

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

Complaint no. 2729 of 2019
Date of First Hearing: 18.09.2019
Date of Decision 25.02.2020

Sh. Rajeev Munjal

R/o: C-405, Rail Vihar, Sector-15, Part-II,
Gurugram - 122001.

Complainant

Versus

M/s Ireo Grace Realtech Pvt Ltd

Office at: C-4, Malviya Nagar,
New Delhi - 110017.

Respondent

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE:

Shri Rit Arora and Pawan Kumar
Ray

Advocates for the
complainant

Shri M.K.Dang and Garvit Gupta

Advocates for the respondent

ORDER

1. The present complaint dated 03.07.2019 has been filed by the complainant/allottee 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.	Apartmentno.	203, 2nd floor, tower C7
5.	Area of unit	1540.442 sq. ft. (super area)
6.	DTCP License No.	05 of 2013 dated 21.02.2013 valid/renewed upto 20.02.2021
7.	RERA Registered/not registered	Registered in 3 phases
8.	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
9.	Completion date as per RERA registration certificate	30.06.2020 -phase 1 30.06.2020 -phase 2 31.12.2023 -phase 3
10.	Date of apartment buyer's agreement	05.05.2014 (Pg. 24 of the complaint)
11.	Total consideration	Rs. 1,72,22,487/- (as per the SOA dated 18.06.2019 on pg. 94 of the reply)
12.	Total amount paid by the complainant	Rs. 1,48,60,355/- (as per the SOA dated 18.06.2019)

		on pg. 94 of the reply)
13.	Due date of delivery possession Clause 13.3- 42 months plus 180 days grace period from date of approval of buildings plans and fulfilment of preconditions imposed thereunder	27.11.2018 Note :- the due date of possession is calculated from date of fire approval NOC i.e. 27.11.2014, Annx R-17 on Pg. 85 of the reply
14.	Offer of possession	18.06.2019 (Annx R 21, Pg. 92 of the reply)
15.	Occupancy certificate	31.05.2019(Annx R 20, Pg. 89 of the reply)
16.	Payment plan (As per Annexure IV on Pg. 56 of the complaint)	Construction linked payment plan
17.	Delay in handing over the possession till date	6 months and 22 days
18.	Relief sought (in specific terms)	<ul style="list-style-type: none"> • Direct the respondent to deliver the possession of the apartment alongwith delay possession charges at the prescribed rate of interest.

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 clause 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 approval 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 been offered on 18.06.2019 i.e. after a delay of more than six months. Hence, this complaint for the aforementioned reliefs.

7. On the date of hearing the Authority explained to the respondent/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 respondent contests the complaint on following grounds:-

- i. That the complainant had signed and executed the apartment buyer's agreement on 05.05.2014 and agreed to be bound by the terms contained therein.
- ii. That the payment demands from the complainant had been raised in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and the complainant made some payments in time and then started delaying and committing defaults.
- iii. The respondent submitted that from the aforesaid terms of the apartment 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 memo of 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. 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 duly was to be duly approved by the fire department before the start of any construction work at site. The fire scheme approval was granted on 27.11.2014 and the time period for calculating the date for offering the possession, according to the agreed terms of the apartment buyer's agreement, would have commenced only on 27.11.2014. Therefore, 60 months from 27.11.2014 (including the 180 days grace period and extended delay period) shall expire only on 27.11.2019. There cannot be any delay till 27.11.2019.

iv. That application for the grant of occupation certificate dated 06.07.2017 and the same has been granted by the concerned authorities on 31.05.2019. Furthermore, the respondent has even offered the possession of the unit to the complainant vide notice of possession dated 18.06.2019.

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

complainant and the respondent is of the considered view that there is no need of further hearing in the complaint.

11. Arguments heard.

12. Counsel for the respondent 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 complainant. 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. 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 for start of construction 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 05.05.2014 the due date of delivery of possession shall come 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 05.05.2014 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.

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


- i. The respondent 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 i.e. 18.06.2019 in terms of section 18(1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 90 days from the date of this order.

- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.15% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
17. The complaint is disposed of accordingly.
18. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Date: 25.02.2020.

judgement uploaded on 02.06.2020