

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

Complaint no. 3605 of 2019
Date of First Hearing: 07.11.2019
Date of Decision: 25.02.2020

Mrs. Anupam Singh
Address: -Q-61/2, Vascon Forest County,
Near EON IT Tech Park,
Kharadi, Pune-411014.

Complainant

Versus

M/s Ireo Grace Realtech Pvt Ltd
Registered office: C-4, 1st Floor, Malviya Nagar,
New Delhi -110017.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Pawan Kumar Ray and Rit Arora Advocates for the complainant
Shri M.K. Dang and Garvit Gupta Advocates for the respondent

ORDER

1. The present complaint dated 26.08.2019 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.	Apartment no.	902, 9th floor, Tower C7
5.	Area of unit	1592.70 sq. ft. (super area)
6.	DTCP License No.	05 of 2013 dated 21.02.2013 valid/ renewed upto 20.02.2021
7.	Name of the licensee	Precision Realtors Pvt. Ltd and others (as per DTCP record)
8.	RERA registered/not registered	Registered in 3 phases
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 registration certificate	30.06.2020 phase 1 30.06.2020 phase 2 31.12.2023 phase 3
11.	Date of apartment buyer's agreement	12.05.2014 (Pg. 34 of the complaint)
12.	Total consideration	Rs. 1,76,76,756/- (As per SOA dt. 11.06.2019, Pg.111 of the reply)
13.	Total amount paid by the	Rs. 1,52,18,377/-

	complainant	(As per SOA dt. 11.06.2019, Pg.111 of the reply)
14.	Due date of delivery of 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 annexed as Annx R28 on Pg. 103 of the reply
15.	Date of receipt of occupation certificate	31.05.2019 (Annx R 31, Pg. 107 of the reply, copy filed by the respondent)
16.	Date of offer of possession letter	11.06.2019 (Annx R 32, Pg. 110 of the reply)
17.	Delay in handing over the possession till offer of possession	6 months and 15 days.
18.	Relief sought (in specific terms)	<ul style="list-style-type: none"> Direct the respondent to deliver the possession of the unit alongwith delayed possession charges in 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 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. However, the possession has been offered vide notice of possession letter dated 11.06.2019, i.e. after a delay of more than six months. It was further alleged by the complainant that the terms and conditions incorporated in the apartment buyer's agreement are one sided and arbitrary. Hence, this complaint for the aforementioned relief.
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 complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the complainant and the respondent 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 complainant has 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 complainant has not yet elapsed and the complaint has been filed pre-maturely by him.
- V. That this Authority does not have jurisdiction to decide on the interest as claimed by the complainant.
- VI. 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.
- VII. That the complainant, 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 when the complainant had booked the unit with the respondent, the present Act was not in force and the provisions of the same cannot be enforced retrospectively.

IX. That the possession of the unit is supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 13.3 of the buyer's agreement and clause 43 of the schedule - I of the booking application form states that *'...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 understands that the company shall be additionally be entitled to a period of 180 days (Grace Period)...*'. Furthermore, the complainant has further agreed for an extended delay period of 12 months from the date of expiry of the grace period as per clause 13.5 of the apartment buyer's agreement. Clause 13.5 read as under: -

*"Subject to Clause 13.3, in the event of delay by the Company in offering the possession of the said Apartment beyond a period of 12 months from the end of the Grace Period (such 12 month period hereinafter referred to as the "**Extended Delay Period**"), then the Allottee shall become entitled to opt for termination of the Allotment/Agreement and refund of the actual paid up instalment (s) paid by it against the said Apartment after adjusting the interest on delayed payments along with Delay Compensation for 12 month.*

Such refund shall be made by the Company within 90 days of receipt of intimation to this effect from the Allottee, without any interest thereon. For the removal of doubt, it is clarified that the Delay Compensation payable to the Allottee who is validly opting for termination, shall be limited to and calculated for the fixed period of 12 months only irrespective of the date on which the Allottee actually exercised the option for termination. This option may be exercised by the Allottee only up till dispatch of the Notice of Possession by the Company to the Allottee whereupon the said option shall be deemed to have irrevocably lapsed. No other claim, whatsoever, monetary or otherwise shall lie against the Company and/or the Confirming Parties nor be raised otherwise or in any other manner by the Allottee."

- X. That the respondent has raised the payment demands from the complainant 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.
- XI. That the respondent company has already completed the construction of the tower in which the unit allotted to the complainant is located and the photographs of the same have been produced on record. The complainant is bound to take the possession of the unit after making payment of the due amount and completing the documentation formalities as the holding charges are being accrued as per the terms of the apartment buyer's agreement and the same is known to the complainant as is evident from a bare perusal of the notice of possession.
- XII. 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, it appears that their calculations have gone wrong on

account of severe slump in the real estate market and the complainant now wants to somehow get out of the concluded contract made by them on highly flimsy and baseless grounds. Such malafide tactics of the complainant 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 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 circumstances 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. As regards the issue of arbitration clause is concerned, the Authority is of the considered opinion that 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, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

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 before the Authority under the Act. Section 89 of the Act makes the things crystal clear. Section 89 of the Act reads as under:-

"The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

Section 89 does not call for any interpretation. The Act being latter in time shall have overriding effect over the Arbitration and Conciliation Act, 1996. Consequently, the Authority is not 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. 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.

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 12.05.2014 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 12.05.2014 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 respondent is established.

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

1. 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 date of offer of possession i.e. 11.06.2019 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 90 days from this order.
2. The complainant is also directed to take possession of the apartment within one month from the date of order by making


payment of outstanding dues at the prescribed rate of interest of 10.15% per annum.

3. The respondent is further directed not to charge any amount from the complainant which is not the part of the apartment buyer's agreement.

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.

judgement uploaded on 02.06.2020