to the complainant.
15. The complainant submitted that the present complaint has been filed by the complainant without prejudice to claim further damages suffered by the complainant on account of inordinate delay committed by the respondents in handing over the possession of the allotted apartment to the complainant, by filing their claim before the "adjudicating officer" to be appointed under the RERA Act 2016.
16. That the complainant further declared that the matter regarding which the present complaint has been made is not pending before any court of law or any other authority or any other tribunal(s).

17. ISSUES TO BE DECIDED

The following issues are to be determined which are raised by the complainant:

- I. Whether there is delay on the part of the respondents in handing over the possession of the apartment to the complainant? If yes, how much delay?
- II. Whether the respondents have intentionally and wilfully failed to deliver the possession of the allotted apartment within the stipulated time as mentioned in the agreement?
- III. Whether the complainant is entitled to interest for every month of delay on account of delay in handing over the possession of the apartment to the complainant?
- IV. Whether the respondents are liable to pay the interest on the total amount received by it from the complainant from the due date of possession till handing over the possession of the apartment?

18. RELIEF SOUGHT

The complainant is seeking the following reliefs:

- I. A direction be given to the respondents to handover the possession of the apartment along with interest on the

total payment made by the complainant from the due date of possession till handing over the possession of the apartment to the complainant.

- II. A direction be given to the respondents to pay interest for every month of delay till the handing over of the possession to the complainant.
- III. The cost of the proceedings to the tune of Rs. 75,000/- may also be awarded.

RESPONDENT'S REPLY

19. The respondents submitted that the complainant after checking the veracity of the project namely, 'Ireo- Victory Valley', Gurugram had applied for allotment of an apartment vide his booking application form dated 01.06.2010. The complainant agreed to be bound by the terms and conditions of the booking application form.
20. The respondents submitted that based on the said application, respondent no.1 vide its allotment offer letter dated 18.06.2010 allotted to the complainant apartment no. A4001, tower no. A, having tentative super area of 4322 sq. ft. for a total sale consideration of Rs. 3,70,90,406.64. However, it is submitted that the total sale consideration amount was exclusive of the registration charges, stamp duty charges,



service tax and other charges which are to be paid by the complainant at the applicable stage. Accordingly, an apartment buyer's agreement was executed between the parties to the complaint on 31.12.2010. 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.

21. The respondents submitted that the complainant made certain payments towards the installment demands on time and as per the terms of the allotment. However, he committed defaults in making payment towards the second installment amount. It is submitted that respondent no.1 had raised the payment demand towards the second installment vide payment request dated 28.12.2010. However, the due amount was received from the complainant only after several reminders dated 02.02.2011 and 22.02.2011 were issued by respondent no.1.
22. The respondents submitted that the complainant has made the part-payment of Rs. 3,66,97,183/-. However, it is submitted that the complainant 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.

23. The respondents 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 agreement. 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.
24. That from the aforesaid terms of the 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 (v) of clause 17 of the approval of building plan dated 29.11.2010 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 25.11.2010. Furthermore, in clause (v) of Part-B of the Environment Clearance dated 25.11.2010 it was stated that approval from fire department was necessary prior to the construction of the project.
25. 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 28.10.2013 and that the time period for offering the possession, according to the agreed terms of the agreement, expired only on 28.04.2018. The respondents have already completed the construction of the tower in which the unit allotted to the complainant is located and the photographs of the same are attached with file. It is pertinent to mention herein that the respondents have already received the occupation certificate dated 28.09.2017. There is a slight delay in offering the possession of the unit to the complainant on account of the completion of the finishing work going on in the unit allotted to the complainant and the complainant is aware about the same. The respondents shall offer the possession of the unit to the complainant shortly and the complainant would be liable to pay the remaining due amount.

DETERMINATION OF ISSUES

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

26. With respect to **all issues**: The authority came across that as per clause 13.3 of apartment buyer's agreement. The clause regarding the possession of the said unit is reproduced below:

"13.3 Possession and holding charges



The company has to hand over possession of the said apartment to the allottee within a period of 36 months from the date of approval of building plans and/or fulfilment of the preconditions imposed therein. The allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days as grace period”.

