

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 29.01.2019
Complaint No.	635/2018 Case titled as Mr. Hemant Sapra versus M/s Ireo Grace Realtech Private Limited
Complainant	Mr. Hemant Sapra
Represented through	Complainant in person with Shri Sukhbir Yadav Advocate.
Respondent	M/s Ireo Grace Realtech Private Limited
Respondent Represented through	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.**

Arguments heard.

As per clause 13.3 of the Builder Buyer Agreement dated 20.8.2015 for unit No.903, 9<sup>th</sup> floor, Tower-C4, in project "The Corrodore", 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 fulfilment of pre-condition imposed thereunder + 6 months grace period (to be computed from approval of fire fighting scheme i.e. 27.11.2014) which comes out to be 27.11.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,25,52,714/- to the respondent against a total sale consideration of Rs.1,33,14,597/-. 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 handing over possession failing which the complainant is entitled to seek refund of the amount.

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 10<sup>th</sup> of subsequent month. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

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

Samir Kumar  
(Member)  
29.1.2018

Subhash Chander Kush  
(Member)

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

**Complaint no. : 635 of 2018**  
**First date of hearing : 10.01.2019**  
**Date of decision : 29.1.2019**

Hemant Sapra  
R/o: A-204, Heritage One, Sector-62, Gurgaon,  
122005, Haryana

**Complainant**

Versus

Ireo Grace Realtech Pvt. Ltd. (through  
managing Director/Authorized representative)  
Registered office: C-4, 1<sup>st</sup> floor, Malviya Nagar,  
New Delhi-110017

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Sukhbir Yadav Advocate for the complainant  
Shri Hemant Sapra Complainant in person  
Shri M.K. Dang Advocate for the respondent

**ORDER**

1. A complaint dated 01.08.2018 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 Hemant Sapra, against the promoter Ireo Grace Realtech Pvt. Ltd., on account



of violation of the clause 13.3 of builder buyer's agreement executed dated 20.08.2015 in respect of flat no. CD-C4-09-903, 9<sup>th</sup> floor, admeasuring 1349.94 sq. ft' of the project "The Corridor" located at sector 67A, Gurugram for not handing over possession of the subject unit on the due date i.e. by 21.03.2017 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid*.

2. Since the builder buyer agreement dated 20.08.2015 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non compliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"The Corridor", Sector 67A, Gurugram, Haryana.
2.	Unit no.	903 on 9 <sup>th</sup> floor, tower C4
3.	Nature of real estate project	Group housing colony



4.	DTCP license no.	05 of 2013 dated 21.02.2013
5.	OC applied dated	06.07.2017
6.	Approval of firefighting scheme	27.11.2014
7.	Admeasuring super area of the allotted unit	1349.94 sq. ft.
8.	RERA registered/unregistered	Registered
9.	Registration no.	377 of 2017 for phase 2
		378 of 2017 for phase 1
		379 of 2017 for phase 3
10.	Date of execution of builder buyer agreement	20.08.2015
11.	Payment Plan	Construction linked payment plan
12.	Total consideration	Rs. 1,33,14,597.84/- (Page 101)
13.	Total amount paid by the complainant till date	Rs. 1,25,52,714/- (as per complainant)
14.	Date of approval of building plans	23.07.2013
15.	Due date of delivery of possession as per clause 13.3 of the agreement dated 20.08.2015 i.e. 42 months from the date of approval of building plans and/or fulfilment of precondition imposed there under plus 180 days. Computed from approval of firefighting scheme plans i.e. on 27.11.2014	<b>27.11.2018</b>
16.	Delay in handing over possession till date	2 months



4. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent. A builder buyer agreement dated 20.08.2015 is available on record for the aforesaid unit no. 903 according to which the possession of the same was to be delivered by 27.11.2018. The respondent has failed to deliver the possession till date. Therefore, the promoter has not fulfilled his obligation which is in violation of section 11(4)(a) of the Act *ibid.*
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 10.01.2019 and 29.01.2019. The reply has been filed on behalf of the respondent which has been perused.

#### **Facts of the complaint**

6. Briefly stated, facts relevant for the disposal of present complaint as that complainant submitted that he received a marketing call from a real estate agent Mr. Sanjay Sharma from REIAS India Real Estate Pvt. Ltd., who represents himself an authorized representative of respondent for



investment in residential project of IREO, situated at sector - 67A, Gurgaon. Further, submitted that he visited to sales gallery of respondent along with real estate agent. Marketing staff of respondent shows rosy picture of project and allure with proposed specification in collusion with real estate agent. Local staff of respondent gave application form and assured that possession will be delivering within 36 months i.e upto March 2016.

