

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

Complaint No. : 1647 of 2019
Date of first hearing : 27.08.2019
Date of Decision : 27.08.2019

Sh. Ranjit Singh Yadav
R/o Near Arya Samaj Mandir, Badshahpur,
Gurugram-122101

...Complainant

Versus

M/s Ireo Grace Realtech Pvt. Ltd.
Office at: 5th floor, Orchid Centre,
Golf course road, Sector-53,
Gurugram-122002
Also at: 1st Floor, Malviya Nagar,
New Delhi-110017

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Smt. Vridhi Sharma
Shri Vinod Kumar
Shri Garvit Gupta

Advocate for the complainant
AR on behalf of the respondent

Advocate for the respondent

ORDER

1. A complaint dated 15.04.2019 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 complainant Sh. Ranjit Singh Yadav, against the promoter M/s Ireo Grace Realtech Pvt. Ltd. on account of violation of clause 13.3 of the apartment buyer's agreement executed on 01.05.2014 for unit no. 301 on 3rd floor, C4 tower, admeasuring super area of 1483.79 sq. ft. in the project "The Corridors" for non-fulfilment of obligations of the promoter under section 11(4)(a) of the Act ibid.

2. Since the apartment buyer's agreement has been executed on 01.05.2014, 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 obligations 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: -

1.	Name and location of the project	"The Corridors" in Sector 67-A, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	301, 3 rd floor, tower no. C4
4.	Project area	37.5125 acres
5.	Unit area	1483.79 sq. ft.
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.	Revised date of completion as per RERA registration certificate	For Phase I and II- 30.06.2020 For phase III- 31.12.2023
8.	DTCP license	05 of 2013 dated 21.02.2013
9.	Date of booking	22.03.2013 (as per the complaint)
10.	Date of allotment letter	07.08.2013
11.	Date of apartment buyer's agreement	01.05.2014
12.	Total consideration	Rs. 1,63,84,598.92/- (as per statement of account dated 17.12.2018 in annexure C4, pg 94 of the complaint)
13.	Total amount paid by the complainant	Rs. 1,61,93,367/- (as per statement of account dated 17.12.2018 in annexure C4, pg 94 of the complaint)
14.	Payment plan	Instalment payment plan (as per pg 65 of the complaint)
15.	Date of delivery of possession	27.11.2018 Clause 13.3 - 42 months from date of approval of building plans and/or fulfilment of preconditions imposed

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		thereunder, i.e. 27.11.2014(date of NOC for fire approval, annexure R-7) + 180 days grace period i.e. 27.11.2018 Note: No building plan approval has been attached with the file. The due date of possession has been calculated from date of fire approval NOC
16.	Date of occupation certificate	31.05.2019
17.	Date of notice of possession	11.06.2019
18.	Delay of number of months/ years upto 11.06.2019	6 months approx.
19.	Penalty clause as per apartment buyer agreement	Clause13.4- Rs. 7.50/- per sq. ft. per month of the super area

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement dated 01.05.2014 is available on record for aforesaid unit according to which the possession of the aforesaid unit was to be delivered by 27.11.2018. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

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LEGAL ADVISOR

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 27.08.2019. The reply has been filed by the respondent and the same has been perused.

Facts of the complaint

6. The complainant submitted the respondent company made several representations of their project to the complainants alluring them to book a unit in their project "The Corridors" situated in Sector 67A, Gurgaon, Haryana. That some of the facilities mentioned by the respondent company include: passenger and service elevators, treated water supply, piped gas, adequate basement parking, lawns, plazas, play areas, seating areas with shade structures, cricket nets, landscaped courtyards, basketball court, pedestrian paths, jogging trail, DTH and FTTH systems.
7. The complainant submitted that relying on the assurances made by the respondent company and allured by the rosy picture painted by the respondent, the complainant applied for booking in the project of the respondent company vide their application dated 22.03.2013 for an apartment.
8. The complainant submitted that vide the allotment offer letter dated 07.08.2013, the complainant was offered allotment of a



residential apartment bearing no. CD-C4-03-301 on 3rd floor, in the project of the respondent company and the payment was to be made as per construction linked payment plan.

9. The complainant submitted that thereafter, an apartment buyer's agreement was executed between the parties on 25.03.2014 under which the complainant was constrained to accept various arbitrary and unilateral clauses made in favour of the respondent company. There was no scope of attaining any mutuality at that time as the complainant had already paid a considerable amount towards the booking of the apartment and could not risk the allotment. The total consideration of the apartment inclusive of development charges, PLC and club membership charges and various other charges had reached to a total of Rs.1,63,84,598.92/-. It is submitted that the complainant has paid an amount of Rs.1,61,93,367/- which is nearly hundred percent, but no signs of completion of the project or delivery of the possession of the apartment has been shown by the respondent leading to a loss of confidence of the complainant upon the respondent.

