



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

**Complaint no.- 6534 of 2019
Date of first hearing -25.02.2020
Date of decision- 25.02.2020**

- 1. Mr. Inderjit Singh Dugal; and**
- 2. Mrs. Shanti Kohli Dugal.**

Address: - C 46, Nizamuddin East, Ground Floor,
New Delhi - 110013.

Complainants

Versus

M/s Ireo Grace Realtech Private Limited.

**Address:-C-4, 1st floor, Malviya Nagar,
New Delhi - 110017.**

Also at: - 304, Kanchan House, Karampura,
Commercial Complex, New Delhi - 110015.

Respondent

CORAM:

**Shri Samir Kumar
Shri Subhash Kush Chander**

**Member
Member**

APPEARANCE.

Ms. Vridhi Sharma Advocate for the complainants

None for the respondents.



ORDER

1. The present complaint dated 03.01.2020 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:-

S.No.	Heads	Information
1.	Project name and location	Corridors, Sector 67 A, Gurugram.
2.	Project area	37.5125 acres
3.	Nature of project	Residential group housing project
4.	RERA registered	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
5.	RERA registration valid upto	30.06.2020 (for Phase I and II) 31.12.2023 (for Phase III)
6.	License No. & validity status	5 of 2013 dated 21.02.2013 valid/renewed upto 20.02.2021
7.	Name of licensee	Precision Realtors Private Limited and 5 others (as per DTCP record)
8.	Unit no., Tower no.	704, 7 th floor, Tower C5
9.	Carpet area	1540.42 sq. ft. (super area)
11.	Date of execution of apartment buyer agreement	25.07.2014 (Pg. 31 of the complaint)
12.	Payment plan	Construction linked payment plan (Pg. 70 of the complaint)
13.	Total sale consideration	1,70,34,777/- (as per SOA dated 11.06.2019, Pg. 80 of the complaint)
14.	Total amount paid by the complainants	1,47,25,109/- (as per SOA dated 11.06.2019, Pg. 80 of the complaint)
15.	Due date of delivery of possession as per agreement. clause 13.3- 42 months from the date of sanction of building plans and/or fulfilment of the preconditions imposed thereunder + 180 days grace period.	27.11.2018 Note - The due date of delivery of possession has been calculated from the date of approval of fire NOC which is 27.11.2014
16.	Date of offer of possession	11.06.2019 (Pg. 78 of the complaint)
17.	Period of delay in handing over possession till offer of	6 months and 15 days.



	possession	
18.	Status of project (ongoing/complete)	Ongoing
19.	Relief sought (in specific terms)	<ul style="list-style-type: none"> • Direct the respondent to handover the possession of the unit in question with all the amenities. • Direct the respondent to set aside the illegal demand raised by the respondent on account of internal electrical connection charges and internal gas pipe line and meter charges. • Direct the respondent to handover the possession of apartment to the complainants without execution of any indemnity bond. • Direct the respondent to pay delay possession charges at the prescribed rate of interest from the schedule date of delivery of possession till the actual offer of possession.

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.SO1533 © 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 been offered by the respondent vide notice of possession letter on 11.06.2019 (annexed as annexure 14 of the complaint). It was alleged by the complainants that alongwith notice of possession the respondent has raised additional demand of Rs. 22,21,410/- under various heads, however, the physical possession has not been handed within stipulated period. Hence, this complaint for the following reliefs :-

- Direct the respondent to handover the possession of the unit in question with all the amenities.
- Direct the respondent to set aside the illegal demand raised by the respondent on account of internal electrical connection charges and internal gas pipe line and meter charges.
- Direct the respondent to handover the possession of apartment to the complainants without execution of any indemnity bond.
- Direct the respondent to pay delay possession charges at the prescribed rate of interest from the schedule date of delivery of possession till the actual offer of possession.

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. However, despite service of notice, the respondent has failed to file the reply to the complaint within stipulated period. But the counsel for the respondent has appeared on the date of hearing i.e. 25.02.2020.
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 complainants 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. In a NCDRC judgement titled "**Capital Greens Flat Buyer's Association and others v. DLF Universal Ltd, complaint no. 351 of 2015**" it was held that -

It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon Clause 13 of the Indemnity-cum-Undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent


defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity.”

15. 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 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.

16. 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 25.07.2017 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 25.07.2017 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.
17. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act :-
- The respondent is directed to pay delay 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. 11.06.2019 (date of 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 within 90 days from the date of order.

- The complainants are also directed to take possession of the apartment within one month after making payment of outstanding dues at the prescribed rate of interest of 10.15% per annum.
 - The respondent is further directed not to charge anything from the complainants which is not the part of apartment buyer's agreement.
18. Complaint stands disposed of.
19. Case file be consigned to the registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Date- 25.02.2020.