

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

Complaint No. : 123 of 2018
Date of first hearing : 8.5.2018
Date of Decision : 17.10.2018

Mr. Dalip Chand,
R/o – M-671, GF,
Princeton Floors,
Mayfield Garden, M-Block,
Sector-51, Gurugram

Complainant

Versus

M/s IREO Grace Real Tech Pvt. Ltd.,
Office at: 5th Floor,
Orchid Centre, Golf Course Road, व जयते
Sector-53, Gurugram

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Anil Bidhan
Shri M.K. Dang

Advocate for the complainant
Advocate for Respondent



ORDER

1. A complaint dated 16.2.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read

with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Dalip Chand, against M/s Ireo Grace Real Tech Pvt. Ltd., for unit no. CD-C10-14-1404 in the project “The Corridors” for altering the terms unilaterally.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	‘The Corridors’ Sector-67A, Gurugram, Haryana.
2.	Registered / not registered	Registered
3.	HRERA registration no.	377 of 2017
4.	Unit/ villa no.	CD-C10-14-1404
5.	Unit measuring	1300 Sq. Ft.
6.	Date of booking	5.3.2013
7.	Booking amount	Rs.10,00,000/-
8.	Date of execution of ABA	Not executed
9.	Amount paid by the complainant till date	Rs.24,65,913/-
10.	Payment plan	Development Link-Retail
11.	Letter of delivery of possession.	12.8.2013
12.	Delay of number of months/ years upto 17.10.2018	No delay
13.	Penalty clause as per builder buyer agreement	Not signed



3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent.
4. Taking cognizance of the complaint, the authority issued notice on 23.4.2018 to the respondent for filing reply and for appearance. The respondent appeared on 7.6.2018. The case came up for hearing on 8.5.2018, 7.6.2018, 7.7.2018, 30.8.2018 and 26.9.2018. The reply on behalf of the respondent has been filed on 2.7.2018.

FACTS OF THE CASE

5. That the complainant booked a flat in March, 2013 by paying a booking amount of 10 lakh rupees on the promise by respondent to deliver the possession within 3 years of booking. Subsequently complainant also paid Rs.14,65,913 as per the respondent's demand which makes total deposited amount to Rs. 24,65,913. After this a provisional allotment letter was issued to the complainant on 12.8.2013.
6. In this allotment letter the agreed sale price was increased from Rs.8750 to Rs.9200 per Sq. Ft. unilaterally. Also, it was



agreed that complainant will be given a flat between 3rd to 7th floor being a senior citizen but he was given top floor.

7. The respondent then protested by a letter dated 7.4.2014 for rectification of price per sq. ft', reduction of Rs.5,20,000 of car parking and allotment of top floor. Moreover, no ABA was provided which was to be provided before demanding 2nd instalment.
8. The construction was to be started within one month of payment of booking amount which didn't happen. Also, no BBA was provided to the complainant. The respondent kept on pressing for another instalment with interest even when construction didn't start.
9. Instead of listening to the complainant, the respondent sent a letter of cancellation of allotment on 11.2.2015 forfeiting the amount of Rs.24,65,913 while further demanding 6,34,895/-. By a letter dated 20.4.2015 the respondent offered to restore the possession but on the condition of payment of additional parking charges so a legal notice was sent to the respondent.
10. In **Suresh Kumar Wadhwa vs. State of M.P & Ors.** in Civil Appeal N0. 7665 of 2009, it was held that alteration of earlier



settled terms including the cost of flat cannot be unilateral and if the party at dominant position imposes new terms it isn't binding on the other party and the other party has the right to withdraw.

11. Respondent is liable to pay to the complainant simple interest @18% on deposited sum of Rs.24,65,913 till such amount is refunded by the respondent, also respondent is liable to compensate the complainant for losses due to inflation approximately Rs.15,00,000. Also, litigation expenses of Rs.2,00,000 should be paid by the respondent.

12. ISSUES TO BE DECIDED

- i. Whether the respondent has acted illegally by demanding more amount than settled and did he have the power to alter cost of unit unilaterally?
- ii. Whether the complainant had to pay the parking cost when it was initially included in the costing?
- iii. Whether the respondent had right to forfeit the amount deposited by the complainant and is he now liable to refund the money?



13. RELIEF SOUGHT

- i. To direct the respondent to refund the entire amount of Rs.24,65,913 along with interest @18% per annum from date of payment till its actual realisation.
- ii. To direct respondent to compensate the complainant with Rs.15,00,000 due to inflation in property in past 5 years.
- iii. To pay the complainant Rs.10,00,000 for mental agony and financial loss suffered.
- iv. To direct the respondent to pay Rs.2,00,000 for litigation expenses and deficiency in services.
- v. Any other relief which this authority may deem fit and proper.

REPLY ON BEHALF OF RESPONDENT

14. The respondent has agreed that it allotted a flat to the complainant having super area of 1300 sq. ft. in the project "The Corridors" and that the complainant has paid Rs.24,65,913 in total. It was further denied that the respondent promised to provide the possession within 3



years and it was to be given as per the terms of the buyers' agreement.

