

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

Complaint no. : 356 of 2020
First date of hearing: 25.02.2020
Date of decision : 21.10.2020

Mrs. Geetika Singh
R/o: U-30, Green Park,
New Delhi 110016

Complainant

Versus

M/s Ireo Pvt. Ltd.
Regd. and Corp. office at: A-11,
First Floor, Neeti Bagh,
New Delhi - 110049

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Sh. Sanjeev Sharma
Sh. M. K. Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 28.01.2020 has been filed by the complainant/allottee in form of 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 as provided

under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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 City Central", Sector 59, Gurugram
2.	Project area	3.937 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	56 of 2010 dated 31.07.2010 valid Upto 30.07.2020.
5.	Name of licensee	M/s. Adson Software Pvt Ltd and 2 others.
6.	RERA Registered/ not registered [Note: The RERA registration is for only 2.236 acres commercial colony]	Registered vide no. 102 of 2017 dated 24.08.2017
7.	RERA registration valid up to	30.06.2020
8.	Unit no. [As per page no. 22 of complaint]	FF03, 1 st Floor
9.	Unit measuring [As per page no. 22 of complaint]	707.27 sq. ft. [super area]
10.	Date of provisional allotment letter [As per page no. 52 of complaint]	24.07.2013
11.	Date of execution of buyer agreement retail for commercial unit	21.11.2013 [As per page no.18 of complaint]



12.	Payment plan (As per page no. 40 of complaint)	Construction linked payment Plan
13.	Total consideration as per payment plan (Net payable-delayed compensation)	Rs. 93,42,932/- [As per SOA dated 17.09.2019 at page 60 of reply]
14.	Total amount paid by the complainant	Rs.83,92,508/- [As per SOA dated 17.09.2019 at page 60 of reply]
15.	Approval of building plan	05.09.2013 (As per page no. 35 of reply)
16.	Due date of delivery of possession As per clause 13.3 of buyer's Agreement for commercial unit 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) + 180 Days (grace period) i.e. 05.09.2013	05.09.2017 (Calculated from the date of approval of building plan i.e. 05.09.2013)
17.	Date of occupation certificate (As per page no 56 of reply)	28.08.2019
18.	Date of offer of possession (As per page no 58 of reply)	17.09.2019
19.	Delay in handing over of possession till offer of possession i.e. 05.09.2017	2 years and 12 days

3. As per clause 13.3 of the buyer agreement retail, the possession was to be handed over within 42 months plus grace period of 180 days after expiry of the said commitment period from the date of approval of the building plan and/or

fulfilment of the preconditions imposed thereunder. Clause 13.3 of the buyer agreement retail is reproduced hereinafter.

“13.3 The company proposes to offer the possession of the said commercial unit to the allottee 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 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 complainant submitted that the parties executed the buyer agreement retail on 21.11.2013. The respondent till date has failed to handover the possession of the unit to the complainant in the promised date of possession i.e. 05.09.2017 including grace period as per the buyer agreement retail. The respondent failed to give possession of the flat within stipulated time prescribed by the buyer agreement retail.
5. The complainant submitted that after repeated visits by the complainant the respondent has neither offered handing over of the possession nor any satisfactory reply is given in this regard. Hence, this complaint inter alia for the following reliefs
 - (i) The Promoter be directed to provide declaration including that of common area u/s 19 (5) or the act along with declaration on affidavit to be submitted with

Director Town and Country Planning or the declaration with Real Estate Regulatory Authority at the time of registration.

- (ii) The promoter shall be directed to pay interest for the delayed period of possession as arrears of DPC and further ordered to pay interest for each month till the possession is handed over.
 - (iii) The promoter be ordered to recalculate the interest on equitable basis from the beginning and reimburse, if charged extra than MLCR.
 - (iv) The parking if charged extra without providing garage and on common areas or basements than it is illegal shall be refunded back to the allottee.
 - (v) The promoter be ordered to get the conveyance deed made in the name of association of allottees for common areas etc and hand over the complex to them in three month's time.
 - (vi) The VAT charged @ 1% of the total amount is against the government policy and notification issued in this regard. The promoter be asked to reimburse the amount.
6. The respondent has submitted reply and submitted the following:
- (i) That the complainant after checking the veracity of the project namely 'Ireo-City Central' Sector 59 had applied for an

allotment of a commercial unit vide booking application form. Based on the said application, the respondent through provisional allotment letter on 24.07.2013 allotted to the complainant unit no. ICC-R-FF-03, first floor having tentative super area of 707.27 sq. ft.

- (ii) That the complainant was bound to take the possession of the unit after making payment of the due amount and completing the documentation formalities as the holding charges are being accrued as per the terms of the apartment buyer's agreement and the same is known to the complainant as is evident from a bare perusal of the notice of possession.
7. 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.
8. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.
9. The authority finds that building plans were approved on 05.09.2013 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 18.01.2017, it has been observed that it was applied on 10.08.2016 after a lapse of almost 3 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.

10. On consideration of the circumstances, the documents 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), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13.3 of the buyer agreement retail executed

between the parties on 21.11.2013, possession of the booked unit was to be delivered within stipulated time i.e. by 05.03.2017 plus grace period of 6 months. Therefore, the due date of handing over possession comes out to be 05.09.2017. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer developer agreement dated 21.11.2013 executed between the parties. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee. With respect to relief of GST, the complainant is at liberty to approach the appropriate forum.

11. Accordingly, the 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 the complainant is entitled to delayed possession at rate of the prescribed interest @9.30% p.a. w.e.f. 05.09.2017 till the handing over of physical possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
12. Hence, the Authority hereby passes this order and issue the following directions under section 34(f) of the Act:

- (i) 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. 05.09.2017 till the handing over of physical possession of the allotted unit.
- (ii) The respondent is directed to pay interest accrued from 05.09.2017 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;
- (iii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (iv) Interest on due payment from the complainant shall be charged at the prescribed rate of interest @9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.


(v) The respondent shall not charge anything from the complainant which is not the part of the buyer developer agreement.

13. Complaint stands disposed of.

14. File be consigned to 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

