

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

Complaint no. 1649 of 2019
Date of First Hearing: 27.08.2019
Date of Decision 27.08.2019

Mr. Braham Prakash Yadav

S/o:- Ranjit Singh Yadav

R/o:- Near Arya Samaj Mandir, **Complainant**
Badshahpur, Gurugram, Haryana-122101

M/s Ireo Grace Realtech Pvt Ltd

Corporate Office: 5th Floor, Orchid Centre, **Respondent**

Golf Course Road, Sector-53, Gurugram,
Haryana-122002

Registered Office: C-4, 1st Floor, Malviya
Nagar, New Delhi-110017, India

CORAM:

Sh. Subhash Chander Kush

Sh. Samir Kumar

Member

Member

APPEARANCE:

Ms. Vridhi Sharma

Sh. Garvit Gupta

Sh. Vinod Kumar

Advocate for complainant

Advocate for the respondent

AR on behalf of 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 Mr. Braham

DEEPANSHU SINGLA

Legal Assistant



Prakash Yadav against the promoter M/s Ireo Grace Realtech Pvt. Ltd. with respect to the apartment described below, on account of violation 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 25.03.2014 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 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', Sector 67-A, Gurugram, Haryana
2.	Nature of real estate project	Residential group housing colony
3.	Area of the project	37.5125 acres
4.	Apartment no.	102, 1 st Floor, Tower A6
5.	Area of unit	1726.91 sq. ft
6.	DTCP License No.	05 of 2013 dated 21.02.2013

DEEPANSHU SINGLA

Legal Assistant

7.	Registered/not registered	Registered (Phase1, Phase2 and Phase 3)
8.	RERA registration no	378 of 2017 (Phase 1) 377 of 2017 (Phase 2) 379 of 2017 (Phase 3)
9.	Completion date as per RERA registration certificate	30.06.2020 phase 1 30.06.2020 phase 2 31.12.2023 phase 3
10.	Date of apartment buyer's agreement	25.03.2014
11.	Total consideration	Rs. 1,94,18,545/- As per the SOA annexed as Annexure C-4 on page 91 of the complaint
12.	Total amount paid by the complainants	Rs. 1,93,54,304/- As per the SOA annexed as Annexure C-4 on page 91 of the complaint
13.	Due date of possession Clause 13.3- 42 months plus 180 days grace period from date of approval of buildings plans and fulfilment of preconditions thereunder.	27.11.2018 Note:- the due date is calculated from the date of fire approval NOC i.e. 27.11.2014
14.	Payment plan	Construction linked payment plan
15.	Delay in handing over the possession till date	6 months 17 days
16.	Penalty Clause (As per clause 13.4 of Apartment Buyer Agreement)	Rs 7.50 per sq. ft of Super Area for every month of delay

DEEPANSHU SINGLA

Legal Assistant

4. The details provided above have been checked on the basis of the record available in the case file provided by the complainant and respondent. An apartment buyer's agreement dated 25.03.2014 is available on record for the aforementioned flat according to which the possession of the unit was to be delivered by 27.11.2018.
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 27.08.2019. The reply has been filed on 06.05.2019 on behalf of the respondent, which has been perused by the authority.

FACTS OF THE CASE

6. Briefly stating the facts of the complaint, the complainant submitted that the respondent company made several representations of its project, alluring him to book an apartment in its project "**The Corridors**" situated in Sector 67A, Gurugram, Haryana. The respondent has made several claims pertaining to the architecture and the landscape of the project.

DEEPANSHU SINGLA

Legal Assistant

7. The complainant submitted that after relying on the assurances made by the respondent company and allured by the rosy picture painted by the respondent, through its agents and representatives, he vide application dated 22.03.2013 applied for booking in the project of the respondent company for allotment of an apartment, details of which have been provided hereunder:

-Apartment No.: 102

-Floor: 1st

-Tower: A6

-Super Area: 1726.91 Sq. Ft.

8. The complainant submitted that an allotment offer letter was served on him on 07.08.2013 by which he was allotted residential apartment bearing no. **CD-A6-01-102** in the said project of the respondent company and the payment was to be made as per the construction linked payment plan of the respondent company.

9. The complainant submitted that thereafter an apartment buyer's agreement was executed between the parties on **25.03.2014** under which he was constrained to accept

DEEPANSHU SINGLA

Legal Assistant

various arbitrary and unilateral clauses made in favour of the respondent company. There was no scope of attaining any mutuality at that time as he has already paid a considerable amount towards the booking of the apartment and could not risk the allotment. That by the agreement, unit no. **CD-A6-01-102** was allotted to him at a basic sale price of **Rs. 1,62,32,954/-** (Rs. 9,400 x 1726.91 sq. ft.). It is to be noted that the total consideration of the apartment after the inclusion of development charges, PLC and club membership charges and various other charges, had reached a total of **Rs.1,94,18,545.58/**. He has nearly paid the total consideration of the apartment, nearly hundred percent, but no signs of completion of the project or the delivery of the possession of the apartment has been shown by the respondent leading to a loss of confidence of him on the respondent. Till date he has paid **Rs. 1,93,54,304.98/-**. He has been constrained to file the present complaint to get possession of the apartment, which is due to them from several years.

