

**HARYANA REAL ESTATE REGULATORY AUTHORITY
PANCHKULA, HARYANA**

Date :
26.09.2018

- | | |
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| 1. <u>Complaint No. 66/2018</u>
Anurag Nag & Anr.
Versus
M/S IREO Fiveriver Pvt. Ltd. | Hearing : 7 th
...Complainant

...Respondent |
| 2. <u>Complaint No. 69 /2018</u>
Bhai Rajinder Pal
Versus
M/S IREO Fiveriver Pvt. Ltd. | Hearing : 2 nd
...Complainant

...Respondent |
| 3. <u>Complaint No. 92 /2018</u>
Sujana Ram
Versus
M/S IREO Fiveriver Pvt. Ltd. | Hearing : 2 nd
...Complainant

...Respondent |
| 4. <u>Complaint No. 93/2018</u>
Suman Lata Davessar & Anr.
Versus
M/S IREO Fiveriver Pvt. Ltd. | Hearing : 2 nd
...Complainant

...Respondent |



5. Complaint No. 106/2018

Desh Ram Dhankhar & Anr.

Versus

M/S IREO Fiveriver Pvt. Ltd.

6. Complaint No. 106/2018

Desh Ram Dhankhar & Anr.

Versus

M/S IREO Fiveriver Pvt. Ltd.

7. Complaint No. 145 /2018

Sanjay Kumar Narwal

Versus

M/S IREO Fiveriver Pvt. Ltd.

8. Complaint No. 148 /2018

Piyush Babarwal

Versus

M/S IREO Fiveriver Pvt. Ltd.

9. Complaint No. 164/2018

Surinder Singh Rathi

Versus

M/S IREO Fiveriver Pvt. Ltd.

Hearing : 2nd

...Complainant

...Respondent

Hearing : 2nd

...Complainant

...Respondent

Hearing : 2nd

...Complainant

...Respondent

Hearing : 2nd

...Complainant

...Respondent


Hearing : 2nd

...Complainant

...Respondent



10. <u>Complaint No. 173 /2018</u>	Hearing :	7 TH
Luxmi Devi & Ors.		...Complainant
Versus		
M/S IREO Fiveriver Pvt. Ltd.		...Respondent
11. <u>Complaint No. 211/2018</u>	Hearing :	2 nd
Kirtika Kaura		...Complainant
Versus		
M/S IREO Fiveriver Pvt. Ltd.		...Respondent
12. <u>Complaint No. 220/2018</u>	Hearing :	2 nd
S.K. Oberoi & Anr.		...Complainant
Versus		
M/S IREO Fiveriver Pvt. Ltd.		...Respondent
13. <u>Complaint No. 285/2018</u>	Hearing :	2 nd
Dr. Gurnam Singh		...Complainant
Versus		
M/S IREO Fiveriver Pvt. Ltd.		...Respondent
14. <u>Complaint No. 344/2018</u>	Hearing :	2 nd
Surinder Pal		...Complainant
Versus		
M/S IREO Fiveriver Pvt. Ltd.		...Respondent



15. Complaint No. 345/2018

Hearing : 2nd

Ram Kaur

...Complainant

Versus

M/S IREO Fiveriver Pvt. Ltd.

...Respondent

16. Complaint No. 346/2018

Hearing : 2nd

Prakash & Anr.

...Complainant

Versus

M/S IREO Fiveriver Pvt. Ltd.

...Respondent

CORAM :

Sh. Rajan Gupta

Chairman

Sh. Anil Kumar Panwar

Member

Sh. Dilbag Singh Sihag

Member



APPEARANCE :

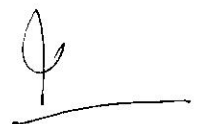
- Mukesh Pandit Counsel for Respondent in all the above Anjali Moudgil Counsel on behalf of complainants in Complaint Nos. 66/220/2018
- Himanshu Raj Counsel on behalf of complainants in Complaint Nos. 69/92/145/148/164/173/2018
- Jawaharlal Davessar complainant present for complaint No. 93/2018
- Radhika Subhash Counsel on behalf of complainants in Complaint No. 211/2018
- Abhineet Taneja Counsel on behalf of complainants in Complaint No. 285/2018
- Gaurav Gupta Counsel on behalf of complainants in Complaint Nos. 344/345/346/2018
- None appeared on behalf of complainant in complaint No. 106/2018



ORDER :

All the above listed complaints are being disposed through this common order. The Complaint Nos. 66 and 173 were listed for hearing on six different dates from April 2018 to July, 2018, wherein adjournment were sought by the Ld. counsel for the respondent for not being able to file a reply, as a result the respondent was burdened with costs on several occasions, and vide order dated 23.07.2018 the matters were ~~was~~ decided to be proceeded ex-parte. Finally the matters were listed to be heard on 26.09.2018.

