

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

Complaint no. 1710 of 2019
Date of first hearing 27.08.2019
Date of decision 27.08.2019

1. Mrs. Anjali Khandelwal
R/o:- C-9/9612, Vasant Kunj, South West,
New Delhi-110070

Complainant

Versus

1. M/s Ireo Grace Realtech Private Limited,
Address: C-4, 1st floor, Malviya Nagar,
New Delhi- 110017

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Shri Vinod Kumar

Advocate for complainants
Authorised representative on
behalf of the respondent

Shri Garvit Gupta

Advocate for the respondent

ORDER

1. A complaint dated 22.04.2019 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 Mrs. Anjali Khandelwal against the respondents M/s IREO Grace Realtech 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 05.05.2014 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 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: -

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.	CD-C3-08-803
5.	Area of unit	1295.78 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 of 377 30.06.2020 of 378 31.12.2023 of 379
9.	DTCP licence no.	05 of 2013 dated 21.02.2013
10.	Date of apartment buyer's agreement	05.05.2014
11.	Date of approval of building plans	23.07.2013
12.	Notice of possession	17.01.2019
13.	Date of occupation certificate	31.05.2019
14.	Firefighting scheme	27.11.2014
15.	Total consideration	Rs. 1,50,46,665/- including taxes and other charges dated 17.06.2019
16.	Total amount paid by the complainant	Rs. 1,32,34,533/- (as alleged by complainant in the complaint)
17.	Payment plan	Instalment payment plan
18.	Date of environment clearance	12.12.2013
19.	Due date of delivery of possession 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.	27.11.2018 (Fire-fighting scheme dated 27.11.2014)
20.	Delay in handing over possession till date of notice of possession i.e. 17.01.2019	6 months 21 day



21.	Penalty clause as per apartment buyer's agreement dated 05.05.2014	Clause 13.4 – Rs. 7.50 per sq. ft per month of super area
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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 27.08.2019. The reply filed on 12.04.2019 on behalf of the respondents and has been perused.

FACTS OF THE CASE

5. Briefly stated, that the complainant/ petitioner/ allottee Mrs. Anjali Khandelwal received a marketing call from the office of the respondent / builder's in the month of February 2013, for booking in residential project of IREO "The Corridor", situated at Sector -67A, Gurugram. The complainant visited to sales gallery of the respondent along with family members and consulted with marketing staff of the respondent. The marketing staff of the respondent shows rosy picture of the project and allure with proposed specification and assured for timely delivery of flat. The marketing staff of the respondent gave a preprinted application form and assured that possession of flat will be delivering within 42 months from date of booking.



6. That on 06.03.2013, the complainant issued two cheque of Rs. 50,000/- dated 06.03.2013 and Rs. 12,50,000/- dated 12.03.2013 drawn on HDFC Bank and also signed a preprinted application form. The respondent acknowledges the payment and issued payment receipt on 21.03.2013.
7. That on 08.05.2013 the complainant made a payment of Rs. 13,81,565/- dated 16.05.2013 drawn on HDFC Bank, against the demand of the respondent. The respondent issued a payment receipt on 18.05.2013 against the payment.
8. That on 07.08.2013 respondent issued an "offer of allotment of residential apartment No. CD-C3-08-803 in group housing project known as "The Corridores" situated in Sector 68, Gurugram, Haryana" along with payment plan.
9. That on date 18.03.2014, the respondent issued a demand letter of third Installment on "commencement of excavation" and the complainant issued a cheque of Rs. 15,59,773/- dated 09.04.2014 against the demand. The respondent issued a payment receipt on 09.04.2014.
10. That on 05.05.2014 a preprinted, unilateral, one sided and arbitrary apartment buyer agreement was executed inter-say respondent/ promoter and complainant / allottee. As per clause number 13.3 of apartment buyer agreement, the



respondent has to give the possession of apartment within a period of 42 months from the date of approval of the building plans and / or fulfillment of the preconditions imposed there under. It is pertinent to mention here that building plans of project were approved on 31.03.2013 and builder has commenced the construction on 18.03.2014 therefore due date of possession is 18.09.2017.

