

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 05.02.2019
Complaint No.	597/2018 Case titled as Mr. Pawan Kumar & Anr. V/S M/S Ireo Grace Realtech Pvt Ltd
Complainant	Mr. Pawan Kumar & Anr.
Represented through	Shri Nirmot Agarwal Advocate for the complainant.
Respondent	M/S Ireo Grace Realtech Pvt Ltd
Respondent Represented	Shri M.K.Dang Advocate for the respondent.
Last date of hearing	10.1.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority vide No.377/2017 for phase -II and the revised date of delivery of possession is 30.06.2020.

Arguments heard.

As per clause 13.3 of the Builder Buyer Agreement dated 9.5.2014 for unit No.904, 9th floor, tower-A3, in project "The Corridors" Sector-67A, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of approval of building plans or pre-conditions imposed thereunder i.e. 27.11.2014 (date of NOC for fire approval) + 6 months grace period which comes out to be 27.11.2018. However, the respondent failed to deliver the possession in time. During the pendency of delivery of possession, the complainant kept on seeking refund after offering deduction of earnest money to the tune of 20%, but this aspect of the matter

did not materialize/honour by the respondent. The complainant has paid a total sum of Rs.53,43,416/- against a total sale consideration of Rs.1,73,06,088/-. It is on record that the respondent has not honoured its commitment to deliver the possession in time and the complainant too has not fulfilled his obligation to make timely payments to the respondent. Since RERA has come into force in May 2016 and as per Section 19 (6) of the RERA Act, both the parties are obligatory to fulfill their respective commitments. Since the revised date of delivery of possession is June 2020, as such, the complainant is directed to pay the due amounts with prescribed rate of interest @ 10.75% per annum and the respondent is also duty bound to give delayed possession charges at 10.75% p.a. to the complainant till the offer of possession of the flat by 30.6.2020 failing which the complainant/buyer shall be entitled for total refund of entire deposited amount alongwith prescribed rate of interest.

Counsel for the respondent has stated at bar that building is complete and in support of his contention they have submitted photographs which are for Phase-II in which unit No.377 of the complainant is located. It has further been submitted that they will be applying for issue of OC within next two months. Respondents are directed to hand over the unit to the complainant immediately on receipt of occupation certificate by DTCP.

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

Samir Kumar
(Member)
5.2.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 597 of 2018
Date of first hearing : 11.12.2018
Date of Decision : 05.02.2019

1. Sh. Pawan Kumar
R/o A3/514, Block-10, Kailash Dham
Apartments, Sector-50, Noida (UP)

2. Sh. Des Raj
R/o Flat no. 404, Tower no. 8, Valley View
Estate, Gwal Pahadi, Faridabad Road,
Gurugram, Haryana

...Complainants

Versus सत्यमेव जयते

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

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Nirmol Kumar Agarwal
Shri M.K.Dang

Advocate for the complainants
Advocate for the respondent



ORDER

1. A complaint dated 24.07.2018 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 Sh. Pawan Kumar and Sh. Des Raj, 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 09.05.2014 for unit no. 904 on 9th floor, A3 tower, admeasuring super area of 1726.69 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 apartment buyer's agreement has been executed on 09.05.2014, 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.	904, 9 th floor, tower no. A3
4.	Project area	37.5125 acres



5.	Registered/ not registered	For Phase II- 377 of 2017 (13.152 acres) Note: The project is registered separately in 3 phases. However, the tower 'A3' is located in phase-II
6.	Revised date of completion as per RERA registration certificate	30.06.2020
7.	DTCP license	05 of 2013 dated 21.02.2013
8.	Date of consent to establish (CTE)	25.05.2016
9.	Date of environmental clearance	04.05.2016
10.	Date of booking	11.03.2013 (as per the complaint)
11.	Date of apartment buyer's agreement	09.05.2014
12.	Total consideration	Rs. 1,73,06,088.42/- (as per payment plan in annexure IV, pg 102 of the complaint)
13.	Total amount paid by the complainant	Rs. 53,43,416/- (as per the complaint)
14.	Payment plan	Instalment payment plan (as per annexure IV, pg 102 of the complaint)
15.	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, annexure R-7) + 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
16.	Delay of number of months/ years upto 05.02.2019	1 month approx.
17.	Penalty clause as per apartment buyer agreement dated 09.05.2014	Clause13.4- 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 09.05.2014 is available on record for unit no. 904 on 9th floor, A3 tower, admeasuring super area of 1726.69 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 11.12.2018, 10.01.2019 and 05.02.2019. The reply has been filed on behalf of the



respondent and has been perused. A rejoinder has been filed by the complainants wherein they have re-asserted the facts stated in the complaint and denied all the contentions of the respondent.

Facts of the complaint

6. The complainants submitted that on 11.03.2013, the complainants booked a unit in the project named “The Corridors” in Sector 67-A, Gurugram by paying an advance amount of Rs. 12,00,000/- to the respondent. Accordingly, the complainants were allotted a unit bearing 904 on 9th floor, A3 tower. An allotment letter was issued to the complainants on 07.08.2013.
7. On 09.05.2014, 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. The complainants made payments of all instalments amounting to a total of Rs. 53,43,416/-.



8. The complainants submitted that depressed with very slow development of the project inspite of paying Rs. 53.43 lakhs of their hard earned money and getting no response form the respondent on their request for expediting the project, the complainants placed a request for the cancellation and refund of the entire amount deposited by the complainants on 27.12.2015, since it was not possible for them to wait for the project completion keeping in view the slow pace of project development.
9. The complainants submitted that on this request, the respondent company's assistant manager customer services, Ms. Charu Goel acknowledged the cancellation request vide mail dated 29.12.2015 and haven't denied that the project was delayed.
10. The complainants submitted that thereafter, the complainants again placed a request for refunding their hard-earned money, several times vide emails date 31.12.2015, 12.01.2016, 17.03.2016, 21.03.2016, 28.11.2016, 09.12.2016, 13.12.2016 and 10.05.2018. However, no action has been initiated by the respondent to refund the money till date, while the project still remains far from complete.



11. It is further submitted that the respondent vide letter dated 04.08.2016 contacted the complainants, requesting for a “no objection” to change the building structure of the relevant tower in which the said tower in which the property was allotted to the complainants. The said letter is indicative of the fact that as on date of the said letter itself the tower was away from completion, in fact even the construction of the same could not have commenced, thus making it evident that as on 04.08.2016, the work on the said tower had not commenced.
12. The complainants submitted that since the project and the said apartment is still under construction, the respondent is in continuous default of its obligation towards the complainants and under the law.
13. **Issues raised by the complainant**

The relevant issues raised in the complaint are:

- I. Whether the respondent has deliberately failed to respond to the complainants request for cancellation and refund of the money despite acknowledging the request vide email dated 29.12.2015?
- II. Whether as required under section 18(1) of the Act, the respondent has failed to complete the project or give possession in time and thus is liable to refund the entire



amount paid by the complainants till date along with interest as prescribed under the Act?

III. Whether as required under section 19(2) of the Act read with the rules framed hereunder, the break up of completion of each phase has not been given to the complainants?

IV. Whether as required as per rule 8(2) of the rules, the agreement is not as per the format prescribed by the Act read with rules and thus shall not be construed to limit the rights and interests of the allottee/complainants under the Act or the rules for the regulation made thereunder?

14. Relief sought

I. Direct the respondent to refund a sum of Rs. 53.43 lakhs along with interest from the date of cancellation request till the date of refund.

Respondent's reply

15. The respondent denied the averments made by the complainants in their complaint.

16. 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.

17. The respondent submitted that all payments were demanded by the respondent company in accordance with the agreed payment schedule. However, the complainants have failed in making payment of the remaining instalments as demanded by the respondent company despite several reminders and follow-ups and have filed the present complaint in order to unnecessarily harass and pressurize the respondent company. The complainants are bound to pay the remaining instalments amount along with delayed interest towards the sale consideration of the unit. It is further submitted that a demand of Rs. 19,76,868/- was rightly raised by the respondent company in accordance with the mutually agreed payment plan.

18. The respondent submitted that despite being at fault in paying the remaining instalments, the complainants had wrongly sent an email requesting the cancellation of the booking. It is wrong and denied that there has been a delay in the project



development. It is submitted that there has been no default on part of the respondent company. Further, the illegal request for cancelation of the booking alleging the delay in the project development was made just after 18 months from the execution of the apartment buyer's agreement.

19. The respondent submitted that in the email dated 29.12.2015, the respondent's assistant manager-customer experience had informed complainant no.1 about the speedy completion of the project. It was also reasserted the respondent's commitment to complete the construction as per the schedule and had offered a site visit to the complainants.
20. The respondent further submitted that the complainants have been committing continuous defaults from the very inception in making payment of the due instalments and accordingly delayed payment interest was charged by the respondent in accordance with the terms of the agreement. It is pertinent to mention that several reminders dated 30.03.2015, 05.06.2015, 02.06.2016, 29.08.2016, 21.09.2016, 04.10.2016, 27.10.2016, 21.11.2016, 13.12.2016, 24.01.2016, 15.02.2017, 14.03.2017, 17.04.2017 were issued to the complainants for payment of remaining due instalments.
21. The respondent submitted that it is wrong and denied that the



respondent has not responded on the complainants request for cancellation. They had already intimated the complainants that the unlawful request of cancellation by the complainants cannot be considered. It is submitted that there has been no default on the part of the respondent company. Rather, the complainants have failed to adhere to their contractual obligations and they now cannot wriggle out of the same by filing baseless, false and frivolous complaint.

