

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 09.01.2019
Complaint No.	995/2018 Case titled as Shivani Mangesh Sholapure Vs. Ireo
Complainant	Shivani Mangesh Sholapure
Represented through	Complainant in person with Shri G.S.Jarodia, Advocate.
Respondent	M/s Ireo
Respondent Represented through	Shri M.K.Dang Advocate for the respondent.
Last date of hearing	3.1.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

As per clause 13.3 of the Builder Buyer Agreement dated 5.7.2011 for unit No.VV-A-4601, 45th floor, in project "IREO Victory Valley", Golf Course Extension Road, Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 36 months from approval of building plans plus 180 days grace period and the fire NOC was received by the respondent on **28.10.2013**, in this way due date of possession comes out to be

28.4.2017. It was a instalment payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.4,26,42,673/- to the respondent against a total sale consideration of Rs.3,93,66,800/-. Respondent has demanded further amount of Rs.57,16,306/-.

Possession was offered by the respondent to the complainant on 26.9.2018. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 28.4.2017 till 26.9.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
9.1.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 995 of 2018
Date of first hearing : 03.01.2019
Date of decision : 09.01.2018

Mrs. Shivani Mangesh Sholapure
R/o House no. 208A, The Aralias, DLF Golf
Course Links, DLF Phase V, Gurugram,
Haryana

...Complainant

Versus

M/s Ireo Victory Valley Pvt. Ltd.
Office at: 5th Floor, Orchid Centre,
Golf Course Road, Sector-53,
Gurugram, Haryana

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mrs. Shivani Mangesh Sholapure Complainant in person
with
Shri Gulab Singh Jarodia Advocate for the complainant
Shri M.K. Dang Advocate for the respondent



ORDER

1. A complaint dated 18.9.2018 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 Mrs. Shivani Mangesh Sholapure, against the promoter M/s Ireo Victory Valley Pvt. Ltd.on account of violation of clause 13.3 of the apartment buyer's agreement executed on 5.7.2011 for unit no.VV-A-4601 on 45th floor, tower A in the project "IREO Victory Valley" 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. The particulars of the complaint are as under: -

1.	Name and location of the project	"IREO Victory Valley", Golf course extension road,Sector 67, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	VV-A-4601, 45 th floor
4.	Project area	25.6125acres
5.	Registered/ not registered	Not registered
6.	DTCP license	244 of 2007 dated 26.10.2007, 103 of 2011 dated 07.12.2011
7.	Occupation certificate received on	28.09.2017
8.	Date of execution of apartment buyer's agreement	05.07.2011
9.	Total consideration	Rs.3,93,66,800/- (as per complaint)
10.	Total amount paid by the complainant	Rs.3,93,66,800/- (as per the complaint)
11.	Payment plan	Instalmentpaymentplan
12.	Consent to establish	07.04.2014
13.	Date of delivery of possession Clause 13.3 – 36 months from approval of building plan plus 180 days grace period	07.10.2017



	Note: Computed from the date of consent to establish i.e. 07.04.2014	
14.	Possession offered on	26.09.2018
15.	Delay of number of days/months/years upto	11 months
16.	Penalty clause as per apartment buyer 's agreement dated 5.7.2011	Clause13.4- Rs. 7.50/- per sq. ft. of the super area

3. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 05.07.2011 is available on record for unit no. VV-B-02-04 on 2nd floor, tower no. B having super area of 4279 sq. ft'.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.

Facts of the complaint

5. The complainant submitted that as per section 2(zk) of the RERA Act the respondent falls under category of promoter and is bound by duty mention in the Act and is under territorial jurisdiction of the authority.
6. The complainant submitted that the marketing staff gave a brochure and assured the complainant that the possession of



the flat will be given within 36 months. The complainant is the first buyer of the flat the no. A-4601, on 45th floor having a super area of 4279 sq. ft. along with three parking spaces for total consideration of Rs.3,93,66,800/- with club membership charges.

7. The complainant submitted that she has paid actual amount of the flat but the respondent has failed to deliver the possession on promise time and construction is still pending. The complainant visited office of respondent several times but fake promises were made.
8. The complainant submitted that as per section 18 promoter is liable to pay compensation for delay in possession and is also liable under section 15 to pay interest to the allottee.
9. **Issues raised by the complainant**

The relevant issues as culled out from the complaint are:

- I. Whether the developer has violated the term and condition of the flat buyer's agreement?
- II. Whether there has been deliberate or otherwise, misrepresentation on the part of developer for delay in giving possession?



- III. Whether complainant is entitled to be paid compensation for delay in possession by the respondent?

10. Relief sought

- I. To direct the respondent to refund the paid amount with interest of 24% from the date of booking to the date of refund paid by the respondent.
- II. To direct the respondent to pay Rs.50,00,000/- for deficiency in service, Rs.11,00,000/- for relegation expenses.
- III. To pass any other order which this authority may deem fit.

Respondent's reply

11. The respondent denied that section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 is applicable to the facts of the present case in hand or that the respondent falls under the category of promoter or is bound by the duties and obligations mentioned in the said act. Further, submitted that this hon'ble authority does not have the jurisdiction to try and decide the present false and frivolous complaint. It is pertinent to mention that the project in question is exempted from registration under the Real Estate Regulation and Development



Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017. The block of the project where the unit of the complainant is situated does not come under the scope and ambit of 'on-going project' as defined in section 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017.

12. The respondent submitted that the request for grant of occupation certificate for the block where the unit of the complainant is situated in the project was made before the publication of Haryana Real Estate (Regulation and Development) Rules, 2017 vide its application dated 9.2.2017 in accordance with sub code 4.10 of the Haryana Building Code, 2017. Thus, according to the provisions of the said Act and Rules, the block where the unit of the complainant is located is not required to be registered under the said Act and Rules.

13. The respondent submitted that the project is not covered within the ambit of the provisions of Real Estate Regulation and Development Act, 2016. It has been held by various authorities that if the building where the unit is located is not part of the project that is registered, the matter shall be dismissed for want of jurisdiction. Since the block where the unit of the complainant



is located is not registered with the HARERA, therefore this hon'ble authority does not have any jurisdiction to decide any dispute related to it.

14. The respondent submitted that the complainant is a real estate investor who had booked the apartment in question with a view to earn quick profit in a short period. However, her calculations went wrong on account of slump in the real estate market and the complainant is now not possessed with sufficient funds to honour her commitments and is trying to somehow wriggle out of her obligations.
15. The respondent denied that the local repetitive/marketing staff gave him a brochure, price list etc. or allegedly allure him the shady picture of the project. It is wrong and denied that the marketing staff allegedly assured to the plaintiff that the possession of the flat will be handed over within 36 months. It is submitted that the complainant has booked the unit in the project of the respondent as per her own independent estimations and judgment and without being influenced by any plans, brochures, advertisements and has undertaken the same in clause 5 of the booking application form and clause N of the apartment buyer's agreement. Furthermore, according to clause



13.3 of the buyer's agreement and clause 35 of Schedule -1 of key indicators from the terms and conditions of apartment buyer's agreement contained in the booking application form states that the "company proposes to hand over the possession of the said apartment to the allottee within a period of 36 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder". From the aforesaid provisions in the apartment buyers agreement and the booking application form, it is evident that the time was to be computed not only from the time the building plan approval was obtained, but also the further time which was required to satisfy the pre-conditions imposed in the building plan approval, was also to be taken into consideration. As such, time was to start running only after all the pre-conditions stipulated in the building plan approval had been satisfied. The averments are baseless, false and frivolous to the knowledge of the complainant and are aimed at misleading this hon'ble authority.



16. The respondent submitted that complainant purchased the unit bearing no. A4601, Atower having tentative super area of 4279 sq.ft' along with 3 no's of parking spaces constructed and denied that the total sale consideration of the unit allotted to the complainant is Rs.3,93,66,800/-with club membership charges.

Further, submitted that the total sale consideration of the unit is Rs. 4,83,58,979/-. Also, submitted that demands were raised by the respondent and the part payments were made by the complainant in accordance with the agreed payment plan. The complainant had made the part payment of Rs.4,26,42,673/- and is required to further make the due payment of Rs.57,16,306/- towards the total sale consideration of the unit instead of wriggling out of her contractual obligations by filing the present baseless, false and frivolous allegations.

17. The respondent denied that the complainant has paid the actual amount of the flat or that the respondent party has failed to deliver the possession of the flat on the alleged promised time. It is wrong and denied that till date the construction is still pending. It is wrong and denied that the complainant had purchased the flat with the intention that after the purchase, he will be able to stay in a safe and better environment. It is wrong and denied that it was allegedly promised by the respondent party at time of receiving payment of the flat that the possession of the fully constructed flat would be handed over to the complainant as soon as construction completes or that the period was 36 months as per flat buyer agreement. It is pertinent to mention here that according to clause 13.3 of the



buyer's agreement and clause 35 of schedule -1 of key indicators from the terms and conditions of apartment buyer's agreement contained in the booking application form states that the "Company proposes to hand over the possession of the said Apartment to the allottee within a period of 36 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder". From the aforesaid provisions in the apartment buyers agreement and the booking application form, it is evident that the time was to be computed not only from the time the building plan approval was obtained, but also the further time which was required to satisfy the preconditions imposed in the building plan approval, was also to be taken into consideration. As such, time was to start running only after all the pre-conditions stipulated in the building plan approval had been satisfied. In the present case, the building approval which was granted on 29.11.2010 had several preconditions which were required to be satisfied. For the purposes of the present matter, it may be noted that the last of these preconditions, i.e. fire NOC was granted only on 28.10.2013. Therefore, all the pre-conditions were fulfilled only on 28.10.2013. Copy of the Fire NOC Approval dated 28.10.2013 is annexed with the reply. In terms of the clause 13.3 of the



agreement, as well as clause 35 of schedule I of the booking application, the proposed time for handing over of possession has to be computed from 28.10.2013. Therefore, 42 months from 28.10.2013 (including the 180 days grace period), expired only on 28.4.2017. It is submitted that the construction of the tower in which the unit allotted to the complainant is located is complete and the respondent has already received the Occupation Certificate dated 28.9.2017 and has offered the possession to the complainant vide letter dated 26.9.2018. It is submitted that there has been a slight delay in offering the possession of the unit to the complaint on account of force majeure conditions as defined in clause 1 of the apartment buyer's agreement. It is submitted that the respondent company had applied for the grant of occupation certificate on 9.2.2017 i.e before the period of possession as specified in the apartment buyer's agreement. However, due to the delay in the grant of occupation certificate by the government authorities, the possession could not be offered to the complainant. The respondent, being a customer oriented company has already offered compensation on account of delay in offering possession in accordance with the terms and conditions of the apartment



buyer's agreement as is evident from column 4 of the statement of account attached with the notice of possession.

18. The respondent denied that due to the alleged acts of the above and of the terms and conditions of BBA, the complainant has been allegedly unnecessarily harassed mentally as well as financially or that the opposite party is liable to compensate the complainant on account of alleged act of unfair trade practice. It is absolutely wrong and denied that there is unfair trade practice or breach of contract or deficiency in services of the respondent party. It is wrong and denied that the smell of alleged playing fraud with the complainant and others is prima facie clear on the part of the respondent party which makes them liable to answer this hon'ble authority. It is submitted that no unfair trade practice has been committed by the respondent company. The respondent has always acted in accordance with the terms and conditions of the buyer's agreement and the rules and regulations laid down by law. However, it is pertinent to mention here that the complainant has failed to adhere to her contractual obligations and has failed to pay the remaining due and payable amount in accordance with the notice of possession dated 26.9.2018.



19. The respondent denied that there is an apprehension in the mind of the complainant that the respondent party has playing fraud or that there is something fishy which respondent party are not disclosing to the complainant just to alleged embezzle the hard earned money of the complainant and other co-owners. It is not admitted that the complainant has neither political rivalry nor any business jealousy with opposite party. It is reasserted that the respondent has acted strictly in accordance with the provisions laid down by law and no fraud or any illegal act has been committed by the respondent. It is submitted that the complainant is a real estate investor who had booked the apartment in question with a view to earn quick profit in a short period. However, her calculations went wrong on account of slump in the real estate market and the complainant is now not possessed with sufficient funds to honour her commitments and is trying to somehow wriggle out of her contractual obligations even after the possession of the unit has been offered to the complainant by the respondent.

20. The respondent denied that the complainant has also visited several times to the office of the respondents for speedy construction and possession . It is wrong and denied that all the time fake promises have been made. It is submitted that the



complainant was made aware about the status of the construction from time to time by the respondent as a new payment demand was raised only after the completion of a construction milestone. It is submitted that the respondent company has already offered the possession of the unit to the complainant. The complainant is bound to make the payment of the due instalment amount in accordance with the terms and conditions of the Agreement. It is pertinent to mention here that approximately 90 conveyance deeds have already been executed for the "Victory Valley" project. The Resident Welfare Association has taken charge of the maintenance of the condominium association and the project is fully completed.