11. That on 27.01.2015 the respondent issued a demand letter on stage "casting of lower basement roof slab" and the complainant paid Rs. 15,43,997/- vide online transfer no. 02731930010736 dated 16.03.2015 against the demand. The respondent issued a payment receipt on 16.03.2015.
12. That on 23.05.2016, the respondent issued a demand letter of tenth installment on stage "within 6 months from casting of top floor" and the complainant issued two cheque of Rs. 3,00,000/- dated 13.06.2016 and Rs. 6,98,899/- dated 14.06.2016, against the demand. The respondent issued payment receipts on 13.06.2016 & 14.06.2016.
13. That on 25.11.2016, the respondent raised a demand of Rs. 42,436/- against VAT and the complainant paid said demand dated 02.11.2016 drawn on HDFC Bank. The respondent issued a payment receipt on 06.12.2016.

14. That thereafter complainant continued to pay the remaining installment as per the payment schedule of the builder buyer agreement and have already paid the more than 95% amount i.e. Rs. 1,32,34,533/- out of total sale consideration Rs. 1,36,32,699/- till date 06.06.2017 along with interest and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject flat for a long time, they raised their grievance to respond. Though complainant was always ready and willing to pay the remaining installments provided that there is progress in the construction of flat.
15. That on 11.03.2019, the respondent issued a statement of account, which shows that till date 06.06.2017 the respondent demand Rs. 1,32,44,567/- and the complainant has paid Rs. 1,32,34,533/-.
16. That the main grievance of the complainant in the present complaint is that in spite of complainant paid more than 95% of the actual amounts of flats and ready and willing to pay the remaining amount, the respondent party has failed to deliver the possession of flat.
17. That the complainant had purchased the flat with intention that after purchase, her family will live in own flat. That it was



promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat along like basement and surface parking, landscaped lawns, club/ pool, EWS etc. as shown in brochure at the time of sale, would be handed over to the complainant as soon as construction work is complete i.e. by September, 2017 (42 months from date of commencement of construction). It is pertinent to mention here that project is already delayed by 19 months till date April 2019 and it might take 12 more months to get it complete in all aspect.

18. That the respondent / builder did not given possession of the flat on time caused huge financial losses and caused mental agony.
19. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, they are liable to be punished and compensate the complainant along with refund of paid money with interest.
20. That due to the acts of the above, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade

practice. Without prejudice the above, complainant reserve the right to file complaint before hon'ble adjudicating office.

21. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others is prima facie clear on the part of the respondent party which makes them liable to answer this hon'ble authority.

22. That there is an apprehension in the mind of the complainant that the respondent party has playing fraud and there is something fishy which respondent party are not disclosing to the complainant just to embezzle the hard-earned money of the complainant and other co-owners. It is highly pertinent to mention here that now a day's many builders are being prosecuted by court of law for siphon off the funds and scraping the project mischievously. A probe needs to initiate to find out the financial and structural status of project.

ISSUES RAISED BY THE COMPLAINANT

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

1. Whether the developer/ respondent has violated the terms and conditions of flat buyer agreement?



2. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers for delay in giving possession?
3. Whether respondents are guilty under section 12 of RERA Act. For wrong / misrepresentation, respondent assured to handover the possession as agreed in builder buyer agreement?
4. Whether complainant is entitled for interest for every month of delay from due date of possession till the handing over of the possession under section 18 (2) proviso of RERA Act.?

RELIEF SOUGHT

The reliefs sought by the complainant are as follows: -

1. Direct the respondent to handover the physical possession of flat complete in all respect as per specification mention in builder buyer agreement within 12 months from date of filling this compliant along with prescribed rate interest.
2. Direct the respondent to pay interest at the prescribed rate from the due date of possession to till the physical

possession of possession of flat as per section 18 (2) proviso of Real Estate (Regulation and Development) Act, 2016).

REPLY BY THE RESPONDENTS

24. The respondent submitted that the complainant, after checking the veracity of the project namely, 'Corridor', Sector 67A, Gurugram had applied for allotment of an apartment vide her booking application form dated 05.03.2013. The complainant agreed to be bound by the terms and conditions of the booking application form agreed upon by her.
25. 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-C3-08-803 having tentative super area of 1295.78 sq.ft for a total sale consideration of Rs. 1,36,32,699.23. The apartment buyer's agreement was executed between the parties to the complaint on 05.05.2014.
26. The respondent submitted that he raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan and the complainant made some payments in



time and made certain defaults. It is pertinent to mention herein that vide payment demand dated 14.04.2013, the respondent had raised the second instalment demand for net payable amount of Rs. 13,81,568/- which had to be paid by 06.05.2013. However, the same was paid by the complainant only on 16.05.2013 after a reminder dated 14.05.2013 was issued by the respondent to the complainant.

