

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

Complaint No. : 242 of 2018
First date of Hearing : 06.06.2018
Date of Decision : 05.09.2018

Smt. Mira Mahbubani,
R/o. IC4/105, Essel Tower, MG Road,
Gurugram, Haryana-122002.

Complainant

Versus

M/s IREO Grace Realtech Pvt. Ltd.
(Through its directors)
Address: IREO Camus, Sector 59,
Gurugram.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Narender Kumar Advocate for the complainant
Shri M.K. Dang Advocate for the respondent

ORDER

1. A complaint dated 09.05.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Smt. Mira Mahbubani, against the promoter M/s IREO Grace Realtech Pvt. Ltd.



2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"The Corridors", Sector 67A, Gurugram, Haryana.
2.	RERA registered/ not registered	Registered
3.	HRERA registration no.	378 of 2017 for phase 1 377 of 2017 for phase 2 379 of 2017 for phase 3
4.	Status of the tower in which complainant's unit is situated	Completed
5.	Applied for occupation certificate on	21.07.2017
6.	Apartment/unit no.	CD-C6-06-603, 6 th floor, tower-C6.
7.	Apartment measuring	1475.86 sq. ft.
8.	Apartment buyer's agreement executed on	Not executed
9.	Total consideration amount as per payment plan सत्यमेव जयते	Rs.1,45,33,240/-
10.	Total amount paid by the complainants till date	Rs.30,07,854/-
11.	Percentage of consideration amount	Approx. 20 percent
12.	Date of delivery of possession as per clause 13.3 apartment buyer's agreement, 42 months plus 180 days grace period from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder.	27 th November 2018
13.	Fire approval NOC was granted on	27 th November 2014
14.	Delay in handing over possession till date	Premature
15.	Penalty clause as per apartment buyer's agreement	Clause 17.a of the agreement i.e. Rs.7.50/- per sq. ft. of the super area for every month of delay.



3. The details provided above have been checked on the basis of record available in the case file which have been provided by

the complainant and the respondent. The apartment buyer's agreement sent by the respondent was not executed by the complainant. The possession of the said unit is to be delivered by 27th November 2018, as per the agreement sent to the complainant.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 06.06.2018. The case came up for hearing on 06.06.2018, 12.07.2018, 02.08.2018, & 05.09.2018. The reply has been filed on behalf of the respondent on 02.07.2018 which has been perused.
5. Briefly stated, the facts of the complaint are that the respondents had launched a residential group housing colony at Sctor-67-A, Gurugram in the name of "The Corridors" and it was assured and promised that whatever mentioned in the brochures carrying the details of completion of project etc., the company will complete the same within the stipulated period. Accordingly, the complainant showed her intention to have an accommodation in the respondent's company project and booked a 2 BHK + S Flat/Unit and initially deposited a sum of Rs.10,00,000/- vide cheque dated 10.03.2013 and a receipt to this effect was issued from the office of the respondent's company on 25.03.2013.



6. The complainant submitted that payment acknowledgement receipt was also issued by the respondent's company on 13.04.2013 acknowledging the amount of Rs.10,00,000/- for unit type 2 BHK + servant room having proposed super area of 1475.87 sq. ft. of property bearing No. CD-C6-06-603 at Sector 67A, Gurugram.
7. The complainant further submitted that she received a payment request letter from the respondent's office whereby the complainant was asked to deposit a sum of Rs.17,99,515/and accordingly the complainant deposited the aforesaid amount by way of cheque dated 06.05.2013 which was duly encashed and the respondent issued a receipt dated 16.05.2013 acknowledging the payment of the said amount.
8. The complainant submitted that an allotment offer letter was issued in favour of the complainant by the respondent dated 07.08.2013 carrying the details of deposits of amount as per the payment plan opted by the complainant. The complainant stated that on getting no response from the respondents, the complainant visited at the office of the respondents and on the request of the official of the respondent's company, the complainant also issued a cheque of Rs.2,08,339/- dated 12.11.2014 which was also duly encashed by the



respondent's company. Hence, in total the complainant had already deposited a sum of Rs.30,07,854/-.

9. The complainant submitted that the respondent company has played a fraud upon the complainant and has cheated her fraudulently and dishonestly with a false promise to start the construction over the site and to complete it within the stipulated period and even miserably failed to execute buyer's agreement from the complainant despite the fact that complainant deposited the aforesaid amount of rupees more than 30,00,000/- and requested to get the completion of paper requirements.
10. The complainant submitted that she being an old lady of more than 81 years of age has been running from pillar to post for the last couple of years and have requested the respondents to refund the amount but the respondents are putting forth the complainant with one pretext or the other and have failed to refund the amount leaving the complainant with no alternative but to approach before this hon'ble authority with a submission to direct the respondents to refund the amount along with interest.
11. The **issues raised** by the complainants are as follow:



- i. Whether the respondent have cheated and played fraud upon the complainant, if so to what effect?
- ii. Whether the respondents are liable to refund the amount of Rs.30,07,854/along with interest @ 18% p.a. to the complainant from the date of deposits till its realization in full and final, if so, to what effect?

