

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 31.10.2018
Complaint No.	163/2018 Case titled as Mr. Sandeep Bansal V/s M/s Ireo Victory Valley (P) Ltd.
Complainant	Mr. Sandeep Bansal
Represented through	Shri Shyam Lal Bansal-father of the complainant in person with Ms. Priyanka Aggarwal.
Respondent	M/s Ireo Victory Valley (P) Ltd.
Respondent Represented through	Shri M.K.Dang Advocate for the respondent.
Last date of hearing	3.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Arguments heard.

It has been alleged by the complainant that the builder as per clause 13.5 of Builder Buyer Agreement has not handed over the possession till date as a result of which they want to wriggle out from the project and are seeking refund alongwith interest.

However, counsel for the respondent has refuted all the issues raised by the complainant by stating that vide an offer letter dated 15.11.2017, the company/builder has offered them possession. Counsel for the respondent has produced a copy of occupation certificate pertaining to

Tower-A of the project. The complainant is directed to take possession of the unit within a week time failing which he shall too be liable for all the obligations as per the provisions of section 19 (a) of the Real Estate (Regulation & Development) Act, 2016. However, complainant is eligible for prescribed rate of interest i.e. 10.45% per annum for delayed period of handing over the possession as per the provisions of section 18 (1) of the Act ibid. If complainant is not satisfied with this decision, he is at liberty to file an appeal before the appropriate forum. Accordingly, the respondent is directed to pay interest at the prescribed rate @10.45p.a. for delayed period within a period of 90 days from the issuance of this order.

Complaint is disposed off accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

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

**Complaint No. : 163 of 2018**  
**First date of Hearing: 9.8.2018**  
**Date of Decision : 31.10.2018**

Mr. Sandeep Bansal  
R/o: B3/9, Janakpuri,  
New Delhi.

**Complainant**

Versus

M/s IREO VICTORY VALLEY (P) Ltd  
Address: Ireo Campus, Sector-59, Archview  
Drive, Ireo city, Golf Course Extension Road,  
Gurugram, Haryana-122002.

**Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Sanjeev Sharma Advocate for the complainants  
Shri K.L Dang, M.K Dang Advocate for the respondent

**ORDER**

1. A complaint dated 16.4.2018 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 complainants Mr. Sandeep Bansal against M/s IREO VICTORY VALLEY (P) Ltd., on account of violation of the clause 13.3 of buyer's agreement



executed on 20.9.2010 in respect of unit described as below for not handing over possession on the due date i.e. 28.10.2017 which is an obligation under section 11(4)(a) of the Act *ibid*.

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

1.	Name and location of the project	"IREO VICTORY VALLEY", Ireo Campus, Sector-59, Archview Drive, Ireo city, Golf Course Extension Road, Gurugram, Haryana-122002.
2.	RERA registered/ not registered	<b>Not Registered</b>
3.	Unit no.	A-2013
4.	Unit measuring	3155 sq. ft.
5.	Buyer's agreement executed on	20.9.2010
6.	Basic sale price as per buyer's agreement	Rs.2,17,69,500/-
7.	Total amount paid by the complainants till date	Rs.2,42,46,262/-
8.	Percentage of consideration amount	100%
9.	Payment plan	Construction link plan
10.	Date of delivery of possession (36 months from the date of approval of building plan and/or approval of preconditions + 120 days grace period) clause 13.3	28.10.2017
11.	Date of offer of possession	15.11.2017
12.	Delay in handing over possession till date	6 months 18 days
13.	Penalty clause as per buyer's agreement dated 03.05.2013	Clause 13.4 of the agreement i.e. Rs.7.50 per sq. ft' of the super area.



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. A buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 28.10.2017 as per the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent filed the reply on 31.5.2018

**BRIEF FACTS OF THE COMPLAINT**

5. That the complainant purchased the apartment no A-2103 admeasuring 3155 sq. ft' in second sale dated 17.10.2011 in OREO VICTORY VALLEY, Gurugram. Total cost of the flat as per buyers agreement is Rs.2,39,92,249 and the builder has demanded Rs.2,66,72,350. The builder has asked for stamp duty and club charges without giving possession of the flat and the complainant has paid Rs.2,42,46,262 to the builder.
6. The buyers' agreement was signed between IREO Victory valley private limited and Ms. Arhune Giare and Rashmi Giare on 20.9.2010 which was then endorsed in favour of Mr. Sandeep Bansal on 17.10.2011.



7. As per clause 13.3 of the buyers' agreement, the builder failed to provide possession till April, 2014 i.e. within 36 months from approval of building plan plus 180 days grace period and 48 months have passed from the due date.
8. The possession was offered on 15.11.2017 with final demand but the project was still incomplete. The complainant made requests vide email dated 20.11.2017, 7.12.2017 and 26.12.2017 for possession but no satisfactory reply was given.