21. The respondent submitted that para no.14 (wrongly numbered as para no.12) is correct strictly to the extent it reproduces Section 18 of the Real Estate (Regulation and Development) Act, 2016 and Rule 15 of the Haryana Real Estate Regulation Rules, 2017. The remaining contents of this para are incorrect and denied. It is not denied that as per section 18 of RERA Act, 2016 the promoter is liable to pay compensation to the allottees of an apartment, building or project for delay or failure in handing over possession as per terms and agreement of sale. However, it is submitted that Section 18 of the RERA Act, 2016 is not



applicable to the facts of the present case in hand. It is wrong and denied that the respondent is bound by the Haryana Real Estate Regulation Rules 2017 which lists the interest to be computed while calculating compensation to be given by promoter to an allottee in case of a default. It is submitted that this hon'ble authority has no jurisdiction to try and decide the present false complaint. It is submitted that the averments raised by the complainant in this para of the brief facts of the complaint are repetitive and the respondent has already submitted its reply to the same in the reply to the above mentioned paras of the brief facts and the same may be kindly read as a part and parcel of the reply to this para in order to avoid unnecessary repetition and for the sake of brevity.

22. The respondent denied that the complainant are entitled to get the refund of paid amount and compensation on paid amount on 24% per annum comparable from the date of booking to the date of refund or is further entitled to recovery of damages of Rs. 50,00,000/- for alleged mental agony and harassment. It is wrong and denied that the complainant is also entitled to get Rs.11,00,000/- towards the cost of litigation.



23. 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:

- i. With respect to the **first and second issue**, the authority came across clause 13.3 of the buyer's agreement which is reproduced hereunder:

“36 months from approval of building plan and/or fulfilment of preconditions imposed thereunder plus 180 days grace period.”

i.e. by 07.10.2017. Thus, the respondent failed in handing over the possession before the said due date, nor paid the compensation stipulated under clause 13.4 of the agreement, thereby committing a breach of the said agreement. It is matter of fact that the respondent has delivered the possession of the said unit to the complainant on 26.09.2018. hereby, the respondent is directed to give the delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 07.10.2017 till 26.09.2018 as per the provisions of section



18 (1) of the Real Estate (Regulation and Development) Act, 2016.

- ii. With respect to the **third issue**, the complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

24. **Jurisdiction of the authority-** The respondent admitted that as the project “IREO Victory Valley” is located on Golf Course Ext.Road, Sector 67, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint.

The preliminary objections raised by the respondent regarding 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 complainants at a later stage.



25. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
26. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
27. Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
28. As per clause 13.3 of the builder buyer agreement dated 5.7.2011 for unit no. VV-A-4601, 45th floor, in project "IREO Victory Valley", Golf Course Extension Road, Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 36 months from approval of building plans and/or fulfilment of the pre-condition imposed there under plus 180 days grace period and the date of consent was received by the respondent on 07.04.2014, in this way due date of possession comes out to be 07.10.2017



but inadvertently in the proceeding dated 09.01.2019 it has been written as 28.04.2017. It was an instalment payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 4,26,42,673/- to the respondent against a total sale consideration of Rs. 3,93,66,800/-. Respondent has demanded further amount of Rs. 57,16,306/-. Possession was offered by the respondent to the complainant on 26.09.2018. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 07.10. 2017 till 26.09.2018 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

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 issue the following directions to the respondent:

- (i) The respondent is directed to give the delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 07.10.2017 till 26.09.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.



(ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

30. The complaint is disposed of accordingly.
31. The order is pronounced.
32. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)

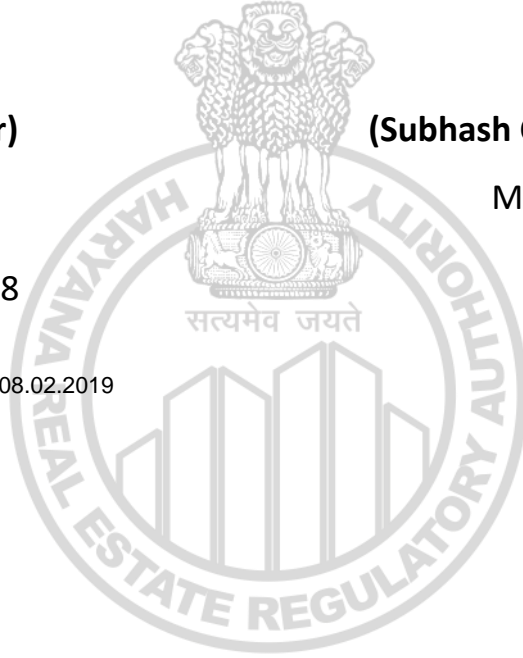
Member

(Subhash Chander Kush)

Member

Dated: 09.01.2018

Judgement Uploaded on 08.02.2019



HARERA
GURUGRAM

