

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 19.09.2018
Complaint No.	214/2018 Case titled as Mr. Sandeep Bansal V/s M/s Ireo Pvt. Ltd.
Complainant	Mr. Sandeep Bansal
Represented through	Ms. Priyanka Aggarwal representative on behalf of the complainant.
Respondent	M/s Ireo Pvt. Ltd.
Respondent Represented through	Shri M.K.Dang, Advocate for the respondent.
Last date of hearing	23.8.2018
Proceeding Recorded by	

Proceedings

The respondent has already applied for registration with the RERA authority.

Shri Shyam Lal Bansal-father of the complainant has alleged that the complainant has entered into an Builder Buyer Agreement for purchase of plot admeasuring 358.80 square yards on 18.12.2011. In this context, the BBA was signed on 3.5.2012. As per clause 11.1 of the BBA which is reproduced as under:-

“subject to Force Majeure as defined herein, and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not being in default of any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनिचयन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16


charges, and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to make the Offer of Conveyance of the said Plot to the Allottee within a period of 36 (Thirty Six) months from the date of receipt of requisite approvals ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (Six) months ("Grace Period") after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.


The possession was to be delivered to the complainant in a time period of 36 months plus 6 months as grace period. As such, taking cognizance of the signing of BBA, the due date within which the possession of the plot comes to 36+6 = 42 months + 12 months (subject to clause 11.3 of the agreement). However, it has been stated that 12 months more grace period is w.r.t force majeure factor which is not applicable in this case. However, it has been admitted that in case builder is not in a position to hand over the possession the complainant can terminate the contract and sought refund of the amount within 12 months which comes out to be 30.11.2016.

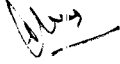
Since the respondent has not delivered the possession of the plot to the complainant for which he has already made payment of Rs.3,48,72,724/- as such the complainant is seeking refund of the amount deposited by him with 18% interest which is not permissible as per provisions of the Act. The pleas taken by the counsel for the respondent is that project is complete and application for occupation certificate has been made to the competent authority. It would not be in the interest of the project and other allottees to refund the amount at this stage as authority is consistently following that where projects are near completion, their refund shall not be in the interest

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह सिविल लाईन गुरुग्राम हरियाणा

of the project and in such case the allottee is allowed interest at the prescribed rate for every month of delay. Detailed order will follow. File be consigned to the registry.


Samir Kumar
(Member)


Dr. K.K. Khandelwal
(Chairman)
19.09.2018


Subhash Chander Kush
(Member)

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

Complaint no. : 214 of 2018
First date of hearing : 31.05.2018
Date of decision : 19.09.2018

Mr. Sandeep Bansal
R/o. B3/9, Janakpuri,
New Delhi-110058

Complainant

Versus

1.M/s Ireo Pvt. Ltd.
Regd. Office: Ireo Campus, Sector-59, Archview
Drive, Ireo City, Golf Course Extension Road,
Gurugram-122001, Haryana
2. M/S Jagdeep Aggarwal
R/O A-11, First Floor, Neeti Bagh,
New Delhi-110049
3. M/S Lipi Bhatia
R/O 305, 3rd Floor, Kanchan House, Karampura
Comercial Complex, New Delhi-110015
4.M/S Margaret Roy
R/O 305, 3rd Floor, Kanchan House, Karampura
Comercial Complex, New Delhi-110015
5. M/S Meera Tomer
R/O C-4, 1ST Floor, Malviya Nagar,
New Delhi-110017

Respondents



CORAM:

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

Chairman
Member
Member

APPEARANCE:

Ms. Priyanka Aggarwal

Representative on behalf of the
complainant

Shri M.K Dang

Advocate for the respondents

ORDER

1. A complaint dated 01.05.2018 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. Sandeep Bansal, against the promoter Ireo Pvt. Ltd. and others on account of violation of the clause 11.1 of the apartment buyer's agreement executed on 03.05.2012 in respect of apartment number C1-14, in the project 'Ireo City' for not handing over possession on the due date i.e. 24.06.2017 which is an obligation under section 11(4)(a) of the Act ibid.

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

DTCP licence no. 63 of 2009, 107 of 2010 and 60 of 2012

Nature of the project: Plotted colony

1.	Name and location of the project	Ireo city, Sector -60, Gurugram
2.	Apartment/unit No.	C1- 14
3.	Flat measuring	358.80 sq. yd. of carpet area
4.	RERA registered/ not registered.	Not registered



5.	Booking date	18.12.2011
6.	Date of execution of apartment buyer's agreement	03.05.2012
7.	Payment plan	Development linked payment plan
8.	Basic sale price	Rs.3,82,37,506/-
9.	Total amount paid by the complainant till date	Rs.3,48,72,724/-
10.	Date of delivery of possession as per clause 11.1 of apartment buyer's agreement (36 Months + 6 months grace period from the date of receipt of requisite approvals i.e. 24.12.2013)	24.06.2017
11.	environment clearance granted on	24.12.2013
12.	Delay in handing over possession till date	1 year 02 months 26 days
13.	Penalty clause as per apartment buyer's agreement dated 03.05.2012	Clause 11.2 of the agreement i.e. Rs.250/- per sq. yd per month of the carpet area of the said flat.