10. The complainant submitted that the building plan of the project in question was approved by the competent authority on 23.07.2013, after which the respondent was to commence

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construction and as per the agreement, was to deliver the possession of the unit to the allottees within 42 months from 23.07.2013, i.e. by 23.01.2017. but far from handing over the possession, the respondent has miserably failed to complete the construction of the project. The complainant has parted with a considerable amount of his hard-earned money and the stagnant construction at the site and no hopes of giving the possession only leads to mental and financial hardship borne by the complainant.

11. The complainant submitted that a perusal of various clauses of the agreement executed between the parties shows that the present agreement is unilateral and arbitrary where the respondent has an upper hand in the entire transaction. As per the agreement, the respondent had the authority to impose an exorbitant rate of interest to the tune of 20% on delayed payments, whereas on the other hand the delay compensation given by the respondent to the complainant in case of delay in delivery in possession as per clause 13.4 is calculated at the rate of meagre Rs. 7.50 per sq. ft. of the super built up area. The said clause is also in clear contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 which has clarified the position that the interest payable by the



promoter in case of default shall be the same as the interest payable by the allottees in case of any default made by them.

12. It is submitted that as per the agreement, the number of flats, area, location and other crucial details are to be managed by the respondent solely without obtaining any consent of the complainant. This does not leave any scope of negotiation or consent from the complainant and he either has to make the payment or get a refund after forfeiting a considerable amount of the total deposit made by him.

13. 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 is entitled to immediate possession of the apartment along with compensation, and at what rate?

14. Relief sought

- I. Direct the respondent to grant immediate possession of the apartment bearing no. CD-C4-03-301 to the

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complainant along with compensation for delay at a prescribed rate of interest;

- II. May pass any other orders as the hon'ble authority deems fit.

Respondent's reply

15. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The allotment of the unit allotted to the complainant was made prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively. That there is no cause of action to file the present complaint. The respondent further submitted that the complainant has no locus standi to file the present complaint.

16. The respondent submitted that this hon'ble authority does not have the jurisdiction to decide on the imaginary interest as claimed by the complainants. It is submitted that in accordance with section 71 of the Real Estate Regulatory Authority Act, 2016 read with rules 21(4) and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, the authority shall appoint an adjudicating officer for holding an inquiry in the prescribed manner after giving any



person concerned a reasonable opportunity of being heard. It is submitted that even otherwise it is the adjudicating officer as defined in section 2(a) of the Real Estate Regulatory Authority Act who has the power and the authority to decide the claims of the complainant.

17. The respondent submitted 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 35 of the buyer's agreement.

18. The respondent submitted that the complainant has not approached this hon'ble authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them 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:

i. The respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Grand Arch', 'Victory



Valley', 'Skyon' and 'Uptown' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.

- ii. The complainant, after checking the veracity of the project namely, 'Corridor; Sector 67A, Gurugram had applied for allotment of an apartment vide their booking application form. The complainant agreed to be bound by the terms and conditions of the booking application form.
- iii. The respondent submitted that the complainant made certain payment towards the instalment demands on time and as per the terms of the allotment. However, the complainant started committing defaults from third instalment demand onwards. Vide payment request dated 18.03.2014, the respondent had raised the third instalment demand for net payable amount of Rs. 21,83,360.80/-. However, the complainant failed to pay the due amount despite reminders dated 13.04.2014 and 04.05.2014. It is pertinent to mention that the respondent had also issued final notices dated 18.02.2015 and 23.02.2015 to the complainant.



- iv. The respondent submitted that the respondent had raised the fourth instalment demand on 27.01.2015 for the net payable amount of Rs. 43,49,849.18/- followed by reminders dated 22.02.2015 and 24.03.2015. The complainant despite reminders only made the part-payment towards the demanded amount and the remaining amount was adjusted in the next instalment demand dated 06.05.2015 as 'arrears'.
- v. The respondent submitted that the complainant has made the part-payment of Rs.1,61,93,367/- out of the total sale consideration of Rs.1,63,84,598.92. it is submitted that the complainant is bound to pay the remaining amount towards the total sale consideration of the plot along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.
- vi. 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 pertinent to mention here that the complainants vide clause 13.5 of the apartment buyer's agreement and clause 44 of the schedule - I of the booking application form had further agreed to the 'extended delay period' of 12 months from the end of grace period.