Relief sought

12. The complainant is seeking refund of an amount of Rs.30,07,854/- fraudulently received by the respondents from the complainant along with interest @ 18% p.a. from the date of deposit till its realization in full and final along with compensation for causing humiliation and mental harassment to the complainant being senior citizen and old lady by the respondents and the cost of litigation expenses as well.

Reply on merits

13. The respondent submitted that the facts of the complaint is correct to the extent that respondent had launched a residential group housing colony at Sector 67-A, Gurugram in the name of 'The Corridors'. The respondent denied that it was assured or promised that whatever mentioned in the brochures carrying the details of completion of project etc.,



the company will complete the same within the stipulated period. It is submitted that no such assurance was ever given by any of the employees of respondent to the complainant and the possession was to be offered strictly in accordance with the agreed terms of the allotment. It is pertinent to mention here that time period for offering the possession of the unit as per the agreed terms of the apartment buyer's agreement has not yet elapsed. However, the construction of the tower where the unit allotted to the complainant is located is complete and respondent has already applied for the grant of occupation certificate on 21.07.2017.

14. The respondent submitted that the complainant had booked a 2 BHK + S flat/unit and deposited a sum of Rs.10,00,000/- and that a receipt to that effect was issued by respondent on 25.03.2013. The respondent denied that on the basis of alleged assurances and promises as stated to be made by the respondents, the complainant showed her intention to have an accommodation in the respondent's company project. The respondent submitted that the complainant had herself approached respondent company and had expressed her desire to purchase a unit/flat in the project of respondent. The complainant had signed the application for provisional registration of residential apartment and had undertaken in



accordance with clause (d) of the said application to execute all the documents/ agreements as per the company's format as well as to accept the terms and conditions therein.

15. The respondent submitted that all demands were raised by respondent in accordance with the payment plan. It is submitted that the terms and conditions contained in the booking application form and apartment buyer's agreement were agreed between the complainant and respondent at the time of signing of the application for provisional registration of residential apartment and the complainant had own her own will and only after understanding the terms and conditions stipulated therein had made a booking with the respondent. The complainant was aware from the very inception that timely payment was the essence of the allotment. However, the complainant not only committed several delays in making part payments and not adhering to the timelines as stipulated in the payment plan but also failed to pay the remaining instalments amount despite various reminders and follow-ups by respondent.

16. The respondent submitted that no queries were ever raised by the complainant and that the question of not receiving response from the respondents' side does not arise at all. The respondent denied that the complainant visited at the office



of the respondent or that on the alleged request of the official of the respondent's company, the complainant issued a cheque in the sum of Rs.2,08,339/-. It is not denied that the complainant has deposited a sum of Rs.30,07,854/-. It is reasserted that the delayed part payments were made by the complainant in accordance with the demands raised by respondent in accordance with the payment plan and not on the basis of the alleged requests of any of the officials of respondent as falsely stated by the complainant.

17. The respondent denied that the respondent company has played fraud upon the complainant or has allegedly cheated her fraudulently and dishonestly or has made an alleged false promise to start the construction over the site and to complete it within the stipulated period or has even failed to execute the buyer's agreement from the complainant or that the complainant requested to get the completion of paper requirements. It is submitted that clause 13.3 of the apartment buyer's agreement states that the '...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 understand that the company shall be additionally be entitled to a period of 180 days (grace period)...'. From the aforesaid provisions in the apartment buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. In the present case, it may be noted that the fire approval NOC was granted on 27.11.2014. Therefore, the pre-condition of obtaining all the requisite approvals were fulfilled only on 27.11.2014. In terms of the Apartment Buyer's Agreement the proposed time for handing over of possession has to be computed from 21.11.2014. Therefore, 48 months from 27.11.2014 (including the 180 days grace period), shall expire only on 27.11.2018. There cannot be any delay till 27.11.2018.