DEEPANSHU SINGLA

Legal Assistant

10. It has been submitted that the building plan of the respondent had been approved by the competent authority on **23.07.2013**. That the building plans of the group housing colony (the respondent) measuring 37.5125 acres (license no. 03 of 2013 dated 21.02.2013) had been approved by the Directorate of Town & Country Planning, Haryana on 23.07.2013 after which the respondent was to commence construction, and as per the apartment buyer's agreement, was to deliver the possession of the unit to the allottees within 42 months + grace period of 180 days from 27.11.2014, which comes out to be 27.11.2018..
11. The complainant submitted that the possession was to be handed over to him by **27.11.2018** but far from handing-over the possession, the respondent has miserably failed to complete the construction of the project. That he has parted with a considerable amount of his hard-earned money and the stagnant construction at the site and no hopes of getting the possession, only leads to mental and financial hardships borne by him. That the failure of the

DEEPANSHU SINGLA

Legal Assistant

respondent company has resulted in serious consequences being borne by him as he is financially burdened to repay the loan and has already parted with a considerable amount his money in order to proceed with the allotment.

12. The complainant submitted that a perusal of various clauses of the agreement executed between them shows that the present agreement is unilateral and arbitrary where the respondent has an upper-hand in the entire transaction. That as per the agreement the respondent had the authority to impose an exorbitant rate of interest on the complainant to the tune of 20% on delayed payments whereas, the respondent was only liable to pay a meagre amount in case of delayed possession to the tune of Rs. 7.50 per sq. ft. of the super built-up area of the apartment.

13. The complainant submitted that he has been diligently paying the instalments as per the demands of the respondent, believing that the money was being used to construct the apartment and he would be intimated of

DEEPANSHU SINGLA

Legal Assistant

the date of delivery of the possession soon. Much to the shock and disappointment of him it seems that his money was only being retained by the respondent as they have, till date failed to deliver the possession of the apartment.

14. The complainant submitted that he has already deposited a considerable amount of money to the tune of **Rs. 1,93,54,304.98/-** with the respondent company and has been waiting for his apartment for the past 6 years as the application was made way back in 2013. That the complainant cannot be made to wait for an indefinite time for the possession and cannot be made to keep on making the payments with a blindfold, having no clear idea as to when will the possession be handed-over to him.

ISSUES RAISED BY THE COMPLAINANT

15. The issues raised by the complainant are as follows: -

DEEPANSHU SINGLA

Legal Assistant

- 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?

RELIEF SOUGHT

16. The relief sought by the complainant is as follows: -

- i. Direct the respondent to grant immediate possession of the apartment bearing no. CD-A6-01-102 to the complainant along with compensation for delay at a prescribed rate of interest.

REPLY FILED BY THE RESPONDENT

17. The respondent submitted that the complainant, after checking the veracity of the project namely, 'The Corridors', Sector 67A, Gurugram had applied for allotment of an apartment vide his booking application form dated

DEEPANSHU SINGLA

Legal Assistant

22.03.2013. The complainant agreed to be bound by the terms and conditions of the booking application form.

18. 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-A6-01-102 having tentative super area of 1726.91 sq. ft. for a total sale consideration of Rs. 1,94,18,545/-. The respondent also submitted that vide letter dated 31.01.2014, he sent 3 copies of the apartment buyer's agreement to the complainant and the same was executed by him on 25.03.2014.

19. The respondent submitted that the complainant made certain payment towards the installment demands on time and as per the terms of the allotment. However, he started committed defaults from third installment demand onwards. Vide payment request dated 18.03.2014, the respondent had raised the demand of third installment for net payable amount of Rs.25,89,964.56/-. However, the complainant failed to pay the due amount despite reminders dated 13.04.2014 and

DEEPANSHU SINGLA

Legal Assistant



04.05.2014. Thereafter, the respondent had also issued final notices dated 18.02.2015 and 23.02.2015 to the complainant.

20. The respondent submitted that it had raised the demand of fourth installment dated 27.01.2015 for net payable amount of Rs. 51,59,864.74/- followed by reminders dated 22.02.2015 and 24.03.2015. It is pertinent to mention herein that the complainant had requested the respondent to transfer the funds paid by the complainant towards the allotment of another unit CD-C6-09-902 to the said unit in question. The respondent being a customer oriented company acceded to the request of the complainant vide its letter dated 23.06.2015 and adjusted Rs. 18,04,941/- after deducting the interest accrued on account of delayed payment for both the units and accordingly issued a credit memo dated 01.12.2015 transferring the amount.

