

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

Complaint no. : 1148 of 2020
First date of hearing: 10.04.2020
Date of decision : 21.10.2020

1. Shri Gian Prakash Kumar
2. Smt. Komilla Kumar
Both RR/o: A 14/12, Vasant Vihar,
New Delhi-110057

Complainants

Versus

M/s Ireo Pvt. Ltd.
Regd. and Corp. office at: C4, First Floor,
Malviya Nagar, New Delhi - 110017

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Complainants in person
Shri M. K. Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 18.03.2020 has been filed by the complainants/allottee's 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 under the provisions of this act or the rules and regulations made thereunder or to the allottee's as per the agreement to sell 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	Ireo Gurgaon Hills, Sector 59, Gurugram
2.	Project Area	11.7 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	36 of 2011 dated 26.04.2011 valid Upto 25.04.2019
5.	Name of the Licensee	Shri Chand & 3 Ors.
6.	RERA Registered/not registered	Not registered
7.	RERA registration valid up to	Invalid
8.	Date of apartment buyer's agreement (As per page no. 25 of complaint)	24.07.2013
9.	Unit no. (As per page no 28 of complaint)	C-04_31, 4 th Floor, Tower C

10.	Unit measuring (As per page no. 28 of complaint)	4786.83 sq. ft. [super area]
11.	Payment plan	Construction Linked Payment Plan
12.	Total sale consideration	Rs 4,67,87,083/- (As alleged by complainants in complaint)
13.	Amount paid by the Allottee's	Rs 4,67,87,083/- (As alleged by complainants in complaint)
14.	Date of approval of building plan (As per page no. 69 of reply)	17.05.2012
15.	Due date of delivery of possession As per clause 14.4 of the apartment buyer's agreement within a period of 42 months from the date of approval of the building plan and or fulfilment of the precondition imposed thereunder+ 180 Days (grace period)	17.05.2016 (Calculated from the date of approval of building plan i.e. 17.05.2012)
16.	Date of environment clearance (As per page no. 72 of reply)	26.06.2013
17.	Date of approval of firefighting scheme (As per page no. 78 of reply)	26.12.2013



18.	Delay in handling over of possession till this date of decision i.e. 21.10.2020	4 years 5 months 4 days
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3. As per clause 14.4 of the apartment buyer's agreement the possession was to be handed over within 42 months plus grace period of 180 days from the date of approval of the building plan and/or fulfilment of the preconditions imposed thereunder i.e. 17.05.2016. Clause 14.4 of the apartment buyer's agreements reproduced herein below:

*"14.4The company proposes to offer the possession of the said Apartment to the allottee's within a period of 42 months from the date of approval of the building plan and/or fulfilment of the preconditions imposed thereunder (**Commitment Period**). The allottee's further agrees and understands that the company shall additionally be entitled to a period of 180 days (**Grace Period**), after the expiry of the said commitment Period to allow for unforeseen delays beyond the reasonable control of the company."*

4. The complainants submitted that he booked an apartment at "Ireo Gurgaon Hills" under the construction linked with the opposite parties which is located at village Gawal Pahari, Tehsil Sohna, Distt. Gurgaon, Haryana, bearing unit no. C-04_31 having super area of 4786.83 sq. ft. and paid an amount of Rs 4,67,87,083/-. receipts of money received was issued by the opposite parties against all the payments done. Application

for booking the apartment signed and received by complainants on 18.06.2013.

5. The complainants submitted the builder buyer's agreement was executed between the parties on 24.07.2013 as per which the possession of the unit was to be handed over within a period of 4 years from the date of approval of building plan and/or fulfillment of the pre-conditions imposed thereunder.
6. Hence, this complaint inter-alia for the following reliefs:
 - (i) Direct the opposite parties to handover the possession of the apartment to the complainants complete in all respects and in conformity with the agreement and for the consideration mentioned therein (without any excess demand on account of any kind of charges levied), with all additional facilities and as per quality standards promised, and execute all the necessary and required documents in respect of the said apartment in favour of the complainants.
 - (ii) Direct the respondent to pay interest @ 24% per annum or at such rate as deemed fit by the Hon'ble Authority, on the amount deposited by the complainants with the opposite party for the period of delay.