7. The complainant submitted that the issued a cheque of Rs. 12,50,000/- vide cheque no. 366435 drawn in Indian Overseas Bank along with an application form. Respondent acknowledges the payment and issued payment receipt dated 12.03.2013. Further, dated 07.08.2013 respondent issued "Offer of allotment of Residential Apartment" for unit no. CD-C4-09-903. Complainant have to accepted the offer of allotment under compel circumstances (Refer to term no. 3, 4 and 6 of offer of allotment). Complainant lodged his protest to respondent about the unilateral terms and conditions of allotment letter.



8. The complainant submitted that on date 20.08.2014 a pre-printed apartment buyer agreement was executed between respondent and complainant. Complainant raised his concern/ objection on unilateral, arbitrary and one sided terms and conditions of agreement in front of respondent and asked to amend the terms. Moreover the due date of offer of possession was extended to 42 months + 6 months. But respondent referred to terms and conditions of application form and allotment letter and threatens to complainant to forfeit the earnest money 20%, if complaint fails to execute FBA.
9. The complainant submitted that licence no. 05 of 2013 was issued to (i) Precision Realtors Pvt. Ltd, (ii) Blue Planet Infra Developers Pvt. Ltd. (iii) Madeira Conbuild Pvt. Ltd. and Global Estate (a partnership firm) vide order dated 22.02.2013. In apartment buyer's agreement, the licence holder were presented as conforming party and these conforming party did not signed the agreement, moreover the apartment buyer agreement did not contain the details of





collaboration/ development agreements etc. and building plans was approved by department on date 21.03.2013.

10. The complainant submitted that on date 20.05.2016 complainant taken home loan from Kotak Mahindra Bank and respondent issued permission to mortgage against the unit in favour of Bank. That thereafter complainant continued to pay the remaining instalment as per the payment schedule of the builder buyer agreement and have already paid the more than 90% amount i.e. Rs. 1,25,89,776/- out of total sale consideration Rs. 1,33,14,597/- till date 16.04.2017 along with interest but when complainant observed that there is no progress in construction of subject flat for a long time, they raised their grievance to respond. Though complainant was always ready and willing to pay the remaining instalments provided that there is progress in the construction of flat.

11. The complainant submitted that the project is already delayed by 22 months till date July, 2018 and it might take 2 more years to get it complete in all aspect. Further, the



complaint is living on a rented accommodation and paying monthly rent of Rs. 47,300/- and he is also paying EMI on loan against the subject flat.

12. The complainant submitted that on date 27.12.2017 he visited to office of respondent and asked for handing over of the flat and requested for several documents. He wrote an email to Mr. Pankaj Soni (Senior Manager - Customer Services) and again requested to provide the following documents and information. Further, he send reminder emails of date 24.01.2018, 27.01.2018 and 17.03.2018, but Respondent did not provided any information and nor the documents till date. Also, submitted on date 06.04.2018 he again approached the builder in their office and asked for required information and documents. Complainant requested to Lipi Ray (Head CRM) to provide any ready to move in apartment in any other project, as respondent is advertising the availability of ready to move in apartment in project IREO -SKYON, Sector-60 and IREO VICTORY VALLEY, Sector -67 @ Rs. 8250/- to Rs. 8600/- per sq. ft. but the respondent bluntly



refused to offer any other alternative available ready to move apartment.

13. The complainant submitted that the cause of action for the present complaint arose in or around 2013 when respondent invite the application for booking without having authority and provided wrong information and concealed material facts. The cause of action again arose on various occasions, including on: a) Aug. 2013; b) April, 2014; c) August, 2016, d) April, 2017; e) Jan. 2018 and on many time till date, when the protests were lodged with the respondent party for refund the paid money. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party.

**14. Issues to be decided**

- I. Whether complainant is entitled for refund of all money paid to respondent?
- II. Whether complainant is entitled for compensatory interest from due date of possession till the date of possession?



## 15. Reliefs sought

The complainant is seeking the following reliefs:

- I. Pass an appropriate award directing the Respondent parties to refund the paid amount i.e. Rs. 1,25,89,776/-and with interest @20% from date of booking to date of refund on paid amount by the Complainant to the respondent party.
- II. Respondent party may kindly be directed to pay an amount of Rs.1,00,000/- as litigation expenses;
- III. Respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the apartment buying application form.
- IV. Any other relief/direction which the hon'ble Authority deems fit and proper in the facts & circumstances of the present complaint.
- V. That in the interest of justice, this authority should pass strict and stringent orders against errant



Promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

### **Respondent's reply**

16. The respondent submitted that the complaint is neither maintainable nor tenable before this hon'ble authority and is liable to be out-richtly dismissed. The apartment buyer's agreement was executed between the complainant and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively. Further, submitted that the complainant has no locus standi to file the present complaint.



17. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 34 of the buyer's agreement, which is reproduced for the ready reference of this hon'ble authority-

*"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".*



18. The respondent submitted that this hon'ble authority does not have the jurisdiction to decide on the imaginary compensation and interest as claimed by the complainant. It is submitted that in accordance with Section 71 of the Real Estate Regulatory Authority Act read with rules 21(4) and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, the authority shall appoint an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard. It is submitted that even otherwise it is the adjudicating officer as defined in section 2(a) of the Real Estate Regulatory Authority Act who has the power and the authority to decide the claims of the complainant.