21. The respondent submitted that vide payment request dated 10.09.2015, the respondent had raised the demand of fifth installment for net payable amount of Rs.14,47,167.85/-. However, the demanded amount was

credited towards the total sale consideration of the unit only after a reminder dated 07.10.2015 was issued to the complainant by the respondent.

22. The respondent submitted that vide payment request dated 11.09.2017, the respondent had raised the demand of twelfth installment for net payable amount of Rs.18,18,091.41/-. However, the demanded amount was credited towards the total sale consideration of the unit only after reminders dated 09.10.2017 and 31.10.2017 were issued to the complainant by the respondent.

23. The respondent submitted that the complainant has made the part-payment of Rs. 1,93,54,305.89/- out of the total sale consideration of Rs.1,94,18,545.60/-. 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.

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 apartment buyer agreement. It is submitted that clause 13.3 of the apartment 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)...."

It is pertinent to mention here that the complainant 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.

25. The respondent submitted that from the aforesaid terms of the apartment 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

DEEPANSHU SINGLA

Legal Assistant



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 apartment 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 complainant has pre-maturely filed the present baseless and false complaint. The complainant is trying to re-write the

DEEPANSHU SINGLA

Legal Assistant



agreed terms and conditions of the said 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 complainant and the complainant has made false averments in order to unnecessarily harass and pressurize the respondent to submit to his unreasonable demands.

26. The respondent submitted that its company has already completed the construction of the tower in which the unit allotted to the complainant is located. It is pertinent to mention herein that the respondent has even submitted an application for the grant of occupation certificate dated 06.07.2017.

DETERMINATION OF ISSUES

27. With respect to the **first and second issues** raised by the complainant, the authority came across that as per the clause 13.3 of the apartment buyer's agreement dated 25.03.2014 for unit no. 102, 1st floor, tower A-6, in project "The Corridors" sector 67A, Gurugram, possession was to be handed over to the complainant within a period of 42 month from the date of

DEEPANSHU SINGLA

Legal Assistant

approval of fire fighting scheme i.e. 27.11.2014 + 180 days grace period which comes out to be 27.11.2018. The relevant clause of the apartment buyer's agreement is as under:

"...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 fulfillment of the preconditions thereunder. The allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days, after the expiry of the said commitment period to allow for unseen delays beyond the reasonable control of the company"

The respondent has not delivered the possession of the unit to the complainant. Complainant has already paid Rs. 1,93,54,304/- to the respondent against a total sale consideration of Rs. 1,94,18,545/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. due date of possession i.e. 27.11.2018 as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 to be read with the rule 15 of the Real Estate (Regulations and Development) Rules, 2017 till the offer of possession.

DEEPANSHU SINGLA

Legal Assistant

FINDINGS OF THE AUTHORITY

28. **Jurisdiction of the authority-** The project "The Corridors" is located in Sector 67A, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint.
29. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

DEEPANSHU SINGLA

Legal Assistant

30. As per the clause 13.3 of the apartment buyer's agreement dated 25.03.2014 for unit No. 102, 1st floor, tower A-6, in project "The Corridors" Sector 67A, Gurugram, possession was to be handed over to the complainant within a period of 42 month from the date of approval of fire fighting scheme i.e. 27.11.2014 + 180 days grace period which comes out to be 27.11.2018. The respondent has not delivered the possession of the unit to the complainant. Complainant has already paid Rs. 1,93,54,304/- to the respondent against a total sale consideration of Rs. 1,94,18,545/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. due date of possession i.e. 27.11.2018 as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 to be read with the rule 15 of the Real Estate (Regulations and Development) Rules, 2017 till the offer of possession.

DEEPANSHU SINGLA

Legal Assistant

DECISION AND DIRECTIONS OF THE AUTHORITY

31. 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 complainant delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 27.11.2018 for the period of delay as per section 18(1) proviso of the Act ibid to be read with rule 15 of the Rules ibid till the 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 till offer of possession shall be paid before 10th of every subsequent month.
- (iii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period.

DEEPANSHU SINGLA

Page 20 of 21


Legal Assistant

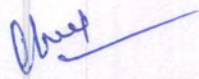
- (iv) Interest on due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- (v) The promoter shall not charge anything from the complainant which is not a part of the apartment buyer's agreement.

32. Complaint stands disposed of.

33. The order is pronounced.

34. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date : 27.08.2019

Judgement uploaded on 10.10.2019

DEEPANSHU SINGLA

Legal Assistant