2. Remaining complaints other than Complaint Nos. 173 and 66 of 2018) were first listed for 05.09.2018 when the same were adjourned on the request of the counsel for respondent. The adjournment was granted subject to payment of costs of Rs. 2,000/- to the complainant and Rs. 5,000/- payable to the authority in each of the cases. Finally the matters were listed to be heard on



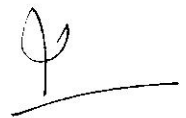
26.09.2018. All the above listed complaints are being disposed off through this common order because the issues in dispute are similar in all the cases. Ld. Counsel for respondent vide letter dated 20.09.2018 informed the Authority that, the reply filed by the respondent in complaint nos. 66,69 and 173 of 2018 may be adopted as reply for all the remaining matters. Accordingly, facts of the lead case no. 69/2018 are being taken into account for disposal of this bunch matter.

3. The case of the complainant in complaint no. 69/2018 is that on 05.10.2010, original allottee booked a 502 Sq. yard residential plot in the project IREO Fiveriver, Sector 3,4,4a Pinjore, Kalka, Urban Complex, Distt. Panchkula, for a total consideration of Rs.1,25,58,000. On 26.03.2011 an allotment letter for Type C, Plot No. P-47 was received by the original allottee. This plot thereafter was bought by the complainant on



22.07.2011 from the original allottee. Out of the total sale consideration of Rs. 1,25,58,000, the complainant has already paid Rs. 82,82,478. The Plot Buyer Agreement was executed on 09.08.2011 under which the respondents were bound to deliver physical possession of the plot by 09.08.2013, and after taking into account the grace period, the deemed date of possession was 09.02.2014. The complainant stated that the respondents have failed to offer possession of the plot and the project is nowhere near completion even after lapse of seven years from the date of purchase by the complainant. The respondents have failed to develop the project and none of the promised facilities have been provided. The respondents have not even got their license renewed.

The Ld. Counsel for the complainant further stated that the complainants have put in their hard earned money for construction of a house on the said plot, but

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the respondents have badly belied their trust and their money is being misused by them. Respondents have not even intimated the likely date of completion of the project.

4. The complainants have sought following reliefs:
 - i. Refund the full amount deposited against the booked property, along with interest at the rate of 20 % p.a. till the actual realization of the complete amount in accordance with section 18(1), Section 19 (4) of the Real Estate (Regulation and Development) Act, 2016 and Rule 15 and 16 of Haryana Real Estate (Regulation and Development) Rules, 2017.
 - ii. To direct the opposite party to pay Rs. 20,00,000 for mental agony caused to the complainants due to non-delivery of the property.
 - iii. To direct the opposite party to pay Rs. 14,00,000 to the complainants on account of deficiency in services

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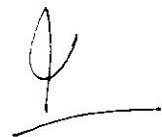
for keeping the complainants in dark with regard to the progress of property.

- iv. To direct the opposite party to pay Rs. 8,00,000 under section 12 of the Real Estate (Regulation and Development) Act, 2016.
 - v. To direct the opposite party to pay Rs. 14,00,000 for causing physical harassment caused to the complainants due to non delivery of the property.
 - vi. To direct the opposite party to hand over 10% of the estimated cost of the real estate project to the complainants under section 59 of the Real Estate (Regulation and Development) Act, 2016.
 - vii. To direct the opposite party to reimburse litigation cost of Rs. 1,00,000 to complainants.
5. In response to the complaint, the respondent states that the present complaint is liable to be dismissed, since the delay in delivery of possession in the present



case is on account 'Force Majeure' circumstances, which have been defined in Clause 1 of the agreement between parties. The Ld. Counsel for the respondents stated that delay on account of receipt of approvals from the government Authorities or any delay beyond the control of the respondent in obtaining approval/permission from the competent authority are specifically covered under 'Force Majeure' circumstances in the agreement.