3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondents. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 24.06.2017. Neither the respondents has delivered the possession of the said flat till date to the purchaser nor they have paid any compensation @ Rs.250/-



per sq. yd per month of the carpet area of the said flat for the period of such delay as per clause 11.1 of the apartment buyer's agreement dated 03.05.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents appeared on 31.05.2018. The case came up for hearing on 31.05.2018, 05.07.2018, 19.07.2018, 09.08.2018, 23.08.2018 and 19.09.2018. The reply has been filed by the respondents. The respondents have supplied the details and status of the project along with the reply.

Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant has booked a plot in Ireo city, Sector 60, Gurugram, plot no. C1 -14 size 358.80 sq. yd. on 18.12.2011.
6. The complainant submitted that without any development promoters demanded payment after payment of instalment complainant visited the project site and there was no



development at the project site and the builder demanded more than 80% of the total cost of the project.

7. The complainant submitted that as per the agreement total cost of the plot is Rs. 38,237,506/- out of which the builder demanded Rs. 34,872,724/- and the complainant paid all the timely payment.

8. The complainant submitted that the builder delayed the project for unlimited time and the complainant inform the builder many time that the delay is causing lots of inconvenience, mental harassment and financial losses. Complainant felt cheated by the unnecessary delay and false promises by the respondents as the complainant has invested his hard earned money in the project.

9. The builder buyer agreement signed between Ireo Pvt. Ltd. On 03.05.2012. As per the agreement clause 11.1 respondent failed to give possession on July 2015 with the limit of 36 months from requisites approvals with 6 months of grace period. As per the commitment of the respondents July 2015, was date of possession, passed 34 months of commitment of possession. As per the development progress of site builder is



not in position to provide possession in favour of complainant in coming 2-3 years. When the complainant visited site there was no sign of development.

10. The complainant submitted that the respondents delayed excessively in giving the possession and now the complainant wishes to withdraw from the project, and also wishes that his money be returned by the promoter.

11. **Issues raised by the complainant are as follow:**

- i. Whether the respondents delayed in handing over the possession of the unit to the complainant?
- ii. Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?
- iii. Whether the respondents are liable to refund the entire amount paid by the complainant?

12. **Relief sought:**

The complainant is seeking the following relief:

- i. That the respondents should compensate with interest on paid amount to respondent @ 18%



(Rs. 2,62,37,869/-) and refund of paid amount Rs.
3,48,72,724/-.

ii. Total amount of refund Rs. 6,11,10,593/-

Respondent's reply

13. The respondents admitted the fact that they are developing the project situated at Sector 60, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complaint.
14. The respondents submitted that the complainant has booked the plot in question wilfully and after going through the terms and conditions of the booking application form and the complainant is bound by it.
15. The respondents submitted that all the demands towards the payments of the plot were made by the respondent no. 1 in accordance with the terms and conditions of the plot buyer's agreement and the payment plan as agreed between the complainant and the respondent no. 1. However, the complainant has not adhered to his contractual obligation and committed several delays in making the payment



towards the instalments and the complainant is bound to pay the delayed interest as per the terms of the agreement.

16. The respondents submitted that the construction of the plot has been completed and the respondent no 1. has already applied for the grant of completion certificate on 12.05.2016. even as per the terms and conditions of the agreement, no defaults or illegalities have been committed by the respondent company with respect to offering the possession of the plot to the complainant.
17. The respondents submitted that the complainant has paid a total amount of Rs 3,48,72,724/- out of the total consideration of Rs 3,82,37,506/-.
18. The respondents have submitted that the complainant has paid the installment amount as stated by him and the builder had demanded more than 50% of the total demanded amount within 1 year of the booking of the plot. However, it is submitted that all the demands were raised by the respondent no. 1 in accordance with the payment plan opted by the complainant.



19. The respondents submitted that as per clause 11.1 of the buyer's agreement, the respondents were supposed to give possession dated July 2015 with the limit of 36 months from the date of requisite approvals with 6 months of grace period. Thus, the said date of possession was wrong and denied.
20. The respondents submitted that it is pertinent to mention here that clause 11.1 of the plot Buyer's agreement states that the "complaint propose to make the offer of conveyance of the said plot to the allottee within a period of 36 months from the date of receipt of approvals.
21. The respondents further admits that they are behind schedule of completion, but the respondents are not responsible for the delay as the delay occurred due to extraneous circumstances beyond their control. The environment clearance issued by state environment impact assessment authority, Panchkula for the plotted development of 29.79 acres at Sector 60 was granted on 24.12.2013. Therefore, the pre-conditions of obtaining all the requisite approvals was fulfilled only on 24.12.2013. in terms of the



clause 11.1 of the agreement the proposed time for handing over of possession has to be computed from 24.12.2013.

