

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

**Complaint no.** 500 of 2019  
**Date of First Hearing:** 07.11.2019  
**Date of Decision:** 25.02.2020

1. Mr. Santosh Arora;  
2. Mr. Mahinder Arora; and  
3. Mr. Arvind Arora  
RR/o B - 37, Lajpat Nagar - 2,  
New Delhi - 110024.

**Complainants**

Versus

1. M/s Ireo Grace Realtech Pvt Ltd  
**Registered office:** C-4, 1<sup>st</sup> Floor, Malviya  
Nagar, New Delhi -110017.  
2. ICICI Bank Limited.  
Office at: - 9-A, Phelps Building, Inner  
Circle, Connaught Place,  
New Delhi - 110001.

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Rit Arora and Shri  
Pawan Kumar Ray  
Shri M.K. Dang and Garvit  
Gupta

Advocates for the complainants

Advocates for the respondent no. 1

**ORDER**

1. The present complaint dated 31.01.2019 has been filed by the complainants/allottees in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation

and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the apartment buyer's agreement executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:-

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.	901, 9th floor, tower C7
5.	Area of unit	1295.78 sq. ft. (super area)
6.	DTCP License No.	05 of 2013 dated 21.02.2013 valid upto 20.02.2021.
7.	Name of the licensee	Precision Realtors Pvt. Ltd. and others (as per DTCP record)
8.	Registered/not registered	<b>Registered in 3 phases</b>
9.	RERA registration no	Registered vide no. 378 of 2017 (for phase I) dated 07.12.2017 Registered vide no. 377 of 2017 (for phase II of 13.152 acres of project land of 13.25 acres) dated 07.12.2017 Registered vide no. 379 of 2017 (for phase III of 8.628 acres of project land) dated 07.12.2017
10.	Completion date as per RERA	30.06.2020 phase 1

	registration certificate	30.06.2020 phase 2 31.12.2023 phase 3
11.	Date of apartment buyer's agreement	24.06.2014 ( <b>Pg. 52 of the complaint</b> )
12.	Total consideration	Rs.89,01,309.98/- <b>(As per Calculation sheet, Pg. 145 of the complaint)</b>
13.	Total amount paid by the complainants	Rs. 89,01,310.00/- <b>(As per Calculation sheet, Pg. 145 of the complaint)</b>
14.	Due date of delivery of possession as per the agreement <b>Clause 13.3-</b> 42 months plus 180 days grace period from date of approval of buildings plans and fulfilment of preconditions imposed thereunder	<b>27.11.2018</b> <b>Note - The due date of delivery of possession has been calculated from the date of approval of fire NOC which is 27.11.2014</b>
15.	Payment plan Pg. 86 of the complaint	Construction linked payment plan
16.	Delay in handing over the possession till date of order i.e. 25.02.2020	One year, 2 months and 29 days.
17.	Relief sought (in specific terms)	<ul style="list-style-type: none"> <li>• Direct the respondent to deliver the possession of the unit alongwith delayed possession charges in the prescribed rate of interest.</li> <li>• Direct the respondent company to waive off the illegal and arbitrary interest charged as delayed interest by the respondent company to the tune of Rs. 4,11,535/-.</li> </ul>

3. As per the apartment buyer agreement in question vide clause no. 13.3 the possession was to be handed over within a period of

42 months from the date of sanction of building plans and/or fulfilment of the preconditions imposed thereunder + 180 days' grace period. The relevant clause of the apartment buyer's agreement reads as under: -

*".....the Company proposes to offer the possession of the said apartment to the Allottee within a period of 42 (Forty Two) months from the date of approval of the Building plans and/or fulfilment of the preconditions imposed thereunder. ("**Commitment Period**"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ("**Grace Period**")....."*

4. On the basis of documents made available by the respondent no. 1, the building plans were approved by the competent authority vide letter no.46743 dated 23.07.2013 with a condition under cause 17 (iv) that the colonizer shall obtain the clearance/NOC as per the provisions of notification no.S01533 © dated 14.09.2006 issued by the Ministry of Environment & Forest, Government of India, before starting the construction/execution of development works at site. The environment clearance has been obtained on 12.12.2013 wherein under clause 39 there is pre-requisite compliance regarding fire safety approval from the fire department before the start of construction.

