BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. 2299 of 2019
Date of First Hearing: 18.09.2019
Date of Decision: 25.02.2020

1. Ms. Madhu Garg; and
2. Mr. Pankaj Garg

Both R/o: 508, Ivory Tower, South City-1, Sector-30, Gurugram (Haryana)-122007. **Complainants**

Versus

M/s Ireo Grace Realtech Pvt Ltd
Office at: C-4, 1st Floor, Malviya Nagar, New Delhi -110017. **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:
Shri Pankaj Garg — Complainant no. 2 in person.
Shri Pawan Kumar Ray and Rit Arora — Advocates for complainants
Shri M.K. Dang and Shri Garvit Gupta — Advocates for the respondent

ORDER

1. The present complaint dated 21.06.2019 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 complainants, 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 A10
5.	Area of unit	1967.12 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.	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 for phase 1 30.06.2020 for phase 2 31.12.2023 for phase 3

11.	Date of apartment buyer's agreement	03.06.2014 **(Pg. 42 of the complaint)**
12.	Total consideration	Rs.2,58,41,784/- **(As per SOA dated 12.06.2019 on Pg. 99 of the reply)**
13.	Total amount paid by the complainants	Rs. 2,24,46,082/- **(As per SOA dated 12.06.2019 on Pg. 99 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 R-16 on Pg. 90 of the reply**
15.	Date of offer of possession letter	12.06.2019 (**Pg. 96 of the reply)**
16.	Occupancy certificate received on	31.05.2019 (**Annx R 19, Pg. 94 of the reply**)
17.	Payment plan Pg. 78 of the complaint	Construction linked payment plan
18.	Delay in handing over the possession till date of offer of possession	6 months and 16 days
19.	Relief sought (in specific terms)	• 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.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 on 12.06.2019 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 construction of apartment is fully completed, occupation certificate was received on 31.05.2019 and offer of possession has been dispatched on 12.06.2019. that the complainants shall deposit complete sale consideration as per offer of possession and take possession.

ii. 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 dated 22.03.2013.

iii. That it raised payment demands from the complainants in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and the

complainants made some payments in time and then started delaying and committing defaults.

iv. 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 thebuyer's agreement andclause 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".

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, 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. 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. 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.

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 03.06.2014 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 03.06.2014 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 respondents 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 offer of possession i.e. 12.06.2019 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.
2. The complainants are directed to take possession of the apartment within a period of one month from the date of order after paying outstanding dues, if any with the prescribed rate of interest of

10.15% per annum as awarded to them in the form of delayed possession charges.

3. The respondent is directed not to charge anything from the complainants which is not the part of 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 04.06.2020