19. The respondent submitted that the complainant has not approached this hon'ble authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by him maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:



- A. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Grand Arch', 'Victory Valley', 'Skyon' and 'Uptown' and in most of these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
- B. That the complainant, after checking the veracity of the project namely, 'Corridor', Sector 67A, Gurugram had applied through his channel partner for allotment of an apartment vide their booking application form dated 05.03.2013. The complainant agreed to be bound by the terms and conditions of the booking application form agreed upon by him.
- C. That based on the said application, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainant apartment no. CD-C4-09-903 having tentative super area of 1349.94 sq. ft. for a total sale consideration of





Rs. 1,33,14,597.84. Vide letter dated 25.03.2014, the respondent sent 3 copies of the apartment buyer's agreement to the complainant which was signed and executed by him only on 20.08.2015 after reminders dated 28.05.2014 and 17.07.2014 were sent to the complainant by the respondent. It is pertinent to mention herein that when the complainant had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be enforced retrospectively.

- D. That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan and the complainant made some payments in time and then from third instalment onwards started delaying and committing default. However, the same was paid by the complainant only on 28.07.2014 after reminders dated 13.04.2014 and 04.05.2014 were issued by the respondent to the complainant and inter -alia.



E. That the complainant has till date made the part- payment of Rs.1,25,89,776/- out of the total sale consideration of Rs. 1,33,14,597.84. However, it is submitted that the complainant is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.

F. That the possession of the unit is supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 13.3 of the buyer's agreement and clause 43 of the schedule - I of the booking application form states that

*'...subject to the allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the preconditions imposed thereunder (Commitment Period). The allottee further agrees and understands that the company shall be additionally be entitled to a period of 180 days (Grace Period)...'*

G. That from the aforesaid terms of the buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary



approvals. It is pertinent to mention here that it has been specified in sub- clause (iv) of clause 17 of the approval of building plan dated 23.07.2013 of the said project that the clearance issued by the ministry of environment and forest, Government of India has to be obtained before starting the construction of the project. It is submitted that the environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of Part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan was to be duly approved by the fire department before the start of any construction work at site.

- H. That it is submitted that the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, would have expired only on 27.11.2018. However, the complainant has filed the present complaint prematurely prior to the due date of possession and no cause of action had accrued at the time of



filing of the complaint. The complainant is trying to mislead this hon'ble authority by making baseless, false and frivolous averments. The respondent has already completed the construction of the tower in which the unit allotted to the complainant is located and the photographs of the same are attached herewith as annexure R-21(Colly). It is pertinent to mention herein that the respondent has already applied for the grant of occupation certificate on 06.07.2017.

20. The respondent submitted that no illegality or wrong has been committed by the respondent. The respondent company is ready to offer the possession to the complainant subject to his making payment of the outstanding dues as agreed upon by the parties in accordance with the terms and conditions of the buyer's agreement and on the receipt of the occupation certificate to be issued by the concerned authorities.

### **Determination of issues**

After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are given below:



21. With respect to the **issue no. 1** raised by the complainant, as per clause 13.3 of the builder buyer agreement dated 20.08.2015, possession was to be handed over to the complainant within a period of 42 months from the date of approval of building plans or fulfilment of pre-condition imposed thereunder + 6 months grace period (to be computed from approval of fire-fighting scheme i.e. 27.11.2014) which comes out to be 27.11.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,25,52,714/- to the respondent against a total sale consideration of Rs.1,33,14,597/-. 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 and Development) Act, 2016 till handing over possession.

22. With respect to the **issue no. 2** raised by the complainant, the complainant can seek compensation from the adjudicating officer for which he shall make a separate application.



### Findings of the authority

23. The authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.



24. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the

Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

25. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer.

**Decision and directions of the authority:-**

26. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:-

- (i) As per clause 13.3 of the builder buyer agreement dated 20.8.2015 for unit no.903, 9<sup>th</sup> floor, tower-C4, in project "The Corridor", 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 fulfilment of



pre-condition imposed thereunder + 6 months grace period (to be computed from approval of fire-fighting scheme i.e. 27.11.2014) which comes out to be 27.11.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,25,52,714/-to the respondent against a total sale consideration of Rs.1,33,14,597/-. 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 and Development) Act, 2016 till handing over possession.

- (ii) 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 10<sup>th</sup> of subsequent month. The respondent is directed to adjust the payment of





delayed possession charges towards dues from the complainant, if any.

27. Complaint stands disposed of.
28. File be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.01.2019

Judgement uploaded on 26.02.2019

**(Subhash Chander Kush)**

Member



HARERA  
GURUGRAM