9. **ISSUES RAISED BY THE COMPLAINANT**

- I. Whether the promoter failed to give possession on April, 2014 as per the commitment?
- II. Whether the promoter is justified in charging interest @15% for delay in payment and compensating at only 1.16% for delay in possession?
- III. Whether the respondent be penalized to dupe the general public of their hard earned money?

10. **RELIEF SOUGHT**

The complainant is seeking the following reliefs:



- I. That the respondent be directed to refund the amount charged till date i.e. Rs.2,42,46,262 with interest.
- II. That the respondent be directed to pay compensation for damages.
- III. Any other relief which this authority deems fit and proper.

### RESPONDENT'S REPLY

11. That the complainant has not paid the whole amount of booking till date. The complainant had booked the flat after understanding the terms and conditions of booking and the complainant is bound by the terms of the agreement.
12. There is a slight delay in handing over the possession due to factors which are outside the control of the respondent's company. Several defaults have been committed by various allottees due to which there is delay in the project. The respondent's company is ready to pay compensation to the complainant as per the agreed terms of the buyers agreement.
13. As per clause 13.3 of the buyers' agreement and clause 35 of schedule-I of Key Indicators from the terms and conditions in booking application form "company proposes to hand over possession within 36 months from date of approval of





building plans and/or fulfilment of the preconditions imposed thereunder.” The building plan was approved on 29.11.2010 and had several preconditions which were required to be satisfied. The last of these pre-conditions i.e., Fire NOC was granted on 28.10.2013. Therefore, 42 months expires on 28.4.2017.

14. The respondent’s company had to comply with modifications made in fire-fighting scheme approval. In respect of 4 towers which were over 100 meters, a revision was sought by the municipal corporation and an outside expert was consulted named Sh. U.S.Chiller. In November-December, 2011 all the recommendations by the expert were implemented. The file was still kept pending in the authority despite the approved fire-fighting scheme by the outside expert. The respondent’s company then had to make changes to incorporate all provisions on account of revision of NBC which came into notice during execution work. After due consideration of all the above the fire-fighting scheme was approved only on 28.10.2013.

15. That the complainant is a real estate investor who booked the apartment to earn a quick profit. He was aware of the stage of construction at the time of booking the apartment. He was





offered possession on 15.11.2017 and the company is willing to pay compensation as per buyers' agreement.

16. The construction of the unit is complete and approximately 90 conveyance deeds have been executed for "Victory Valley" project. The resident welfare association has taken charge of maintenance and the project is fully complete.

### DETERMINATION OF ISSUES

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

17. The authority came across that as per clause 13.3 of buyer's agreement. The clause regarding the possession of the said unit is reproduced below:

*"13.3 Possession and holding charges*

*The company has to hand over possession of the said apartment to the allottee within a period of 36 months from the date of approval of building plans and/or fulfilment of the preconditions imposed therein.*

Accordingly, the due date of possession was 28.10.2017 and the possession has been delayed by 6 months till the date of offer of possession. The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. per month of the super area of the unit for the period of delay as per clause 13.4 of



buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held 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."*

18. The promoter is liable under section 18(1)(a) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1)(a) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.45% per annum on



the amount deposited by the complainant with the promoter on the due date of possession upto the date of offer of possession i.e. 15.11.2017.

### FINDINGS OF THE AUTHORITY

19. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
20. As the possession of the apartment was to be delivered by 28.4.2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.
21. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligations.



22. In the present complaint, the complainant is seeking refund of the entire money paid till date i.e. 2,42,46,262/- along with interest from the date of provisional allotment till its realization of the payment and cancel the allotment upon entire refund.
23. However, keeping in view keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the interest of other allottees as the project has already been completed and the respondent has offered possession. The refund of deposited amount will also have adverse effect on the other allottees in the said project. Therefore, keeping in view the principles of natural justice and in public interest, the relief sought by the complainant cannot be allowed.
24. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.



The authority is of the considered opinion that the respondent has failed to deliver the possession of the said unit to the complainant by the committed date i.e. 28.10.2017

and the possession has been delayed by 6 months 18 days. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession.

### **DECISIONS 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 complainant is directed to take possession of the unit within a week time failing which he shall too be liable for all the obligations as per the provisions of section 19 (a) of the Real Estate (Regulation & Development) Act, 2016.
- (ii) The complainant is eligible for prescribed rate of interest i.e. 10.45% per annum from the date of possession till the date of offer of possession as per the provisions of section 18 (1) of the Act *ibid*.
- (iii) If complainant is not satisfied with this decision, he is at liberty to file an appeal before the appropriate



forum. Accordingly, the respondent is directed to pay interest at the prescribed rate @10.45p.a. for delayed period within a period of 90 days from the issuance of this order. Interest accruing thereafter shall be paid before the 10<sup>th</sup> of each month.

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: 30.10.2018

HARERA  
GURUGRAM