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LEGAL ASSOCIATE

vii. 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 memo of 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 duly was to be duly approved by the fire department before the start of any construction work at site. It is submitted that the fire scheme approval was granted on 27.11.2014 and the time period for calculating the date for offering the possession, according to the agreed terms of the buyer's agreement, would have commenced only on 27.11.2014. Therefore, 60 months from 27.11.2014 (including the 180 days grace period and extended delay period) shall expire only on 27.11.2019. There cannot be any delay till 27.11.2019. The time period for offering the



possession of the unit has not yet elapsed and the complainants have pre-maturely filed the present baseless and false complaint. The complainants are trying to re-write the agreed terms and conditions of the agreement. It is submitted that even as per the terms and conditions of the agreement, no defaults or illegalities have been committed by respondent with respect to offering the possession of the unit to the complainants and the complainants have made false averments in order to unnecessarily harass and pressurize the respondent to submit to their unreasonable demands.

viii. The respondent submitted that the respondent company has already completed the construction of the tower in which the unit allotted to the complainants is located and the photographs of the same are annexed with the file. It is pertinent to mention herein that the respondent has even submitted an application for the grant of occupation certificate dated 06.07.2017.

ix. The respondent submitted that the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to

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somehow get out of the concluded contract made by them on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed.

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:

19. In respect of the **first issue**, the apartment buyer's agreement dated 01.05.2014 for unit no. 301, 3rd floor, tower no. C-4 in the said project, as per clause 13.3 of the apartment buyer agreement the possession of the said unit was to be delivered within 42 months plus 6 months grace period from the date of approval of building plans/ sanctions. The due date is taken from approval of fire scheme approval i.e. 27.11.2014, the due date comes out to be 27.11.2018. The respondent has offered the possession of the unit to the complainant on 11.06.2019. Complainant has already paid Rs. 1,61,93,367/- to the respondent against total sale consideration of Rs. 1,63,84,598/-. Thus, the respondent has failed to deliver the possession of the said unit within the prescribed time.



20. The due date of handing over the possession was 27.11.2018. however, the possession was offered on 11.06.2019, after a delay of almost 6 months. Accordingly, the complainant is entitled to delayed possession charges at the prescribed rate of 10.45% per annum w.e.f. 27.11.2018 to 11.06.2019 as per the provisions of section 18(1) of the real estate (regulation and development) act 2016.

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

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.

22. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

23. **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

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no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint.

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 complainants at a later stage.

24. As per the apartment buyer's agreement dated 01.05.2014 for unit no. 301, 3rd floor, tower no. C-4 in the said project, as per clause 13.3 of the apartment buyer agreement the possession of the said unit was to be delivered within 42 months plus 6 months grace period from the date of approval of building plans/ sanctions. The due date is taken from approval of fire scheme approval i.e. 27.11.2014, the due date comes out to be 27.11.2018. The respondent has offered the possession of the unit to the complainant on 11.06.2019. Complainant has already paid Rs. 1,61,93,367/- to the respondent against total sale consideration of Rs. 1,63,84,598/-. Thus, the respondent has failed to deliver the possession of the said unit within the prescribed time.

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25. The due date of handing over the possession was 27.11.2018. however, the possession was offered on 11.06.2019. Accordingly, the complainant is entitled to delayed possession charges at the prescribed rate of 10.45% per annum w.e.f. 27.11.2018 to 11.06.2019 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

Decision and directions of the authority

26. 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:

- I. The respondent is directed to pay the interest at the prescribed rate i.e. 10.45% per annum for every month of delay on the amount paid by the complainant w.e.f. 27.11.2018 till offer of possession i.e. 11.06.2019.
- II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- III. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for delayed period.
- IV. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.45%

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by the promoter which is the same as is being granted to the complainant in case of delayed possession.

V. The respondent shall not charge holding charges till 27.09.2019. The complainant is directed to take over the possession of the offered unit within a period of one month failing which, the complainant shall be liable to pay holding charges after the expiry of one-month period.

27. The complaint is disposed of accordingly.

28. The order is pronounced.

29. Case file be consigned to the registry.


(Samir Kumar)

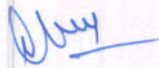
Member

Haryana Real Estate Regulatory Authority, Gurugram

MEMBER

Dated: 27.08.2019

Judgement uploaded on 05.09.2019


(Subhash Chander Kush)

Member

MEMBER

MEMBER

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POORNIMA RAO
LEGAL ASSISTANT

AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER