

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

Complaint no. 1569 of 2019
Date of First Hearing: 27.08.2019
Date of Decision 27.08.2019

Mr. Ravinder Singh Yadav
S/o Ranjit Singh Yadav
R/O:- Near Arya Samaj Mandir,
Badshahpur, Gurugram (Hr.)-122101

Complainant

M/s Ireo Grace Realtech Pvt Ltd
Corporate Office: 5th Floor, Orchid Centre,
Golf Course Road, Sector-53, Gurugram,
Haryana-122002

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

Respondent

CORAM:

Shri Subhash Chander Kush
Shri 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 12.04.2019 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. Ravinder

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Singh 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 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	Group housing colony
3.	Area of the project	37.5125 acres
4.	Apartment no.	402, 4 th Floor, Tower A9
5.	Area of unit	1891.51 sq. ft
6.	DTCP License No.	05 of 2013 dated 21.02.2013
7.	Registered/not registered	Registered (Phase 1, Phase 2 and Phase 3)
8.	RERA registration no	378 of 2017 (Phase 1) 377 of 2017 (Phase 2) 379 of 2017 (Phase 3)

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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 agreement	25.03.2014
11.	Total consideration	Rs. 2,52,27,699/- As per the SOA dated 13.06.2019
12.	Total amount paid by the complainants	Rs. 2,11,85,415/- As per the SOA dated 13.06.2019
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 imposed thereunder	27.11.2018 Note :- the due date of possession is calculated from date of fire approval NOC i.e. 27.11.2014 annexed as Annexure R-17 on pg. 108 of the reply
14.	Offer of possession As per notice of possession dated 13.06.2019	13.06.2019
15.	Occupancy certificate	31.05.2019
16.	Payment plan	Construction linked payment plan
17.	Delay in handing over the possession till date	6 months 17 days
18.	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

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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. A apartment buyer agreement



dated 25.03.2014 is available on record for the aforementioned apartment according to which the possession of the subject apartment was to be delivered by 27.11.2018 and the respondent has failed to handover the possession by the due date. Therefore, the promoter has failed to fulfil its committed liability.

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. and the notice is sent to the respondent dated 15.04.2019. The reply has been filed on behalf of the respondent on 06.05.2019, which has been perused by the authority.

FACTS OF THE COMPLAINT

6. Briefly stating the facts of the complaint, the complainant submitted that the respondent company made several representations of its project to the complainant, alluring him to book an apartment in its project "**The Corridors**" situated in Sector 67A, Gurgaon, Haryana.
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, the complainant vide his application

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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.: 402

-Floor: 4th

-Tower: A9

-Super area: 1891.51 sq. ft.

8. The complainant submitted that an *allotment offer letter* was served on him on 07.08.2013 by which the complainant was allotted residential apartment bearing no. **CD-A9-04-402** 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 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

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the apartment and could not risk the allotment. By the agreement, unit no. **CD-A9-04-402** was allotted to the complainant at a basic sale price of **Rs. 1,77,80,194/-** (Rs. 9,400 x 1891.51 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.2,12,45,590.76/-**. He has nearly paid around 99.17% of the total consideration of the apartment, nearly hundred percent, but no sign of completion of the project or the delivery of the possession of the apartment has been shown by the respondent. The complainant till date has paid **Rs.2,11,85,414.98/-**. The complainant has been constrained to file the present complaint to get possession of the apartment, which is due to them from several years.

10. The complainant submitted that the building plan of the respondent had been approved by the competent authority on **23.07.2013**. The building plans of the group housing colony 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 agreement, was to deliver the possession of the unit to the allottees within 42 months from 23.07.2013, that, is by **23.01.2017**.

11. The complainant submitted that the possession was to be handed over to the complainant 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 getting the possession, only leads to mental and financial hardships being borne by the complainant. That the failure of the respondent company has resulted in serious consequences being borne by the complainant 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. That obtaining no status updates from the respondent regarding the construction work at the site or the date of delivery of the possession the complainant has been

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perturbed to the extent that he has been constrained to file the present complaint for immediate possession of his apartment along with compensation for delay at a prescribed rate of interest. 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 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.

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

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date failed to deliver the possession of the apartment. The respondent is thus, liable to give immediate possession of the apartment along with compensation for delay at a prescribed rate of interest.

13. The complainant submitted that he has already deposited a considerable amount of money to the tune of **Rs. 2,11,85,414.98/-** 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. 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. Hence, in the pressing circumstances it is essential that the complainant gets the possession along with the interest, at a prescribed rate, for the period of delay.

ISSUES RAISED BY THE COMPLAINANT

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

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- i. Whether there has been failure on 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 interest, and at what rate?

RELIEF SOUGHT

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

- i. Direct the respondent to grant immediate possession of the apartment bearing no. CD-A9-04-402 to the complainant along with prescribed rate of interest for the period of delay.

REPLY FILED BY THE RESPONDENT

16. The respondent submitted that he 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 'Úptown' and in most of these projects large number of families have already shifted after having taken possession and Resident Welfare

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Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.

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 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-A9-04-402 having tentative super area of 1891.51 sq. ft. for a total sale consideration of Rs. 2,12,45,590.79/. The respondent also submitted that vide letter dated 04.02.2014, he sent 3 copies of the apartment buyer's agreement to the complainant and the same was executed 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.28,36,824.31/-. However, the complainant failed to pay the due amount despite reminders dated 13.04.2014 and 04.05.2014. It is pertinent to mention herein that the

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

20. 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-C6-05-502 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. 17,02,798/- 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 the complainant has made the part-payment out of the total sale consideration of Rs. 2,12,45,590.79/-. 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.
22. 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 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 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.

23. The respondent submitted that from the aforesaid terms of the apartment buyer 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 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 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 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 complainant and the complainant has made false averments in order to unnecessarily harass and pressurize the respondent to submit to his unreasonable demands.

24. 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.

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DETERMINATION OF ISSUES

25. With respect to the **first issue** raised by the complainant, the authority came across that, as per the clause 13.3 of the apartment buyer agreement dated 25.03.2014 the possession of the said apartment was to be handed over to the complainant within a period of 42 months with a grace period of 180 days from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder. The building plan was approved on 23.07.2013 by the competent authority. As per the clause 17(iv) of the memo of approval of building plans, the respondent has to obtain environmental clearance before starting the construction. Thereafter, the EC was granted on 12.12.2013. as per clause 39 of part A of EC the respondent has to obtain fire safety plan duly approved by fire department before the start of construction. The said fire scheme approval was granted on 27.11.2014. The relevant clause is reproduced as under-

*"...the company proposed 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 conditions imposed thereunder. The allottee further agrees and understand that the company shall additionally be entitled to a period of 180 days ("**Grace Period**") on the expiry of the said commitment period...."*

Accordingly, the due date of handing over the possession is calculated from the date of fire fighting approval which comes out to be 27.11.2018. But as the possession was offered

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on 13.06.2019 after receiving the occupation certificate on 31.05.2019 and the promoter has delayed the delivery by 6 months and 17 days till date of offer of possession. Thus, it has failed to fulfill its obligations under section 11(4)(a) of the said Act.

26. With respect to the **second issue** raised by the complainant, the authority came across that, the respondent has failed to deliver the possession by the due date, the complainant is liable to get the delayed possession charges at the prescribed rate of 10.45% under section 18(1) proviso of the Act ibid to be read with rule 15 of the Rules ibid on the amount paid by him from the due date of possession till the offer of possession.

FINDINGS OF THE AUTHORITY

27. **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.
28. 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.

29. As per the clause 13.3 of the apartment buyer agreement dated 25.03.2014 for unit no. 402, 4th Floor, tower A-9, in project "The Corridors", Sector 67-A, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of getting fire fighting approval i.e. 27.11.2014 + 180 days grace period which comes out to be 27.11.2018. The respondent has received the OC on 31.05.2019 and offered the possession of the unit to the complainant on 13.06.2019. complainant has already paid Rs. 2,11,85,415/- to the respondent against a total sale consideration of Rs. 2,52,27,699/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 27.11.2018 to 13.06.2019 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 to be read with rule 15 of the Real Estate (Regulations and Development) Rules, 2017.

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DECISION AND DIRECTIONS OF THE AUTHORITY

30. 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 to the complainant delayed possession charges at prescribed rate of interest i.e. 10.45% per annum 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.
- (iii) The respondent shall not charge any holding charges from the complainant during the pendency of this complaint before this authority.
- (iv) The complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period.
- (v) 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.

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(vi) The promoter shall not charge anything from the complainant which is not a part of the apartment buyer agreement.

(vii) The complainant is directed to take over the possession within a period of one month from the date of issuance of this order failing which he shall be liable to pay holding charges.

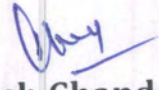
31. Complaint stands disposed of.

32. The order is pronounced.

33. Case file be consigned to the registry.


(Samir Kumar)

Member
Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Date : 27.08.2019

Judgement uploaded on 10.10.2019

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