7. The possession of the subject apartment has not been offered by the respondent to the complainants so far. The complainants seek delay interest as per section 18 of the Act and further reserve their right to file a separate application for seeking compensation and/or cost of litigation from the Adjudicating Officer.
8. The respondent has submitted reply and submitted the following:
 - (i) That the complainants after checking the veracity of the project namely ' Ireo-Gurgaon Hills ' had applied for allotment of an apartment vide their booking application form on 17.06.2013 and deposited part amount towards the total sale consideration. The complainants agreed to be bound by the terms and conditions of the booking application form.
 - (ii) That based on the said application , the respondent vide its allotment offer letter on 18.06.2013 allotted to the complainants apartment no. GH-C-04-31, 4th floor in tower c in a bare-shell condition having tentative super area of 4786.83 square feet for a total sale consideration of Rs. 4,53,17,781/-. The respondent sent three copies of the agreement to the complainants which was signed and executed on 27.07.2013.
 - (iii) That the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was

obtained on 26.12.2013 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, would have expired only on 26.12.2018.

(iv) That it is pertinent to mention herein that respondent has fulfilled all his obligation and has complete the entire work under the scope of respondent in terms of booking application form and apartment buyer's agreement and has applied for grant of occupation certificate with the concerned authority on 24.09.2018. It is the complainants who have defaulted in performing the interior work which is under the scope of complainants in terms of apartment buyer's agreement. respondent had invited the complainants several times by emails to complete the interior works in the apartment booked by the complainants.

(v) That it is pertinent to mention herein that the implementation of the said project was hampered due to non-payment of instalments by allottees including the complainants on time and also due to the events and conditions which were beyond the control of the respondent and which has the construction and progress of the project.

9. 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.
10. 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 based on these undisputed documents and submission made by the parties.


11. Arguments have been heard. However, the respondent could not submit any cogent reasoning for not handing over the flat or unit within stipulated time.
12. The authority finds that building plans were approved on 17.05.2012 with the condition that NOC from the fire department shall be submitted in the competent authority along with a set of plans duly signed by the Commissioner, Municipal Corporation, Gurugram within a period of 90 days from the date of issuance of sanctioned building plans. But, from the perusal of documents regarding approval of fire-fighting schemes dated 26.12.2013, it has been observed that it was applied on 07.11.2013 after a lapse of almost 1.5 years. Since, this lapse has been made on the part of the promoter, so, the allottee cannot be made to suffer due to negligence on the part of the promoter and the promoter cannot take advantage of his own faults. While deciding complaints against IREO Pvt. Ltd., earlier the same fact remained unnoticed inadvertently and due date of possession was calculated from the date of approval of firefighting scheme. At that time the same point was also not raised by the complainants, hence, the authority is moving from its stand taken earlier to calculate due date of possession from the date of approval of firefighting scheme. So, the arguments made by the counsel for respondent regarding the calculation of due date of handing over the


possession from the date of approval of fire-fighting scheme are rejected hereby.

13. On consideration of the circumstances, the evidence and submissions made by the parties and findings of the authority regarding contravention as per provisions of rule 28(2), the authority is satisfied that the respondent is in contravention of the provisions of the Act.
14. By virtue of apartment buyer's agreement executed between the parties on 24.07.2013, possession of the booked unit was to be delivered as per clause 14.4 of the apartment buyer's agreement within a period of 42 months from the date of approval of the building plan and or fulfilment of the precondition imposed thereunder with 180 days grace period. The building plans were sanctioned on 17.05.2012 thus the due date of possession comes out to be 17.05.2016. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. from due date of possession i.e. 17.05.2016 till the handing over of physical possession of the allotted unit as per the provision of section 18(1)(a) of the Act read with rules 15 of the Rules
15. Hence, the authority hereby passes this order and issue the following directions under section 34(f) of the Act: -

- (a) The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 17.05.2016 till the handing over of physical possession of the allotted unit.
- (b) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (c) The respondent is directed to pay interest accrued from 17.05.2016 till the handing over of physical possession of the allotted unit to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10th of each succeeding month.
- (c) The respondent shall not charge anything from the complainants which is not the part of the agreement.
16. Complaint stands disposed of.
17. File be consigned to the registry.


Samir Kumar
(Member)


**Subhash
Chander Kush**
(Member)


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.10.2020

Judgement uploaded on 24.11.2020