

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

Complaint no. : 1152 of 2019
Date of first hearing : 24.07.2019
Date of decision : 25.02.2020

1. Mrs. Neha Kiran Agarwal; and
2. Mr. Abhishek Kumar
Both R/o Flat no. 201, Al Hashmi,
Building, Umm Hurair 1 (near Medeor
Hospital), Dubai, United Arab Emirates.

Complainants

versus

1. M/s Ireo Grace Realtech Pvt. Ltd.,
Office at: C-4, 1st floor, Malviya
Nagar, New Delhi-10017.
2. Mr. Subhasis Lahiri
Address: Jhadsa, Tulsi Wala Bagh,
Haryana.
3. Jai Bharat Aggarwal
Address: Olive-1601, The Salcon
Verandas, Sector 54, Golf Course
Road, Gurugram-122002.

Respondents

APPEARANCE:

Shri Ramesh Agrawal Authorized representative of the
complainants
Shri M.K. Dang and Garvit Gupta Advocates for the respondents

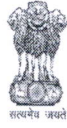
ORDER

1. The present complaint dated 26.03.2019 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 promoters shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale 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.	DTCP license no.	5 of 2013 dated 21.02.2013 valid/renewed upto 20.02.2021
5.	Name of the licensee	Precision Realtors Pvt. Ltd. and others (as per DTCP records)
6.	RERA registered/not registered	Registered in phases (Phase 1, Phase 2 and Phase 3)
7.	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
8.	Registration certificate valid up to	30.06.2020 (phase 1) 30.06.2020 (phase 2) 31.12.2023 (phase 3)



9.	Building plans approved on	23.07.2013 (copy filed by the respondent)
10.	Environment clearance received on	12.12.2013 (copy filed by the respondent)
11.	Fire scheme approval received on	27.11.2014 (copy filed by the respondent)
12.	Apartment/unit no.	501, 5 th floor, tower B5
13.	Apartment measuring	1593.06 sq. ft
14.	Date of apartment buyer's agreement	02.09.2014 (Pg. 60 of the complaint)
15.	Total consideration as per payment plan	Rs. 1,56,67,491.30/- (as per SOA, Pg. 137 of the complaint)
16.	Total amount paid by the complainants as admitted by the respondents	Rs.1,61,14,151/- (para 11, Pg. 15 of the reply) Note - As per statement of accounts, Pg. 137 of the complaint the complainants have paid Rs. 1,59,66,650.73/-.
17.	Payment plan	Construction linked payment plan (Annx IV of the agreement, Pg. 99 of complaint)
18.	Due date of delivery of possession as per the agreement Clause13.3: 42 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder + grace period of 180 days.	27.11.2018 (Due date of delivery of possession is calculated from the date of approval of fire scheme i.e. 27.11.2014)
19.	Delay in handing over possession till date of decision	One year, two months and 29 days.
20.	Relief sought (in specific terms)	• Direct the respondent to handover the possession of

		the apartment and to pay delay possession charges at the prescribed rate of interest.
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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, 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. Requisite permission from the Department of Mines and Geology Department has been obtained on 4.3.2014 (copy of the same placed on record), as such, the date of start of construction comes out to be 27.11.2014.
6. Possession of the apartment has not been offered till date. Hence, this complaint for the aforementioned reliefs.
7. On the date of hearing the Authority explained to the respondents/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.
8. The respondents contest the complaint on following grounds:-
- i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the complainants and the respondents prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively.
 - ii. That there is no cause of action to file the present complaint.
 - iii. That the complainants have no locus standi to file the present complaint.



- iv. That according to the booking application form and the apartment buyer's agreement, the time period for offering the possession of the unit to the complainants has not yet elapsed and the complaint has been filed pre-maturely by them.
- v. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 35 of the apartment buyer's agreement.
- vi. That the possession of the unit is supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. It is pertinent to mention here that the complainants vide clause 13.5 of the apartment buyer's agreement and clause 43 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.
- vii. That the complainants, after checking the veracity of the project namely, 'Corridor, Sector 67A, Gurugram had applied for allotment of an apartment vide their booking application form. The complainant agreed to be bound by the terms and conditions of the booking application form agreed upon by them.
- viii. That the respondent company has already completed the construction of the tower in which the unit allotted to the complainants is located and the photographs of the same have been produced on record.

ix. That the complainants are 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 their calculations have gone wrong on account of severe slump in the real estate market and the complainants now want to somehow get out of the concluded contract made by them on highly flimsy and baseless grounds. Such malafide tactics of the complainants cannot be allowed to succeed.

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 respondents 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 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.

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 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.

14. It has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force.

15. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the

arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The same analogy shall apply to the complaint cases filed under the Act consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

16. 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. SO1533 (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 approvals 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.

17. 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 02.09.2014 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 02.09.2014 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 respondents is established.

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

1. The respondents are 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 respondents at the prescribed rate of interest to the complainants within 90 days and thereafter monthly interest be paid on or before 10th 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 respondents 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.

19. Complaint stands disposed of.

20. Case file be consigned to the registry.


Samir Kumar

(Member)


Subhash Chander Kush

(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Date- 25.02.2020.