22. The respondents submitted that the complete real estate industry is under pressure of delivery and the availability of skilled manpower and material is at its all-time low and thereby, the respondent company does not gain anything by delaying the project and is rather committed to deliver the project in the best standards of quality and performance. The respondents have further contended that the parties are bound by the terms and conditions of the contract and that as per clause 11.1 of the apartment buyer's agreement, the respondents shall handover the possession of the apartment within 36 months with a grace period of 6 months from the date of receipt of all project related approvals including sanction of building plan/revised building plan and other approvals.

23. The respondents submitted that though the said project is going behind schedule of delivery, however the respondents have throughout conducted the business in a bona fide manner and the delay occasioned had been beyond the



control of the respondents and due to multifarious reasons and given the agreed terms between the parties the complainant has no cause of action to file the present complaint as the delay so occasioned is very much due to the factors so contemplated.

24. The respondents submitted that complainant is misusing the provisions of RERA Act, 2016 and rules framed thereunder. All the averments made by the complainant are baseless, false and frivolous.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

25. With regard to the **first issue** raised by the complainant, as per clause 11.1 of buyer's agreement dated 03.05.2012, the possession of the said apartment was to be handed over within a period of 42 months from the date of receipt of requisite approvals (with a grace period of 6 months). In the



present complaint, the authority is of the view that the date of handing over the possession should have been counted from the date of receipt of environment clearance i.e 24.12.2013. Therefore, the due date of handing over possession shall be computed from 24.12.2013. The clause regarding the possession of the said unit is reproduced below:

“11.1 offer of possession

“subject to Force Majeure as defined herein, and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not being in default of any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges, and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to make the Offer of Conveyance of the said Plot to the Allottee within a period of 36 (Thirty Six) months from the date of receipt of requisite approvals (“Commitment Period”). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (Six) months (“Grace Period”) after the expiry of the said Commitment Period to allow



26. Accordingly, the due date of possession was 24.06.2017 and the possession has been delayed by 1 year 2 months and 26 days till the date of decision.

27. With respect to **second issue** raised by the complainant, as the possession of the flat was to be delivered by 24.06.2017 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. Therefore, 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.

28. With respect to **third issue** raised by the complainant, refund cannot be allowed keeping in view the current status of the project. The detailed findings and directions in this regard have been elaborated in subsequent paras.

Findings of the authority

29. The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint. The complainant is an allottee as per definition under section 2(d) of the Act and the respondents are well within the definition of promoters as per section 2(zk) of the Act. Once there is allottee-promoter relationship, the complaint is maintainable before this authority.

30. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as provided under Section 11 of the Act *ibid*. 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 its obligation.

31. The respondents have already applied for registration with the RERA authority. Shri Shyam Lal Bansal-father of the complainant has alleged that the complainant has entered into an builder buyer agreement for purchase of plot admeasuring 358.80 square yards on 18.12.2011. In this context, the BBA was signed on 03.05.2012. As per clause 11.1 of the BBA which is reproduced as under:-

“subject to Force Majeure as defined herein, and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not being in default of any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges, and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to make the Offer of Conveyance of the said Plot to the Allottee within a period of 36 (Thirty Six) months from the date of receipt of requisite approvals (“Commitment Period”). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (Six) months (“Grace Period”) after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.”



32. The possession was to be delivered to the complainant in a time period of 36 months plus 6 months as grace period. As such, taking cognizance of the signing of BBA, the due date within which the possession of the plot comes to $36+6 = 42$ months + 12 months (subject to clause 11.3 of the agreement). However, it has been stated that 12 months more grace period is w.r.t force majeure factor which is not applicable in this case. However, it has been admitted that in case builder is not in a position to hand over the possession the complainant can terminate the contract and sought refund of the amount within 12 months which comes out to be 24.06.2017.

33. Since the respondents have not delivered the possession of the plot to the complainant for which he has already made payment of Rs.3,48,72,724/- as such the complainant is seeking refund of the amount deposited by him with 18% interest which is not permissible as per provisions of the Act. The plea taken by the council for the respondents is that the project is complete and application for occupation certificate has been made to the competent authority. It would not be in



the interest of the project and other allottees to refund the amount at this stage as the authority is consistently following that where projects are near completion, there refund shall not be in the interest of the project and in such case the allottee is allowed interest at the prescribed rate for every month of delay.

Decision and directions of the authority

34. 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 here by issue the following directions to the respondents in the interest of justice and fair play:

- i. The respondents are directed to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 24.06.2017 till the actual date of handing over of the possession.



- ii. The respondents are directed to pay interest accrued from the due date of possession i.e. 24.06.2017 till the date of decision, on account of delay in handing over of possession to the complainant within 90 days from the date of decision and subsequent interest to be paid by 10th of every succeeding month.

35. The order is pronounced.

36. Case file be consigned to the registry

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date : 19.09.2018



Judgement is uploaded on 19.12.2018