15. The respondent has denied that the apartment was booked @Rs.8750 per sq. ft. and the complainant was aware from the beginning that total sale price was to be charged @Rs.9200 per sq. ft. The complainant failed to discharge his obligations by not paying instalments and not signing the buyers' agreement.

16. The respondent denied of providing the apartment anywhere between 3rd and 7th floor and that it made an illegal demand letter for 3rd instalment as it was according to the payment plan.

17. The complainant made no visits to the respondent's office and the respondent did not threaten to cancel the allotment of the complainant. The respondent terminated the allotment of the complainant and forfeited his money but it didn't raise another demand of Rs.6,34,895. Then also the respondent company offered restoration of the unit @Rs.8750 per sq. ft. exclusive of car parking charges and it didn't levy any penal charges also. The complainant knew that timely payment was



the essence of the contract and if not made on time it could jeopardise the whole project.

18. As per clause 21.3 of the buyers' agreement, on default in payment of instalments 20% of the amount was to be forfeited and the allotment was to be cancelled. A criminal complaint was filed by the complainant which was dismissed by the competent authority. Also, this Hon'ble tribunal is not competent to try this suit and it cannot order for compensation to the complainant in the interest of justice.

REJOINDER BY COMPLAINANT

19. The respondent has admitted the payment of Rs.24,65,913 and the buyers' agreement provided by the respondent is to mislead the hon'ble tribunal as it is blank and not signed. Also, this document belongs to Smt. Sashi Budhiraja. Further, the apartment under consideration is shown to have a super area of 1868.82 Sq. Ft' at basic sale price of 9400/- per sq. ft' at a consideration of Rs.1,75,66,908 whereas as per the allotment letter the agreed super area was 1300 sq. ft' at a sale price of Rs.9200 per sq. ft'.



20. Reasons given by respondent for delay in project due to restrictions of Hon'ble High Court and weak financial position of the developer are stereo type and baseless.

DETERMINATION OF ISSUES

21. With respect to the **first issue**, the basic sale price as set out in the payment plan is Rs.9200 per sq. ft' so the respondent has acted as per the agreed terms. Also, the respondent provided an offer for restoration of allotment on 20.4.2015 @Rs.8750 basic sale price which was agreed to by the complainant vide letter attached on page no. 53. Although the builder is in contractual right, para 181 of **Neelkamal Realtors vs UOI** which points out that

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

It appears from the accepted terms that the complainant was having no problem with the basic sale price and he agreed to it.



22. With respect to the **second issue**, the payment plan attached on page no. 38 provides for parking charges and the restoration of allotment offer dated 20.4.2015 provided it to be separate and in addition to the basic sale price which was then agreed to by the complainant. Also, letter dated 23.4.2013 by the respondent says that the car parking was to be in addition to the basic sale price of Rs.8750. moreover, there is no document in support of the allegation by the complainant that the car parking was to be included in the basic sale price.

23. With respect to the **third issue**, the respondent has referred to Clause 10 and 12 of the booking application dated 10.4.2013 made by the complainant under which the complainant has agreed to execute all documents and pay all charges as demanded in due course. In the case of **DLF Ltd. v. Bhagwati Narula, 1(2015) CPJ 319 (NC)** revision petition no. 3860 of 2014 it was held by the National Consumer Dispute Redressal Commission, New Delhi that agreement for forfeiting more than 10% of sale price would be invalid and 20% of the sale price cannot be said to be a reasonable



amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can show that it had only suffered loss to the extent the amount was forfeited by it. Earnest money is said to be the only amount that is paid at the time of concluding the contract. Thus, amount beyond 10% cannot be forfeited and if done so that would be unreasonable. It is a well settled principle that any clause in derogation to the said law shall not be valid in law. Thus, it has to be noted that the respondent cannot forfeit more than 10% of the earnest money.

FINDINGS OF THE AUTHORITY

24. In the present complaint, the complainants are seeking refund of the entire money paid till date i.e. 24,65,913/- along with interest @ 18% p.a. from the date of payments till actual realisation. However, keeping in view the present status of the project and intervening circumstances and in the interest of natural justice, the authority is of the considered view that provisions of section 13 of the Real Estate (Regulation & Development) Act, 2016 prevails that the builder cannot forfeit more than 10% of the total



consideration amount before signing of the agreement (since there is no signed agreement inter-se the parties on record). In case refund is allowed in the present complaint at this stage of the project, it will adversely affect the rights of other allottees to continue the project. However, the complainant will be entitled to a prescribed rate of interest till the date of handing over of possession.

DECISION AND DIRECTIONS OF THE AUTHORITY

25. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The authority is of the considered view that provisions of section 13 of the Real Estate (Regulation & Development) Act, 2016 prevails and the builder cannot forfeit more than 10% of the total consideration amount before signing of the agreement (since there is no signed agreement inter-se the parties on record).



- (ii) The builder is directed to refund the excess amount forfeited by the respondent to the complainant. No interest shall be payable in this context.
- (iii) No interest shall be payable in this complaint.

26. The order is pronounced.

27. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated:17.10.2018

HARERA
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