

PROCEEDINGS OF THE DAY

Day and Date	Friday and 07.12.2018
Complaint No.	567/2018 Case titled as Smt. Geetika Singh & anr V/S M/S Ireo Grace Realtech Pvt Ltd
Complainant	Smt. Geetika Singh & Anr
Represented through	Shri Shanker Wig, Advocate for the complainant.
Respondent	M/S Ireo Grace Realtech Pvt Ltd
Respondent Represented through	Shri Garvit Gupta Advocate for the respondent.
Last date of hearing	18.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Arguments heard.

As per clause 13.3 of the Builder Buyer Agreement dated 11.8.2014, for unit No.1202, Tower A-4, 12th floor in project “The Corridors” in Sector-67, Gurugram possession was to be handed over to the complainant within a period of 42 from the date of approval of building plan i.e. 27.11.2014 (date of NOC for fire approval) and/or fulfillment of pre-conditions imposed thereunder + 6 months grace period which comes out to be 27.11.2018. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.1,72,95,529/- against the total sale consideration of Rs.1,84,44,568/-. Project is registered with the authority and the revised date of delivery of unit is 30.6.2020 and as such, complainant is entitled for

delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 27.11.2018, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over the offer of possession failing which the complainant is entitled to seek refund the paid amount with interest.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

Complaint is disposed of 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. : 567 of 2018
Date of first hearing : 18.09.2018
Date of Decision : 07.12.2018

1. Smt. Geetika Singh
2. Sh. Jasbir Singh
Both R/o U-30, Green Park,
New Delhi - 110016

...Complainants

Versus

M/s Ireo Grace Realtech (Pvt.) Ltd.
Office at: 5th floor, Orchid Centre,
Golf course road, Sector-53, सत्यमेव जयते
Gurgaon-122002

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Shanker Wig
Shri Garvit Gupta

Advocate for the complainants
Advocate for the respondent

ORDER

1. A complaint dated 19.07.2018 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 Smt. Geetika Singh and Sh. Jasbir Singh, against the promoter M/s Ireo



Grace Realtech (Pvt.) Ltd. on account of violation of clause 13.3 of the apartment buyer's agreement executed on 11.08.2014 for unit no. 1202 on 12th floor, A4 tower, admeasuring super area of 1726.91 sq. ft. in the project "The Corridors" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act ibid.

2. Since the buyer's agreement has been executed on 11.08.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"The Corridors" in Sector 67-A, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	1202, 12 th floor, tower no. A4
4.	Project area	37.5125 acres
5.	Registered/ not registered	Registered separately in 3 phases For Phase I- 378 of 2017 (13.25 acres)



		For Phase II- 377 of 2017 (13.152 acres) For Phase III- 379 of 2017 (8.628 acres)
6.	DTCP license	05 of 2013 dated 21.02.2013
7.	Date of booking	22.03.2013 (as per statement of account in annexure-B, pg 69 of the complaint)
8.	Date of apartment buyer's agreement	11.08.2014
9.	Total consideration	BSP- Rs. 1,62,32,954/- (as per agreement) Rs. 1,84,44,568.34/- (as per payment plan in annexure IV, pg 52 of the complaint)
10.	Total amount paid by the complainant	Rs. 1,72,95,529.13/- (as per statement of account in annexure-B, pg 69 of the complaint)
11.	Payment plan	Instalment payment plan (as per annexure IV, pg 52 of the complaint)
12.	Date of delivery of possession	27.11.2018 Clause 13.3 – 42 months from date of approval of building plans and/or fulfilment of preconditions imposed thereunder, i.e. 27.11.2014 (date of NOC for fire approval) + 180 days grace period i.e. 27.11.2018



		Note: No building plan approval has been attached with the file. The due date of possession has been calculated from date of fire approval NOC)
13.	Delay of number of months/ years upto 07.12.2018	10 days
14.	Penalty clause as per apartment buyer's agreement dated 11.08.2014	Clause13.3- Rs. 7.50/- per sq. ft. per month of the super area

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. An apartment buyer's agreement dated 11.08.2014 is available on record for unit no. 1202 on 12th floor, A4 tower, admeasuring super area of 1726.91 sq. ft. according to which the possession of the aforesaid unit was to be delivered by 27.11.2018. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance.. The case came up for hearing on 18.09.2018 and 07.12.2018. The reply and brief notes of argument has been filed by the respondent and has been perused.



Facts of the complaint

6. On 22.03.2013, the complainants booked a unit in the project named "The Corridors" in Sector 67-A, Gurugram by paying an advance amount of Rs. 14,609,658/- to the respondent. Accordingly, the complainants were allotted a unit bearing 1202 on 12th floor, A4 tower.
7. On 11.08.2014, apartment buyer's agreement was entered into between the parties wherein as per clause 13.3, the possession should have been offered within 42 months from date of approval of building plans and/or fulfilment of preconditions imposed thereunder, i.e. 27.11.2014(date of NOC for fire approval) + 6 months grace period i.e. by 27.11.2018. However, till date the possession of the said unit has not been handed over to the complainants despite making all requisite payments as per the demands raised by the respondent. The complainants made payments of all instalments demanded by the respondent amounting to a total of Rs. 1,72,95,529.13/-.
8. The complainants submitted that the promoter only completed civil construction work but other construction and allied works are still pending to be completed. Simple



structure is raised at the site of project after the lapse of 64 months. The project is inordinately delayed.

9. Issues raised by the complainant

The relevant issues raised in the complaint are:

- I. Whether the promoter is liable to get itself registered with the hon'ble authority under RERA, 2016 in terms of section 3(1) first proviso of the Act?
- II. Whether the respondents have caused exorbitant delay in handing over the possession of apartment to the complainants and for which complainants have right to demand the refund of money paid to the promoter as per provisions of the Real Estate (Regulation and Development) Act 2016?
- III. Whether the respondent is liable for interest @ 20 % p.a. (i.e. at the same rate of interest which the respondent use to charge on delay in payments by the allottees) to the complainant on amount received by the respondent from the complainant and which interest should be paid on the amount from the date when the respondent received the said amount?
- IV. Whether actions should be taken against the respondent



for their failure of not obtaining insurances as prescribed under section 16 of the Act?

10. Relief sought

- I. Direct the respondents to refund a sum of Rs. 1,72,95,529/- along with interest @ 20% per annum from the date when payments were made.

Respondent's reply

11. The respondent submitted that they are a reputed real estate company having immense goodwill, comprising of law abiding and peace loving persons and have always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects.
12. The respondent submitted that the complainants themselves had willingly approached the respondent company to make booking with the respondent. The complainants had made the booking of their own free will and after reading, understanding and verifying the terms and conditions stipulated in the Application for Provisional registration of Residential Apartment and Booking Application Form and are bound by them.
13. The respondent submitted that it is wrong and denied that at



the time of booking the unit, it was assured by the promoter M/s Ireo Grace Realtech (Pvt.) Ltd. that the project shall be delivered to the buyers within 42 months from the date of booking. It is submitted that according to clause 43 of the Schedule-I of the booking application form containing key indicators from the terms and conditions of apartment buyer's agreement, it was mutually agreed that the company shall offer the possession of the said apartment to the complainants within a period of 42 months (commitment period) from the date of approval of the building plans and/or fulfillment of the pre-conditions imposed thereunder. The complainants further agreed that the company shall be additionally entitled to a period of 180 days (grace period) after the expiry of the commitment period. The complainants are deliberately concealing material facts in order to mislead this hon'ble authority and to unnecessarily harass and pressurize the respondent company.



14. The respondent submitted that all payments were demanded by the respondent company in accordance with the agreed payment schedule. However, the complainants have delayed in making payment of the part sale consideration and are also bound to pay the remaining installments amount as per the payment schedule.

15. The respondent further submitted that an amount of Rs. 11,49,040/- along with service tax, stamp charges and registration charges are still required to be paid by the complainants towards the total sale consideration of the unit. It is wrong and denied that the complainants have made regular payments as demanded by the promoter time and again or that there was no default on account of making payment to the promoter. It is submitted that the complainants have made delayed part-payments towards the total sale consideration of the unit and accordingly several reminders dated 14.05.2013, 28.05.2013, 02.09.2013, 13.04.2014, 04.05.2014, 29.06.2016 and 15.11.2016 were sent to them by the respondent intimating the complainants about the delayed interest being charged. Furthermore, it is pertinent to mention here that various cheques issued by the complainants against the payment demands made by the respondent company were dishonored from time to time and the same fact was intimated to the complainants vide letters dated 22.04.2014, 28.05.2014 and 26.06.2014.

16. The respondent further submitted that from the provisions in the apartment buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. In the present case, it may be noted that the fire



approval NOC was granted on 27.11.2014. Therefore, the pre-condition of obtaining all the requisite approvals were fulfilled only on 27.11.2014. In terms of the apartment buyer's agreement the proposed time for handing over of possession has to be computed from 27.11.2014.

17. The respondent submitted that it is wrong and denied that the complainants visited the construction site several times or visited the office of the promoter to enquire about the alleged slow construction and time of handing over the possession. It is wrong and denied that the promoter only completed civil construction or that other construction and allied works are still pending to be completed. It is wrong and denied that the simple structure is raised at the site of the project after the lapse of 64 months or that this project is inordinately delayed. The respondent company has already completed the construction of the unit allotted to the complainants.

18. The respondent further submitted that no discussions were made, nor any email as claimed by the complainants was received by the respondent company. The complainants are trying to mislead this hon'ble authority.



Determination of issues

After considering the facts submitted by the complainant,

reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

19. In respect of **first issue** raised by the complainants, the project has already been registered by the respondent as per RERA, 2016 vide registration no. 378 of 2017, 377 of 2017 and 379 of 2017 in three separate phases. Thus, this issue becomes infructuous.
20. In respect of the **second and third issue** raised by the complainant, as per clause 13.3 of the apartment buyer's agreement dated 11.08.2014, the due date of possession was 27.11.2018. It cannot be said that the respondent has caused exorbitant delay in handing over the possession. Moreover, as per the registration certificate, the respondent has undertaken to deliver the project by 30.06.2020. Thus, the complainants cannot be allowed refund at this stage. However, they are entitled to delayed possession interest at the prescribed rate of 10.75% per annum from the due date of possession till the handing over of possession.
21. Regarding **fourth issue**, the apartment buyer's agreement was executed on 11.08.2014, much prior to coming in force of



RERA, 2016, thus section 16 of the said Act cannot be applied retrospectively.

22. The terms of the agreement are drafted mischievously by the respondents as in this case 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.”

23. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
24. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
25. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



Findings of the authority

26. **Jurisdiction of the authority-** The project “The Corridors” is located in Village Mewka, Sector 91, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

27. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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.

28. As per clause 13.3 of the agreement dated 11.08.2014, possession was to be handed over to the complainant by 27.11.2018. However, the respondent has not delivered the unit in time. The project is registered with the authority and



the revised date of delivery of unit is 30.06.2020. Keeping in view the intervening circumstances, status of the project and the interest of other allottees, the authority is of the view that it will not be proper to allow refund at this stage. However, as such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 27.11.2018(due date of delivery of possession), as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over the offer of possession failing which the complainant is entitled to seek refund the paid amount with interest.

Decision and directions of the authority

29. 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 respondents:

- (i) The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant.
- (ii) The respondent is directed to pay interest accrued from 27.11.2018 to 07.12.2018(date of this order) on account of delay in handing over of possession to the complainant



amounting to Rs.50,938/- within 90 days from the date of order.

(iii) Thereafter, the monthly payment of interest @ 10.75% on the paid up amount of the complainant, amounting to Rs.1,54,939.12/- till handing over of the possession so accrued shall be paid before 10th of subsequent month.

(iv) The respondent is directed to handover possession to the complainants by the committed date of 30.06.2020, failing which the complainant is entitled to seek refund the paid amount with interest.

30. The complaint is disposed of accordingly.

31. The order is pronounced.

32. Case file be consigned to the registry.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Date: 07.12.2018

Judgement Uploaded on 08.01.2019