18. The respondent submitted that even as per the terms and conditions of the apartment buyer's agreement, no defaults or illegalities have been committed by the respondent. Also, the complainant failed to execute the apartment buyer's agreement which was sent to her by respondent vide letter dated 21.03.2014. The complainant failed to abide by her contractual obligation of executing the agreement despite reminders dated 28.05.2014 and 17.07.2014. The respondent



further informed that on failure of the complainant to make payment of the outstanding amount, the earnest money would stand forfeited in accordance with clause 21.3 of the apartment buyer's agreement. On account of non-fulfilment of the contractual obligations by the complainant despite several opportunities extended by respondent, the allotment of the complainant was cancelled by respondent vide cancellation letter dated 11.02.2015 in accordance with clause 21.1 of the apartment buyer's agreement and the amount paid by the complainant as earnest money was forfeited by respondent as per clause 21.3 of the apartment buyer's agreement and the complainant is now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment.

19. The respondent submitted that the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, her calculations went wrong on account of slump in the real estate market and the complainant was not possessed with sufficient funds to honour her commitments. The complainant has filled this baseless, false and frivolous complaint with malafide motives.



Determination of issues:

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

20. With respect to the first issue raised by the complainant, the complainant has not adduced any evidence but has made only assertion. Thus, the said issue becomes superfluous.
21. With respect to the second issue raised by the complainant, the learned counsel for the respondent submitted that they have sent the apartment buyer's agreement to the complainant and the respondent also sent several reminders to him for execution of the said agreement. As per clause 13.3 of apartment buyer's agreement, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months plus grace period of 180 days from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder. In the present complaint the fire approval of NOC was granted on 27.11.2014. Therefore, the due date of possession shall be computed from 27.11.2014. The clause regarding the possession of the said unit is reproduced below:



“13. Possession and holding charges

Subject to force majeure, as defined herein and further subject to the allottee having complied with all its obligations under the terms and condition of this agreement and not having defaulted under any provisions of this agreement including but not limited to the timely payment of all dues and charges including the total sale consideration, registration charges, stamp duty and other charges and also subject to the allottee complied with all the formalities or documentation as prescribed by the company, the company proposes to apply for the grant of the occupation certificate within a period of 42(forty two) months from the date of approval of the building plans and/or fulfilment of the preconditions contained thereunder(committed period). The allottee further agrees and understands that the company shall additionally be entitled to a period of 180 (one hundred eighty) days (grace period) after the expiry of the said committed period to allow for unforeseen delays beyond the reasonable control of the company.”

22. Accordingly, the due date of possession is 27th November 2018. The due date of possession has so far not been crossed, thus the refund sought by the complainant cannot be allowed. The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. of super area for every month of delay until the actual date of submitting the application for obtaining the occupation certificate as per clause 13.4 of apartment buyer’s agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors**



Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017),

wherein the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

Findings of the authority

23. 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 complainants at a later stage.
24. It is matter of record that on account of non-payment of further instalments, the respondent cancelled the allotment of the said on 11.2.2015 and forfeited the deposited amount of Rs.30,07,854/-. After cancellation of the said unit on 11.2.2015, the complainant failed to take up the matter with the respondent and now after a lapse of more than three years, the complainant has filed the present complaint which



is not maintainable being barred by limitation. Accordingly,
the complaint stands dismissed being barred by limitation

25. The order is pronounced.

26. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 05.09.2018
Complaint No.	242/2018 Case titled as Smt. Mira Mahbubani V/s M/s Ireo Grace Real tech Pvt. Ltd.
Complainant	Smt. Mira Mahbubani
Represented through	Shri Narender Kumar, Advocate for the complainant.
Respondent	M/s Ireo Grace Real tech Pvt. Ltd.
Respondent Represented through	Shri M.K.Dang, Advocate for the respondent
Last date of hearing	2.8.2018

Proceedings

The project is registered.

Arguments heard. Counsel for the complainant has filed brief notes which have been placed on the file.

The complainant booked a flat/unit No.CD-C6-06-603, Tower C6, 6th Floor admeasuring 1475.86 square feet and the complainant paid total amount of Rs.30,07,854/- to the respondent till date against the total consideration of Rs.1,45,33,240.26. Learned counsel for the respondent submits that they have sent the BBA to the complainant several times but the same was not signed by the complainant and the respondent also sent several reminders to him for execution of agreement. As per approval of fire fighting scheme received from Director Fire Service Haryana Panchkula vide memo No.DFS/FA/2014/117 /56205 dated 27.11.2014. On account of non payment

of further instalments, the respondent cancelled his allotment on 11.2.2015 and forfeited the deposited amount of Rs.30,07,854/-. After cancellation of the unit on 11.2.2015, the complainant failed to take up the matter with the respondent and now after a lapse of more than three years filed the present complaint which is not maintainable being barred by limitation. Accordingly, the complaint stands dismissed being barred by limitation. Order pronounced. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
05.09.2018