22. It is further submitted that the respondent company has regularly informed the complainants about the construction status and the same is evident from the payment demands which were raised by the respondent company from time to time. It is pertinent to mention that the complainants are aware from the very beginning that according to the terms and conditions of the agreement, the payment demands were supposed to be raised only on completion of respective stages of construction.

23. The respondent further submitted that the respondent company has already completed the construction of the tower in which the unit allotted to the complainants is located.

Determination of issues

After considering the facts submitted by the complainants,



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

24. In respect of the **first issue** raised by the complainants, vide email dated 29.12.2015(exhibit L, page 124 of the complaint), the respondent acknowledged the cancellation request raised by the complainants but did not consider their request as per the terms of the agreement and also did not give a justification for their inability in considering the request. This can be said to be a deficiency of service on the part of the respondent company.
25. In respect of **second issue**, as per clause 13.3 of the agreement dated 09.05.2014, the due date of possession comes out to be 27.11.2018. However, the respondent failed to deliver the possession in time. Further, the project is registered with the authority and the revised date of completion as per the registration certificate is 30.06.2020 and during the proceedings dated 05.02.2019, the respondent submitted that the building is complete, and they will be soon applying for the OC. Also, the photographs for phase-II in which the unit in question is located have been annexed with the file. Thus, keeping in view the status of the project and the interest of



other allottees, the authority is of the consistent view that refund cannot be allowed at this stage. However, the complainants are entitled to delayed possession charges at 10.75% per annum to the complainant from the due date of possession till the offer of possession by 30.06.2020, failing which the complainants shall be entitled to refund of the entire deposit the amount along with prescribed rate of interest.

26. In respect of **third issue** raised in the complaint, as per annexure IV of the agreement, a payment plan was laid down highlighting the break up of construction and thereafter payment reminders were made by the respondent highlighting the completion of each phase. Thus, this issue is decided in the negative.
27. In respect of **fourth issue**, the apartment buyer's agreement was executed on 09.05.2014, much prior to coming in force of RERA and HARERA rules. Thus, the rules and act cannot be applied retrospectively.
28. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



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.

29. 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

30. **Jurisdiction of the authority-** The project “The Corridors” is located in Sector 67-A, 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.

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 complainants at a later stage.

31. As per clause 13.3 of the agreement dated 09.05.2014 for unit no.904, 9th floor, tower-A3, in the project “The Corridors”, sector-67A, Gurugram, possession was to be handed over to the complainants within a period of 42 months from the date of approval of building plans or pre-conditions imposed thereunder i.e. 27.11.2014 (date of NOC for fire approval) + 6 months grace period which comes out to be 27.11.2018. However, the respondent failed to deliver the possession in time. Further, the project is registered with the authority and the revised date of completion as per the registration certificate is 30.06.2020. During the pendency of delivery of possession, the complainants kept on seeking refund after offering deduction of earnest money to the tune of 20%, but this aspect of the matter did not materialize/ was not honoured by the respondent. The complainants have paid a total sum of Rs.53,43,416/- against the total sale consideration of Rs.1,73,06,088/-. It is on record that the respondent has not honoured his commitment to deliver the possession in time and the complainants too have not fulfilled their obligation to make timely payments to the respondent. The Real Estate (Regulation and Development) Act, 2016 came into force in



May 2016 and as per section 19 (6) of the said Act, both the parties are under an obligation to fulfill their respective commitments. Counsel for the respondent has stated during proceedings dated 05.02.2019 that building is complete and in support of his contention they have submitted photographs which are for phase-II in which unit no.377 of the complainants is located. It has further been submitted that they will be applying for issue of OC within next two months. Since the revised date of delivery of possession is June 2020, as such, the complainants must pay the due amount along with interest for delayed payment and the respondent is also duty bound to pay delayed possession interest at the prescribed rate to the complainants from the due date of possession till the offer of possession by 30.06.2020, failing which the complainants shall be entitled to refund of the entire deposit the amount along with prescribed rate of interest.



Decision and directions of the authority

32. 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 respondent:
- (i) The complainants are directed to pay the due amounts with prescribed rate of interest @ 10.75% per annum.

- (ii) 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 complainants.
- (iii) The respondent is directed to pay interest accrued from due date of possession, i.e. 27.11.2018 to 05.02.2019 (date of this order) to the complainants within 90 days from the date of order. Thereafter, the interest shall be paid on or before 10th of every subsequent till the offer of possession of the flat by revised date of possession as indicated in the registration certificate, i.e. 30.06.2020.
- (iv) Respondent is directed to hand over the unit to the complainants immediately on receipt of occupation certificate from DTCP.
- (v) If the respondent fails in offering possession by 30.06.2020, the complainants shall be entitled to total refund of entire deposited amount along with prescribed rate of interest.
33. The complaint is disposed of accordingly.
34. The order is pronounced.
35. Case file be consigned to the registry.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Date: 05.02.2019

Judgement uploaded on 26.02.2019