5. The fire approvals from the competent authority has been obtained by the promoter on 27.11.2014. As per clause 35 of environment clearance certificate dated 12.12.2013, the

project proponent shall obtain permission of Mines & Geology Department for excavation of soil before the start of construction.

6. However, the possession has not been offered till date. Hence, this complaint for the aforementioned reliefs.
7. Despite service of notice, the respondents have failed to file the reply to the complaint within stipulated period. Hence, respondent no. 2 is proceeded ex parte. But the counsel for the respondent no.1 has appeared on the date of hearing i.e. 25.02.2020. It has been brought to the notice of the authority that the respondent no. 1 has applied for occupation certificate.
8. On the date of hearing the Authority explained to the respondent no. 1/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
9. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
10. The Authority on the basis of information and explanation and other submissions made and the documents filed by the parties is of the considered view that there is no need of further hearing in the complaint.

11. Arguments heard.
12. Counsel for the respondent no. 1 has submitted that due to force majeure i.e. restriction/ban on construction activity by the order of NGT and other authorities, they could not complete the project within the stipulated period as per clause 13.3 of the apartment buyer agreement. However, counsel for the complainants has raised an issue that six months' grace period beyond 42 months has already been given in this case as per clause 13.3 of the agreement and therefore, additional grace period due to ban imposed by the NGT or any other authorities may not be allowed in case such total ban does not exceed six months' period. Hence, keeping in view the facts and circumstances of the matter, the additional extended grace period of 12 months due to the ban imposed by the NGT or any other authorities is not allowed to the respondent no. 1 in terms of clause 13.5 of the agreement. The stipulation made in clause 13.5 of the BBA is too vague to understand. It has not been clarified under which circumstance additional extended delay period was required to be availed by the respondent no. 1.
13. Clause 13.3 describes the period within which construction attached had to be completed and possession of the apartment handed over to the complainants. This clause, granted 180 days grace period also to the respondent no. 1 still not satisfied with this grace period the respondent against availed 12 months' extended delay period in clause

13.5 and not in clause 13.4 of the agreement which deals with the award of delay compensation. In our considered opinion, clause 13.5 is onerous and it amounts to unfair trade practice on the part of respondent no.1.

14. On consideration of the circumstances, the evidence and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority observes that the building plans were approved by the competent authority vide letter no. 46743 dated 23.07.2013 with a condition under clause 17 (iv) that the colonizer shall obtain the clearance/ NOC as per the provisions of notification no. S01533 (c) dated 14.09.2006 issued by the ministry of Environment and Forest, Government of India, before starting the construction/ execution of development works at site. The environment clearance has been obtained on 12.12.2013 wherein under clause 39, there is pre - requisite compliance regarding fire safety approval from the fire department before the start of construction. The fire approval from the competent authority has been obtained by the promoter on 27.11.2014. Moreover, as per clause 35 of the environment clearance certificate dated 12.12.2013, the proponent is required to obtain permission of mines and geology department for excavation of soil before the start of construction. Requisite permission from the mines and geology department has been obtained in this case on 04.03.2014.

15. As such, the date of start of construction comes out to be 27.11.2014 which is the date when the permission from fire department has been obtained by the promoter in pursuance of clause 39 of the environment clearance before start of construction. As per clause 13.3 of the apartment buyer's agreement dated 24.06.2014 the due date of delivery of possession has been worked out to be 27.11.2018. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 24.06.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent no. 1 is established.

16. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:-

1. The respondent no.1 is directed to pay delayed possession charges at the prevalent prescribed rate of interest of 10.15% p.a. with effect from 27.11.2018(due date of delivery of possession) till the offer of possession in terms of section 18(1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
2. The arrears of interest, so accrued from due date of delivery of possession i.e. 27.11.2018 till the date of order i.e. 25.02.2020 be paid by the respondent no. 1





at the prescribed rate of interest of 10.15% p.a. to the complainants within 90 days and thereafter monthly interest be paid on or before 10<sup>th</sup> of each subsequent English calendar month.

3. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
4. The respondent no. 1 shall not charge anything from the complainants which is not part of the buyer's agreement. Interest on the due payments from the complainants shall be charged at the prescribed rate @10.15% p.a. by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

17. Complaint stands disposed of.

18. Case file be consigned to the registry.

  
**Samir Kumar**  
(Member)

  
**Subhash Chander Kush**  
(Member)

**Haryana Real Estate Regulatory Authority, Gurugram**

Date- 25.02.2020.