27. The respondent submitted that vide payment request dated 27.01.2015, the respondent raised the payment demand towards the fourth installment for the net payable amount of Rs. 15,43,997/-. However, the complainant defaulted in making the timely payment of the installment and made the payment of the same only after a reminder dated 15.03.2015 was issued by the respondent to the complainant.

28. The respondent submitted that vide payment request dated 06.05.2015, the respondent raised the payment demand towards the fifth instalment for the net payable amount of Rs. 13,23,670.03. However, the complainant defaulted in making payment towards the demanded amount despite reminder dated 05.06.2015 issued by the respondent and the due amount was adjusted in the next instalment demand dated 10.06.2015 as arrears.

29. The respondent submitted that vide payment request dated 15.11.2016, the respondent raised the payment demand towards the eleventh instalment for the net payable amount of Rs. 10,03,473.07. However, the complainant again defaulted in making the timely payment of the instalment and reminder dated 12.12.2016 was issued by the respondent.
30. The respondent submitted that the complainant has till date made the part- payment of out of the total sale consideration of Rs. 1,36,32,699.23. 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.
31. 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 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 complainant had also acknowledged and admitted in clause 13.5 of the agreement for an extended delay period of 12 months from the date of expiry of grace period.

32. 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. A copy of the Building Approval Plan dated 23.07.2013 is attached. 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.

SANDEEP BHUCKAL
LEGAL ASSISTANT

33. 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 27.11.2014 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, would have expired only on 27.11.2019. However, the complainant has filed the present complaint prematurely prior to the due date of possession and no cause of action had accrued at the time of filing of the complaint. The complainant is trying to mislead this hon'ble authority by making baseless, false and frivolous averments. The respondent 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 already applied for the grant of occupation certificate on 06.07.2017.
34. It is 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 her calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to somehow get out of the concluded contract made by her on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed.

DETERMINATION OF ISSUES

35. With respect to the **all issue**, raised by the complainants as per clause 13.3 of apartment buyer's agreement dated 05.05.2014, 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.

36. Accordingly, the due date of possession was 27.11.2018 and the possession has been delayed by 6 months 21 day till date of offer of possession 17.01.2019. 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 offer 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 10.45% 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

37. 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.*
38. 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.
39. Argument heard. As per clause 13.3 of the builder buyer agreement dated 05.05.2014 for unit no. CD-C3-8-803 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 fire fighting approval i.e.

27.11.2014 plus 180 days grace period which comes out to be 27.11.2018. Respondent has received the occupation certificate on 31.05.2019 and offered the possession of the unit to the complainant on 17.06.2019. Complainant has already paid Rs. 1,32,34,533/- to the respondent against a total sale consideration of Rs. 1,50,46,665/-.

Decision and directions of the authority:

40. 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. 10.45% 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 i.e. ~~17.01.2019~~ 17.06.2019
- 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 the delayed period. The complainant is directed to take over the

*Corrected vide
order dated 25/09/19*

possession of the unit within a period of one month from the date of issuance of this order.

- 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. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

41. Complaint stands disposed of.
42. The order is pronounced.
43. The file is consigned to the registry


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated:27.08.2019

Corrected judgement uploaded on 25.09.2019

SANDEEP BHUCKAL
LEGAL ASSISTANT

**BEFORE THE HARYANA REAL ESTATE REGULATORY
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obligation of the promoter under section 11 (4) (a) of the Act
ibid.

2. Since, the apartment buyer's agreement was executed on 05.05.2014 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 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: -

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
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18.	Date of environment clearance	12.12.2013
19.	Due date of delivery of possession 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.	27.11.2018 (Fire-fighting scheme dated 27.11.2014)
20.	Delay in handing over possession till date of notice of possession i.e. 17.01.2019	6 months 21 day

SANDEEP BHUCKAL
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21.	Penalty clause as per apartment buyer's agreement dated 05.05.2014	Clause 13.4 – Rs. 7.50 per sq. ft per month of super area
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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 27.08.2019. The reply filed on 12.04.2019 on behalf of the respondents and has been perused.