As per clause 13.3 of the agreement, the possession of the booked unit was to be handed over the complainant within a period of 36 months from the date of approval of building plans and /or approval of preconditions +180 days grace period which comes out to be 28.04.2017. (Firefighting approval date is 28.10.2013) complainant is entitled for delayed possession charges @ 10.60% per annum w.e.f 28.04.2017 on account of delay in offering possession till the offer of possession and the possession has been delayed by 2 year 2 months 26 days till the date of decision. The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. per month of the super area of the unit for the period of delay as per clause 13.4 of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondents and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:



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

27. Thus, the promoters are liable under section 18(1)(a) proviso of Act, read with rule 15 of Rules ibid to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over 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 complainant with the promoters on the due date of possession upto the date of offer of possession.

FINDINGS OF THE AUTHORITY

28. The application filed by the respondents for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside

compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

29. During the course of arguments counsel for the respondents has themselves admitted that no possession letter has been offered by the respondents to the complainant in spite of the fact that occupation certificate has been issued by the competent authority on 28.09.2017. Counsel for respondents has stated at bar that possession could not be offered to the complainant till date as finishing work in flat no. A4001, in tower-A allotted to the complainant is still going on and is likely to be completely within next three months. On the basis of submission made by the counsel of the respondents, it is quite clear that the occupation certificate dated 28.09.2017 has been issued by the competent authority without verifying the ground realities of the project whether the building in which flat of the complainant is located has been completed in all respects in accordance with the provisions/sanction of building plans as per Haryana Building Code, 2017. As such, DTCP, Haryana is directed to clarify and explain the circumstances under which occupation certificate dated 28.09.2017 has been issued by their office without verifying the grounds realities as finishing work is still going on in the flat/unit no.A4001 and the offer of possession has not been



issued by the respondents so far whereas as per provisions of Section 14, offer of possession is to be given by the respondent to the allottee within a period of two months from the date of receipt of occupation certificate.

30. It is really strange that how occupation certificate has been obtained (in a misrepresented form) in view of the facts stated above as neither the possession has been offered nor the work at site in the flat is completed. It is really a quandary. The respondent is liable for penal action for obtaining the occupation certificate in a fraudulent manner, as such, the occupation certificate w.r.t flat of the complainant is not applicable at the moment. Accordingly, the promoter/respondent is directed to issue the offer of possession letter at the earliest by completing all the work within 20 days failing which penal action under section 63 of the Real Estate (Regulation & Development) Act 2016 shall be initiated against the respondents/promoters. It is further observed that the flat/unit has been sold for a total consideration of Rs.3,70,90,406/- against which an innocent complainant/buyer has already paid Rs.3,66,97,184/- which is a huge amount. The promoter is obligated to fulfill his commitments as per terms and conditions of agreement dated 31.12.2010 executed inter-se the parties. As per clause 13.3 of



the agreement, the possession of the booked unit was to be handed over the complainant within a period of 36 months from the date of approval of building plans and /or approval of preconditions +180 days grace period which comes out to be 28.04.2017. (Firefighting approval date is 28.10.2013) Complainant is also entitled for delayed possession charges @ 10.60% per annum w.e.f 28.04.2017 on account of delay in offering possession till the offer of possession. It is directed that the same may be adjusted at the time of final settlement.

DECISIONS AND DIRECTIONS OF THE AUTHORITY

31. 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) 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.

- (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) The promoters/respondents are directed to issue the offer of possession letter at the earliest by completing all the work within 20 days failing which penal action under section 63 of the Real Estate (Regulation & Development) Act 2016 shall be initiated against the respondent/promoter.
- (iv) Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (v) The promoter shall not charge anything from the complainant which is not part of the agreement.
- (vi) As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondents under the Act *ibid*. A copy of this order

be endorsed to registration branch for further action in the matter.

32. The order is pronounced.

33. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.07.2019