The Ld. Counsel for the respondent stated that the complainants were fully aware of the facts that various approvals and permissions were yet to be obtained and were under process at the stage of entering into buyer's agreement. Further, citing Clause 11.1 from the agreement, the Ld. Counsel stated that in ordinary circumstances although the deemed date of delivery of possession was 24 months + 6 months Grace Period from the date of execution of the agreement, but

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subject to 'Force Majeure' such period shall stand extended automatically to the extent of delay caused due to Force Majeure circumstances. Accordingly, the respondents would be entitled to extension of time corresponding to continuance of such circumstances.

6. The respondent in his written reply and verbal submissions through his counsel specifically states that delay was caused due to the following reasons:

- i. **Delay in grant of environment clearance:** That the respondent had applied for environment clearance on 18.04.2012, the grant of the same was delayed for the want of revised layout plan for the entire area of the project. Since the sectoral road circulation plan was revised by the State Authorities, the respondent was forced to revise the layout plan of the project. That on 16.09.2013 revised layout plan was submitted to the Environment Authorities. On 23.12.2013 the State Environment Impact Assessment Authority, Haryana,



in complete disregard to the fact that the project had already been granted wildlife clearance, observed that the revalidation of the same is required. This clearance from wildlife authorities could be obtained only on 15.04.2014. This when received with an additional condition of obtaining NOC from Standing Committee of National Board of Wild Life. They also issued the direction that project development could start only after the recommendation of Standing Committee of National Board of Wild Life.

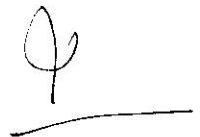
ii. **Delay in Grant of Clearance by National Board for Wildlife (NBWL):**

That the said clearance had already been obtained on 30.10.2009. Its revalidation was delayed since no clearance could be granted by NBWL in September 2013 tenure. The Board was reconstituted only on 22.07.2014. Thereafter working of the NBWL was



stayed by the Hon'ble Supreme Court vide interim order dated 25.08.2014 in Writ Petition (Civil) No. 736 of 2014. Eventually the clearance to the project could be granted vide letter dated 24.04.2015. After this clearance only the respondent could commence development.

- iii. **Non- Access to the Project:** That despite having paid 172.54 Crore towards external development charges and infrastructure development charges by the respondent, the state Authorities/HUDA failed to provide ingress and egress to the project. The Haryana government notified development plan of Kalka-Pinjore area including sectors 1,2,3,4,4a and 5 on 18.03.2005. Based on the aforesaid master plan, DTCP Haryana made a circulation plan dated 07.10.2008, which provide ingress and egress to newly laid out sectors. This circulation plan was revised on 01.06.2011. On perusal of the circulation plan it was



found that access to the project in question was possible only through the sectoral road planned by DTCP, and the said project is landlocked and is fenced by Kaushalya river on one side and by various other land owners on other side. Further, the grant of license to licensee companies was ostensibly based on legitimate expectation that the access to the project would be provided by the Government by construction of sectoral roads mentioned in circulation plan. However, till date the state government has neither laid sectoral roads nor provided access.

7. Written pleadings as well as oral submissions of both the parties have been gone through in detail. It is observed that the case of the respondents is that the builder-buyer agreement of the year 2011 has a specific stipulations with regard to the force majeure conditions, and it was specifically informed to the complainants vide clause 10 of the agreement that the



developer is in the process of developing and completing the project in accordance with the lay out plans of the residential colony. However, the said lay out plans could be changed and altered as required by the statutory authorities. Further, it was specifically agreed that the site plan could be revised during the course of completion of the project. Further, clause 11 of the agreement stipulates that the possession of the plot shall be subject to force majeure conditions.

The respondent further states that they had applied for environment clearance in April,2012 but since lay out plan for the entire area itself was revised by the State Government Authorities the clearance could not be granted to the respondent. When the clearance finally arrived in 2014, it came with an additional stipulation of getting clearance from the National Board for Wild Life which according to the respondent was unnecessary since they had already obtained the

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same in October,2009. Further, the Wild Life Board itself was not constituted on account of say by the Hon'ble Supreme Court, therefore, the final clearance could not be obtained upto April,2015.

The next plea of the respondent is that despite having deposited Rs.172.54 crores towards EDC and infrastructure development charges by the respondent with the State Government Authorities, the State Government has not yet provided the access roads for the colony.

For these reasons the respondent could not complete the colony and their case is fully covered by the force majeure conditions defined in clause 1 of the agreement.