FACTS OF THE CASE

5. Briefly stated, that the complainant/ petitioner/ allottee Mrs. Anjali Khandelwal received a marketing call from the office of the respondent / builder's in the month of February 2013, for booking in residential project of IREO "The Corridor", situated at Sector -67A, Gurugram. The complainant visited to sales gallery of the respondent along with family members and consulted with marketing staff of the respondent. The marketing staff of the respondent shows rosy picture of the project and allure with proposed specification and assured for timely delivery of flat. The marketing staff of the respondent gave a preprinted application form and assured that possession of flat will be delivering within 42 months from date of booking.



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RELIEF SOUGHT

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REPLY BY THE RESPONDENTS

24. The respondent submitted that the complainant, after checking the veracity of the project namely, 'Corridor', Sector 67A, Gurugram had applied for allotment of an apartment vide her booking application form dated 05.03.2013. The complainant agreed to be bound by the terms and conditions of the booking application form agreed upon by her.
25. 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-C3-08-803 having tentative super area of 1295.78 sq.ft for a total sale consideration of Rs. 1,36,32,699.23. The apartment buyer's agreement was executed between the parties to the complaint on 05.05.2014.
26. The respondent submitted that he raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan and the complainant made some payments in

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time and made certain defaults. It is pertinent to mention herein that vide payment demand dated 14.04.2013, the respondent had raised the second instalment demand for net payable amount of Rs. 13,81,568/- which had to be paid by 06.05.2013. However, the same was paid by the complainant only on 16.05.2013 after a reminder dated 14.05.2013 was issued by the respondent to the complainant.

27. The respondent submitted that vide payment request dated 27.01.2015, the respondent raised the payment demand towards the fourth installment for the net payable amount of Rs. 15,43,997/-. However, the complainant defaulted in making the timely payment of the installment and made the payment of the same only after a reminder dated 15.03.2015 was issued by the respondent to the complainant.
28. The respondent submitted that vide payment request dated 06.05.2015, the respondent raised the payment demand towards the fifth instalment for the net payable amount of Rs. 13,23,670.03. However, the complainant defaulted in making payment towards the demanded amount despite reminder dated 05.06.2015 issued by the respondent and the due amount was adjusted in the next instalment demand dated 10.06.2015 as arrears.



29. The respondent submitted that vide payment request dated 15.11.2016, the respondent raised the payment demand towards the eleventh instalment for the net payable amount of Rs. 10,03,473.07. However, the complainant again defaulted in making the timely payment of the instalment and reminder dated 12.12.2016 was issued by the respondent.
30. The respondent submitted that the complainant has till date made the part-payment of out of the total sale consideration of Rs. 1,36,32,699.23. 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.
31. 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 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 complainant had also acknowledged and admitted in clause 13.5 of the agreement for an extended delay period of 12 months from the date of expiry of grace period.

32. 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. A copy of the Building Approval Plan dated 23.07.2013 is attached. 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.



33. 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 27.11.2014 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, would have expired only on 27.11.2019. However, the complainant has filed the present complaint prematurely prior to the due date of possession and no cause of action had accrued at the time of filing of the complaint. The complainant is trying to mislead this hon'ble authority by making baseless, false and frivolous averments. The respondent 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 already applied for the grant of occupation certificate on 06.07.2017.

34. It is 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 her calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to somehow get out of the concluded contract made by her on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed.

DETERMINATION OF ISSUES

35. With respect to the **all issue**, raised by the complainants as per clause 13.3 of apartment buyer's agreement dated 05.05.2014, 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.

36. Accordingly, the due date of possession was 27.11.2018 and the possession has been delayed by 6 months 21 day till date of offer of possession 17.01.2019. 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 offer 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 10.45% 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

37. 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.*
38. 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.
39. Argument heard. As per clause 13.3 of the builder buyer agreement dated 05.05.2014 for unit no. CD-C3-8-803 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 fire fighting approval i.e.



27.11.2014 plus 180 days grace period which comes out to be 27.11.2018. Respondent has received the occupation certificate on 31.05.2019 and offered the possession of the unit to the complainant on 17.06.2019. Complainant has already paid Rs. 1,32,34,533/- to the respondent against a total sale consideration of Rs. 1,50,46,665/-.

Decision and directions of the authority:

40. 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. 10.45% 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 i.e. 17.01.2019.
- 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 the delayed period. The complainant is directed to take over the

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possession of the unit within a period of one month from the date of issuance of this order.

- 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. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

41. Complaint stands disposed of.
42. The order is pronounced.
43. The file is consigned to the registry



(Samir Kumar)

Member



(Subhash Chander Kush)

Member

Dated:27.08.2019

Judgement uploaded on 04.09.2019

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