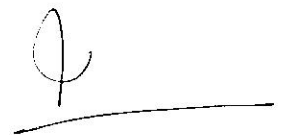
On the other hand the case of the complainants is that against a total sales consideration of over Rs.1,25,58,000/- the complainants have already paid an amount of Rs.82,82,478. Out of this as per



Annexure C-II annexed with the complaint an amount of over Rs.31 lacs had been paid upto the year 2011 and the remaining amount was paid by the complainants in the year 2015.

8. It is observed that according to the respondent several clearances environment clearance was yet to be obtained in the year 2011 when an amount of over Rs.31.00 lacs was got deposited by the complainants. If the clearance were yet to be obtained then the respondent should not have asked for such a huge deposit from the complainants.

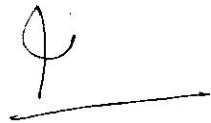
Further, the respondent got over Rs.50.00 lacs deposited from the complainants in the year 2015 i.e. when the environment and wild life clearance had already been obtained. But, due to whatever reason there was no access roads provided by the state government authorities and the respondents felt that the State Government Authorities are not likely to

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provide requisite infrastructure, there was no reason for the respondent to raise additional demands and receive the said amount of over Rs.50.00 lacs in the year 2015. In 2015 either there was no force majeure conditions for completion of the project in which case the project should have been completed within a reasonable period of time there-after, or, if there was still force majeure conditions persisting, as the case has been claimed to be due to non-availability of access roads etc, the respondent should not have demanded such a huge amount of money of over Rs.50 lacs.

9. The Authority observes that in August,2018 the respondent has sent following letters of requests to the Authority:-

- i. 431 of 2018, Dated : 20.08.2018, for IREO Fiverivers Plot Pocket- R-1, located at sector 3,4,4A, Village Islmanagar, Pinjore Kalka urban complex, Panchkula.

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- ii. 432 of 2018, Dated : 20.08.2018, for IREO Fiverivers Plot Pocket- P-1, located at sector 3,4,4A, Village Islamnagar, Pinjore Kalka urban complex, Panchkula.
- iii. 433 of 2018, Dated : 20.08.2018 , for IREO Fiverivers Plot Pocket- Q-1, located at sector 3,4,4A, Village Islamnagar, Pinjore Kalka urban complex, Panchkula.
- iv. 434 of 2018, Dated : 20.08.2018 , for IREO Fiverivers Plot Pocket- S-1, located at sector 3,4,4A, Village Islamnagar, Pinjore Kalka urban complex, Panchkula.
- v. 435 of 2018, Dated : 20.08.2018 , for IREO Fiverivers Plot Pocket- T-1, located at sector 3,4,4A, Village Islamnagar, Pinjore Kalka urban complex, Panchkula.
- vi. 436 of 2018, Dated : 20.08.2018 , for IREO Fiverivers Plot Pocket- T-2, located at sector 3,4,4A, Village Islamnagar, Pinjore Kalka urban complex, Panchkula.
- vii. 437 of 2018, Dated : 20.08.2018 , for IREO Fiverivers Plot Pocket- U-1, located at sector 3,4,4A, Village Islamnagar, Pinjore Kalka urban complex, Panchkula.
- viii. 438 of 2018, Dated : 20.08.2018 , for he Woods , located at sector 3,4,4A, Village Islamnagar, Pinjore Kalka urban complex, Panchkula.
- ix. A copy of the above letters have been made part of this file.



Vide above letters the respondent has sought to withdraw their applications pending with the Authority for registration of their projects under the RERA Act. They have specifically stated that the respondent plans to migrate their project into residential affordable housing colony under Deen Dayal Jan Awas Yojna. From these letters it is abundantly clear that the respondents are not even planning to complete the project as agreed to with the complainant. They are in fact planning to change the entire character of the project. In this way there is no likelihood of delivery of the plot to the complainant.


Faced with the above situation when the project has neither been completed nor is there any likelihood of its completion, nor has the respondent put-forward any time line for completion of the project, it is concluded that for all practical purposes the agreement of the respondent with the complainant is totally frustrated by

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way of breach by the respondent. Their pleas regarding force majeure conditions are also not acceptable for the reasons stated in the foregoing paragraphs.

10. In the circumstances, it will be fair and just to order the respondent to refund the entire money deposited by the complainants with the respondent along with interest at the rate prescribed in rule 15 of The Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. the interest on the deposit shall be payable @ SBI marginal cost of lending rate (MCLR)+2%.. The respondents shall refund 50% of the money to the complainants within the period 30 days and remaining 50% in a further period of 30 days from the date of uploading of this order on the website of the Authority.


D.S. Singh
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman