

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 09.01.2019
Complaint No.	1398/2018 Case titled as Sunita Yadav Vs. Ireo Grace Realtech Pvt.Ltd.
Complainant	Sunita Yadav
Represented through	Complainant in person with Shri Deepak Kumar Khushlani, Advocate.
Respondent	M/s Ireo Grace Realtech Pvt.Ltd.
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 registered with the authority.

Arguments heard.

As per clause 13.3 of the Builder Buyer Agreement dated 12.5.2014, for unit No.CD-B7-03-304, Tower B7, 3rd floor, in project "The Corridor, Sector 67-A, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of approval of building plans i.e. 23.7.2013 + 180 days grace period which comes out to be 23.7.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.42,44,286/- to the respondent against a total sale consideration of Rs.1,38,83,798/- and as such complainant is well

within his right to claim refund alongwith prescribed rate of interest i.e 10.75%.

Respondent is directed to forfeit 10% of the total sale consideration amount and refund the balance amount deposited by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within 90 days from today.

Complaint stands disposed of. 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. 1398 of 2018
Date of First Hearing: 03.01.2019
Date of Decision 09.01.2019

1. Ms. Sunita Yadav

R/o 1482/3 Rajiv Nagar, Old Delhi Road,
Opposite Air force officers mess, Gurugram-
122001

Complainants

2. Ms. Anita Bahl

R/o 4244, B-5 &6,
Vasant Kunj, New Delhi
Versus

1. M/s IREO Grace Realtech Pvt Ltd

Registered office: 304, Kanchan House,
Karampura, Commercial Complex, New
Delhi-110015

2. M/s Precision Realtors Ltd.

305, Kanchan House,
Karampura Commercial complex,
New Delhi

3. M/s Blue Planet Infra Development Ltd.

40/16, East Patel Nagar,
New Delhi

4. Madeira ConBuild (p) Ltd.

304, Kanchan House, (3 rd floor)
Karampura Commercial Complex
New Delhi

5. M/s Global Estate

G- 23, Ashok Vihar, Phase I
Delhi

Respondents



CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Deepak Kumar Khushlani
and complainant in person
Shri M.K. Dang

Advocate for complainant
Advocate for the respondent

ORDER

1. A complaint dated 23.10.2018 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 Ms. Sunita Yadav against the promoter M/s IREO Grace Realtech Pvt. Ltd.
2. Since, the builder buyer agreement has been executed on 12.05.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for noncompliance 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 Corridor, sector 67-A, Gurgaon,, Haryana
2.	Nature of real estate project	Residential group housing colony
3.	Area of the project	37.5125 Acres
4.	Unit No.	CD-B7-03-304(tower B7) 3 rd floor
5.	Area of unit	1320.86 sq. ft
6.	Registered/not registered	Registered (Phase1, Phase2 and Phase 3)
7.	RERA registration no	378 of 2017 (Phase 1) 377 of 2017 (Phase 2) 379 of 2017 (Phase 3)
8.	Completion date as per RERA registration certificate	30.06.2020
9.	Date of booking	22.03.2013
10.	Date of allotment letter	07.08.2013
11.	Date of Agreement	12.05.2014
12.	Total Consideration	Rs 1,38,83,798/-
13.	Total amount paid by the complainant	Rs. 42,44,286/-,
14.	Payment Plan	Construction linked payment plan
15.	Approval of firefighting scheme	27.11.2014
16.	Date of cancellation of allotment	01.09.2016
17.	Penalty Clause (As per clause 13.4 of Apartment Buyer Agreement)	Rs 7.50 per sq. ft of Super Area for every month of delay



4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent appeared on 03.01.2019. The case came up for hearing on 03.01.2019 and 09.01.2019. The reply filed on behalf of the respondents have been perused. The respondents have supplied the details and status of the project along with the reply.

Facts of the case

5. The complainant submitted that the respondent no.1 is a developer and license for constructing and equipping a group housing colony located at golf course extension road, Sector-67-A in the revenue estate of Gurugram, Haryana known by the project name as "THE CORRIDORS" had been granted to the respondent no. 2 to 5, who are the "Confirming Parties" and are also the alleged subsidiary companies of respondent no.1.
6. The complainant submitted that the time of execution of application form, respondent no.1 collected the initial earnest money of Rs.12,50,000/- from the complainants vide cheque no. 408351 dtd.3.3.2013 and cheque no. 54612 dated.



04.03.2013 of Rs.6,25,000/- each vide against which two separate receipts on dated 12.03.2013 vide no. 13210446 and 13210468 dated 12.03.2013 were issued mentioning therein the unit/flat no. CD-B7-03-304.

7. The complainants thereafter as per the 2nd demand raised by the respondent no.1, paid another sum of Rs. 12,55,484/- through two cheques of Rs. 6,27,742/- each against which acknowledgment vide two separate receipts no. 14211027 dated.13.5.2013 and 14211285 dated.21.5.2013 were issued by the respondent no.1.
8. That complainants were stunned and surprised to note the moment they received the "Offer of Allotment" letter dated.07.08.2013 with a payment plan attached thereto; wherein net basic sale price had been changed/increased to Rs.9,200/- per sq. ft. without any notice, knowledge and consent of the complainants, also falsely raised Rs.8,50,633/- towards preferential location charges Rs.4,33,123/- towards development charges and Rs. 2,50,000/- towards club membership charges, which were not agreed or were a part



of the sale consideration price at the time of booking of unit/flat.

9. That complainants when enquired in regard to increase of Rs. 450/- per sq. ft. in the basic sale price and demand of other charges as above mentioned; then it was assured by the respondent no.1 that increased price shall be taken-back including other charges and persuaded the complainants to pay the next/third instalment to avoid any late payment charges and/or forfeiture of money and promised that the adjustment shall be made before issuance of next/fourth instalment's due date. Respondent no.1 further assured that they are in a process of being finalizing the apartment buyer agreement and necessary reductions in other charges & in the basic sale price shall be done at their end; thus, vide letter dated.24.12.2013 respondent no.1 requested the complainants to return the original buyer agreement which was already sent to the complainants vide letter dated 13.12.2013. Consequently, complainants returned the same for necessary corrections and complainants also paid the



Third instalment of Rs.17,21,414/- through two cheques of Rs. 8,60,707/- each against which two receipts no. 15211217 and 15211218 dtd.30.4.2014 were issued. Furtherance to that complainants also paid a separate sum of Rs.17,388/- vide two cheques of Rs.8694/- each, against which two receipts No. 15211718 & 15211720 dated 31.5.2014 were also issued.

10. That when complainants received another apartment buyer agreement along with payment plan for getting it signed by the complainants; several other issues which were contrary, one sided & unethical adversely affecting the interest and charges as falsely claimed were neither being resolved in the said apartment buyer agreement nor the original basic sale price was reduced to its original amount of Rs. 8,750/- per sq. ft.

11. That complainants at the time when no payment demand was to be paid, requested the respondent no.1 to refund their hard-earned money, but the respondents so, as to take benefit of their own wrongs and upon false assurances



through their executives named Ms. Lipi Ray & Mr. Siddharth Kapoor while extending the lame excuses by further stating to discuss the issue of the complainants with higher officials as a special case assured to return the amount. Lastly the cancellation of unit vide letter dtd.1.9.2016 was done by the respondent no.1 by illegally forfeiting 20% of the total cost of unit also not only deduct interest of Rs.5,55,050/- upon delayed payment; furtherance to that Rs.3,90,076/- as brokerage and Rs.5,52,339/- as applicable taxes has also been falsely levied.

12. The respondent no.1 in continuation of that send the Final notice dated.28.7.2016 threatening to cancel the unit, which lastly was cancelled vide cancellation letter dtd.1.9.2016 i.e. after more than two years from the date of receiving the last payment and forfeited the whole sum paid by the complainants.

13. That the complainants subsequently came know that the license with respect to the project "THE CORRIDORS" had been granted to respondents 2 to 5 and the name of the



licensee along-with the license details were supposed to be disclosed by accused company in their advertisement issued for launch of present project, which they did not do so, but under malafide intentions they firstly pre-launched the present housing project and allotted the unit no. before grant of building plan approval by receiving the initial/earnest money; such illegal acts amount to misleading and defrauding the general public, as per the information derived through reply dated 26.11.2015 under R.T.I. issued from the Directorate of Town & Country Planning, Chandigarh.

14. The complainants further submit that as per the representations made by the respondent no.1 that it is fully competent to develop, transfer and convey the right, title and interest of the residential apartment pursuant to which complainants booked the unit. That, however sufferings due to misconduct and modus operandi of respondents, when complainants enquired and shocked to know that respondents had committed fraud/misrepresentation of facts for the reason that Under section 2 (d) of Haryana



Development and Regulation of Urban Areas, Act, 1975 (*hereinafter referred to as Haryana Act, 1975*), defines term colonizer to mean an individual company or association, body of individuals, whether incorporated or not, owing land for converting it into a colony and to whom a license has been granted under the said Act. In the present case, undeniably, till date, the respondent no.1 is neither an owner of any part of land comprised of project nor any license has been granted by the Director General Town & Country Planning, Chandigarh to the Respondent No.1. Therefore, it meets none of the essential conditions of the expression “**Colonizer**” as prescribed under section 2 (d) of the Haryana Act, 1975.

15. It is further pertinent to mention here that in terms of Memo No. PF-51A/2015/2708 dated. 18.2.2015, the D.G.T.C.P, Chandigarh has laid down policy parameters for allowing change in beneficial interest, viz. change in developer; assignment of joint development rights and/or marketing rights etc. in a license granted under Haryana Act, 1975.



Whereas, no such permission had been granted in favour of accused company by D.G.T.C.P, Chandigarh; and what to talk of neither been ever applied by the respondent no. 2 to 5 land owning companies. Thus, from the above stated position it is clear that the respondent no.1 has no legal authority to deal with the said license No. 5/2013 and/or to book, allot, sell, transfer any flats/units made thereat with any third party and the entire transaction made by the respondent no.1 in league with other respondents is totally illegal and unlawful based on misrepresentations and false statements.

16. To unearth the falsehood of accused company, it is stressfully submitted that the “Apartment Buyer’s Agreement” had only been signed by the respondent no.1 also on behalf of land owning companies, in absence of valid relationship with them. Further, it had also been revealed that no approval for change in developer in terms of policy dated 18.02.2015 issued by Town & Country Planning Department, Haryana, had been granted to the respondent no.1; which clearly proves the fact “that the project has been sold by the respondent no.1, which



is not a licensee company in absence of documents regarding relationship of respondent no.1 with licensee companies/respondent nos. 2 to 5 terming project imperfect and defective”.

17. The crucial aspect had to be seen that at the time of advertising the project and/or receiving the earnest money whether a proper and valid license for carrying out the residential project was granted to respondent no.1 and/or it was competent and authorized with valid approvals/clearances from the DGTCP, Chandigarh to carry out with the project; failing which prima-facie proves that respondent no.1 was neither the owner for carrying out the residential project nor was competent to collect the money and to the book/sell the flats thereof.

18. The complainants also submit that the project was not only pre-launched but, the initial/earnest money of 20% was taken before not only before grant of building plan approval, but even prior to the execution of agreement for sale, which is not permissible under the Act. It is also submitted that



Building Plan Approval for the project had only been granted on dated 23.07.2013 and the accused company was well aware that the present project cannot be launched before grant of building plan approval, for the reason they not only started the construction at the site.

19. Finally so, as to grab the hard earned money of complainants, the Respondents in terms of their Cancellation Letter dtd.1.9.2016 had not only forfeited **20%** of the earnest money i.e. Rs.27,37,134/-; but, also deducted interest to the tune of Rs.5,55,050/-; on delayed payment; thereafter Rs.3,90,076/- as Brokerage and Rs.5,52,339/- as Service Tax had also been deducted, thus complainant left with no right, title to the claim/money paid by the complainants.

20. That respondent no.1 at the time of booking advertised the project with a 90 meter motorable access road approaching to the project and assured that a link road of 90-meter-wide, flanked by an 18 meter wide green belt, further flanked by a 24 meter wide service road as a approach to the project as



also shown in site-plan/brochures at page no. 38 & 39 of the apartment buyer agreement.

21. But, the respondents since inception and on every account had concealed the fact that the land upon which the 90 meter road was to be developed, which in fact is under litigation filed by the landowners before Hon'ble High Court of Punjab & Haryana in Civil Writ Petition No. 25807/2014 and 8983/2014, wherein stay order had already been passed; furtherance to that no fresh acquisition notification or proceedings had been initiated by HUDA/Government, as per the information gathered from the O/o Land Acquisition Officer, Haryana under RTI vide reply dated.04.01.2017.

22. Therefore, it is submitted that no 90 meter road and/or 18 meter road and/or 24 meter service road towards the present group housing project *as also shown in the lay-out plans* exists at the site/project.

23. It is pertinent to mention here that the respondents now cannot escape from their own wrongs by simply stating that they had no concern in regard to construction of the 90 meter



road and litigation proceedings arising therefrom, as the land acquisition is between state government and the land owners and further stating that the respondents are neither involved in the process of land acquisition nor is it party to the litigation proceedings as referred.

24. That pursuant to assurance by the respondents to hand over the possession within stipulated period of 42 months with further grace period of 180 days as mentioned in Clause No. 13.3 of "Apartment Buyer's Agreement"; Complainants signed upon the dotted lines to the said clauses. But, till today No Occupation Certificate had even been granted qua the project, hence the commitment period of handing over the possession from the day of grant of Building Plan Approval has already been expired on dated.22.1.2017.

25. Further in the said during the course of investigation by the Police a reply was filed by Assistant Commissioner of Police (Gurgaon-Haryana) to the quashing petition filed by the Respondent No.1 before Hon'ble Punjab & Haryana High Court as Criminal Misc. No. 6459-M of 2015, in which it had



been said in Para No.4 of reply to merits that *“as came forth during the course of investigation, the petitioner company (Respondent No.1 herein) has no license to develop the project and booking residential apartment in the project”*. But the Respondents, so as to shield themselves for their own mischievous, contentious and fraudulent acts are still leaving no stone unturned to grab the money of complainants under the aforesaid misrepresented and misconceived theory.

26. That respondent no.1 being a Developer in terms of Section 4 (2) (l) (E) of Act 2016 was supposed to take all pending approvals on time, from the Competent Authorities; but in present scenario neither any regulatory permission for change in beneficial interest/change in developer had ever been applied by the respondent no. 2 to 5 before competent authority i.e. DTCP, Chandigarh nor had ever been any approval been granted in favour of Respondent No.1 to deal with the project in any manner rather being a stranger to the project. Thus, Respondent No.1 has no legal authority to deal with the said license No.5/2013 and/or to book, allot, sell,



transfer any flats made thereat with any third party and the entire transaction made by the Respondent No.1 in league with Respondent Nos. 2 to 5 is totally illegal and unlawful based on misrepresentations and false statements.

27. That all the actions of respondents are not in consonance with the laws, especially the development regulation laws prevalent in the state of haryana, including the fact that no valid supporting documents had ever been submitted by any of respondents showing any relation of respondent no.1 with Respondent Nos. 2 to 5 *except their redundant inter-se agreements* executed amongst them, which are invalid, inoperative and not considered by the O/o DTCP, Chandigarh.

28. The complainants further reserves their right and be given liberty to further raise, add or amend the facts which shall be subsequently gathered so, as to further unearth the mischief of Respondents, who in violation had already not complied the conditions laid down in Building Plan Approval dtd.23.7.2013 amongst collecting the earnest



money from the complainants before its Building Plan approval, which is also not permissible.

ISSUES RAISED BY THE COMPLAINANT

The issues raised by the complainant are as follows: -

- i. Whether the Project is under a delayed zone?
- ii. Whether the respondents are entitled to return the money paid by the complainants with interest and at to what rate?

RELIEF SOUGHT

The relief sought by the complainant is as follows:-

- i. To direct the respondents to refund the amount paid i.e Rs. 42, 44,286/- paid by the complainant along with interest at the rate of 20 % per annum from the date of receiving respective payment till its realization.

REPLY BY THE RESPONDENT

29. The respondent submitted that respondent no. 1 allegedly assured that all necessary approvals/pre-clearances in regard to the Project and Construction had been obtained from O/o Directorate Town & Country Planning, Haryana or from other concerned civic authorities or that accordingly the



complainants jointly booked a 2 BHK unit/Flat in the aforesaid Group Housing Project. It is submitted that no such representations as stated by the complainants were made by respondent no.1 company.

30. The respondent submitted that projected 90 meter approachable road to the project in lay-out plans/brochures. However, it is submitted that the responsibility of constructing the 90 meter approachable road was not of respondent no.1. The responsibility to develop and construct the 90 meter sector road as envisaged in the master plan and the sector plan is with the state authorities and particularly with Haryana Urban Development Authority and not with respondent no.1. The complainants were aware that the layout plans and drawings were tentative and subject to approvals by concerned statutory authorities.

31. The respondent submitted that it is wrong and denied that the complainants were also told to leave some columns blank at page no.7 or that the basic sale price (BSP) was agreed @ Rs. 8,750/- per sq.ft. It is submitted that from the very inception the complainants were aware that the BSP was to be calculated @ Rs. 9200/- per sq. ft. and the same was



specifically mentioned in the Booking Application form as well.

32. However, it is submitted that the complainants had defaulted in making timely payment in respect of the installment amount demanded by respondent no.1 towards the total sale consideration. The complainants had made the payment of the whole amount of Rs. 12,55,484/- only after a reminder letter dated 14.05.2013 was sent by respondent to no.1 to complainant no.1.

33. It is pertinent to mention here that the total sale consideration of the unit was to include the preferential location charges and the same is evident from a bare perusal of the booking application form wherein it was mutually agreed by the complainants that the plc was to be charged at the rate of 7% of the Basic Sale Price. It is submitted that the development charges and the club membership charges were demanded in accordance with the terms of the booking application form and the apartment buyer's agreement and the complainants were aware about the same from the very inception.



34. However, the remaining installments amount towards the sale consideration of the unit were not paid by the complainants despite several reminders and follow-ups by respondent no.1 and ultimately the unit allotted to the complainants was cancelled in accordance with the mutually agreed terms of the Booking Application Form and the Apartment Buyer's Agreement.

35. It is wrong and denied that the cancellation of unit vide letter dated 01.09.2016 was done by respondent no.1 by alleged illegally forfeiting 20% of the total cost of unit also not only deduct interest of Rs. 5,55,050/- upon delayed payment. It is wrong and denied that Rs. 3,90,076/- as Brokerage and Rs. 5,52,339/- as applicable taxes has also been alleged falsely levied. It is submitted no assurance as stated by the complainants in this para was given by the respondents. Rather, complainant no.1 had requested respondent no.1 to change the payment plan vide their email dated 16.07.2015.

35. It is pertinent to mention that vide payment request dated 06.07.2015, respondent no.1 had raised the demand for fourth installment of net payable amount of Rs. 17,34,317.06 followed by reminders dated 21.08.2015 and 12.11.2015. However the same was never paid by the complainant. Vide



Payment request dated 21.04.2016, respondent no.1 had raised the demand for fifth installment of net payable amount of Rs. 32,45,862.95 followed by reminders dated 17.05.2016 and 08.06.2016. However, the complainants again failed to pay the due installment amount. Yet again, the complainants defaulted in abiding by their contractual obligations. It was further informed that on failure of the complainants to make payment of the outstanding amount, the allotment of the unit will be terminated and that the earnest money would stand forfeited in accordance with the agreed terms of the booking.

36. On account of non-fulfillment of the contractual obligations by the complainants despite several opportunities extended by respondent no.1, the allotment was cancelled by respondent no.1 and the earnest money was forfeited vide Cancellation Letter dated 01.09.2016 in accordance with Clause 21 read with Clause 7.4 of the Apartment Buyer's Agreement and the complainants are now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment.

36. Price was mentioned as Rs. 9200/- per square feet. No objection whatsoever was ever raised by the complainants and instead the complainants kept on making payments



towards the sale consideration of the unit. It is submitted on account of continuous defaults of the complainants in adhering to the contractual obligations, the unit was terminated and out of the part amount of Rs. 42,44,286/-, a sum of Rs. 42,34,599/- was forfeited in accordance with the terms of the allotment which were mutually agreed upon by the parties. The complainants cannot challenge the terms and conditions of the booking application form, allotment letter and the apartment buyer's agreement and cannot re-write the agreed terms and conditions of the allotment. The averments raised by the complainants are completely baseless, false and frivolous.

37. The complainants were aware about the terms and conditions of the booking application Form from the very inception and had only after reading and understanding the same had signed it willingly. No columns were left blank and no forgery was committed by the respondents as falsely alleged by the complainants. The respondents have always acted in accordance with the terms and conditions of the allotment and it is the complainants who are trying to concoct a baseless and false story in order to mislead this



Hon'ble Authority and to make the respondents submit to their unreasonable demands.

38. It is submitted that the complainants were aware from the very inception that respondents no. 2 to 5 are the owners of the land on which the said project is to be constructed and accordingly license no. 5/2013 was rightly granted to them. Furthermore, respondent no.1 is the promoter under Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. It is submitted that it is evident from Clause 'E' of the apartment buyer's agreement that the complainants were aware that respondents no.2 to 5 have vested with respondent no.1 the complete authority and powers inter alia to undertake on their behalf marketing, sale and administration of the constructed units and to do all such acts, deeds or things as maybe necessary by respondent no.1 in its sole discretion vide inter-se agreements executed between the respondents. The inter-se agreements executed between the respondents have been duly registered with the competent authorities. It is also pertinent to mention here that the complainants had undertaken vide Clause 'F' of the apartment buyer's agreement that respondent no.1 had allowed the complainants to inspect the ownership record of



the said land/license, various approvals granted by DTCP in favor of respondents no.2 to 5 and all other documents and that the complainants had fully satisfied themselves in all respects, with regard to the right, title and interest of the respondents and that there shall be no objections/re-investigation by them in this regard.

39. The inter-se agreements executed between the respondents have been duly registered with the competent authorities. It is submitted that the inter-se agreements executed between the respondents were submitted before DGTCP, Chandigarh and accordingly license no. 5/2013 was granted in favor of respondents no.2 to 5. It is submitted that it is evident from Clause 'E' of the apartment buyer's agreement that the complainants were aware that respondent no.1 has been authorized to receive applications for allotment of the residential apartments and to impose conditions, make allotments and to deal with, negotiate, finalize, sign and execute the sale agreements and to also receive sale consideration and other charges or dues as stated in the Agreement from the purchasers.

40. However, it is wrong and denied that the present project was launched before the grant of building plan approval or that



they had started the construction at site or had send the allotment letter thereafter_in a cyclostyled manner to all buyers including to the complainants. It is absolutely wrong and denied that so as to allegedly grab the hard earned money of the complainants, the respondents in terms of their cancellation letter dated 01.09.2016 had forfeited 20% of the earnest money along with interest to the tune of Rs. 5,55,050/- on delayed payment, Rs. 3,90,076 as Brokerage and Rs.5,52,339/- as Service Tax.

41. It was further informed that on failure of the complainants to make payment of the outstanding amount, the allotment of the unit will be terminated and that the earnest money and other charges would stand forfeited in accordance with the agreed terms of the agreement. On account of non-fulfillment of the contractual obligations by the complainants despite several opportunities extended by respondent no.1, the allotment of the complainants was cancelled by respondent no.1 vide cancellation letter dated 01.09.2016 in accordance with Clause 21 read with Clause 7 of the apartment buyer's agreement and the earnest money and other applicable charges were forfeited in accordance with clause 21.3 of the apartment buyer's agreement.



42. Furthermore, the complainants were aware from the very inception and had even undertaken in Clause 22 of Key Schedule - 1 of booking application form and clause 10.1 of the apartment buyer's agreement that the layout plans and drawings of the said project are tentative and subject to approval by the statutory authority and government. It is submitted that the responsibility to develop and construct the 90 meter sector road as envisaged in the master plan and the sector plan is with the state authorities and particular with Haryana Urban Development Authority and not with respondent no.1 company.
43. However, it is submitted that a revision was filed against the order dated 20.02.2017 and the said order was set aside by the competent forum. It is wrong and denied that this shows the act and conduct of respondents who are bent upon with their alleged nefarious and illegal goals. It is submitted that it is evident from a bare perusal of Clause 'F' of the Apartment Buyer's Agreement that the complainants undertook that there shall be subsequent revision in the Layout and Building Plans and that it shall not raise any objection to such revision/modification. It is submitted that by the way of revised plan, no residential towers were scrapped and rather,



permission to fully construct two more residential towers was granted by the competent authorities. The revision was done in accordance with the terms and conditions of booking and allotment. The averments as raised by the complainants are baseless, false and frivolous.

44. However, it is wrong and denied that been it has been stated in Sub clause 12.1 of Clause 12 that no separate charges can be claimed. It is wrong and denied that the respondents left with no room to confront that the Basic Sale Price was originally Rs. 8750/- per sq. ft. or that the booking was done @ Rs. 8750/- per sq. ft. or that it included car parking or that it was self-styled changed to Rs. 9200/- per sq. ft. It is not denied that in the reply filed by Assistant Commissioner of Police to the quashing petition filed by respondent no.1 before Hon'ble Punjab and Haryana High Court it has been wrongly mentioned in Para No. 4 of reply that respondent no.1 has no license to develop the project and booking residential apartment in the project. It is wrong and denied that the respondents so as to shield themselves for their alleged mischievous, contentious and fraudulent acts are still leaving no stone unturned to grab the money of complainants under the alleged misrepresented and misconceived story. It



is reasserted that no unfair practice or wrongdoing has been committed by respondents as alleged by the complainants.

45. It is wrong and denied that no legal and valid title of respondent no.1 over the land on which the development with no valid documents with authentication of title only owned by respondent no.2 to 5 is being carried out or alleged false declaration in contravention to Section 4(2)(l) of the 'Real Estate (Regulation and Development) Act, 2016' by respondent no.1 before this Hon'ble Authority had been filed so as to get project registered under the Act. It is wrong and denied that respondent no.1 was supposed to take all pending approvals on time or that in the present scenario, the permission to change in beneficial interest/change in developer had to be applied by respondents no. 2 to 5 before DTCP, Chandigarh. It is wrong and denied that no approval has been granted in favor of respondent no.1 to deal with the project in any manner or is a stranger to the project. It is absolutely wrong and denied that respondent no.1 has no legal authority to deal with the said license no. 05/2013 or to book, allot, sell, transfer any flats thereat with any third party or that entire transaction made by respondent no.1 in league



with respondents no. 2 to 5 is alleged illegal, unlawful or is based on misrepresentations and false statements. It is

46. The respondent submitted that present complaint is not maintainable in law and on facts against the answering respondent and hence is liable to be dismissed at the very onset.

47. The respondent submitted that property in dispute was books much before RERA act became applicable. Thus, the hon'ble court has no jurisdiction to entertain the present complaint.

48. The respondent submitted that from the facts of the case that the dispute is between the complainant and respondent no.1. the respondent is unnecessarily dragged into it. The respondent is unnecessarily dragged into it. The respondent is unnecessarily dragged into it.

49. That the complainant was never asked for cancellation of the unit but was looking for more investment for himself and his known through respondent no. 2 in IREO and Ekantam in janurary,2016. The it transpires that science the market is not giving good returns on Real estate and that is why the complainant in order to wriggle out pf his commitment, the



complainant is concocting false and frivolous allegation to suit his vested interest.

50. It is wrong and denied that the complaint can be preferred under sections 12, 13,14,18,19,31 and 71 or any other applicable provisions of the Real Estate (Regulation and Development) Act, 2016. It is submitted that authority does not have the jurisdiction to decide on the present complaint. The complainant is estopped from filing the present complaint by his own acts, omissions, admissions, and laches and has no locus standi to file the present complaint.

51. The respondent submitted that it is not denied that the super area of the unit was increased from 1350 sq. ft to 1483.57 sq. ft. as per the agreed clauses of the booking application form. It is pertinent to mention here that the complainant himself has agreed in clause 22 of the schedule- I of the booking application form that the super area of the unit was tentative and that if there would be any change in the apartment's size then in that case the applicable sale consideration shall be payable to respondent no.1 by the complainant.

52. The respondent submitted that it is wrong and denied that at the time of signing of application for booking, the



complainant was informed that the size of apartment would be 1350 sq. ft super area at a basic sale price of Rs. 8,750 per sq. ft or that the total cost of the apartment would be Rs. 1,18,12,500/-.

53. It is submitted that according to clause 2 of the booking application form and clause 5 of the schedule -I of the booking application form, the complainant had agreed to pay the charges as stated by the complainant in this sub-para in addition to the basic sale price of the unit. The complainant is now taking baseless, false and frivolous pleas in order to justify his own wrongs, illegalities and laches.

DETERMINATION OF ISSUES:

54. With respect to the **first issue** and **second** raised by the complainant, as per clause 13.3 of apartment buyers agreement time is the essence of the agreement for the payment of sale consideration, maintenance charges and other deposits and amounts, including any interest. If the allottee fails in timely performance of its obligations agreed to pay in time any of the instalments to the company, the company shall be entitled to cancel the allotment and terminate the agreement. There have been letters issued by



the respondent to the complainant demanding the payment of due instalments. Thus the respondent has abided by the agreement and has cancelled the allotment of the unit vide letter dated 01.09.2016. It is pertinent to note that the respondent cannot forfeit more than 10% of consideration amount as earnest money. The promoter is liable to deduct only 10% of the consideration amount and refund the balance amount.

Findings of the Authority

Jurisdiction of the authority-

Subject Matter Jurisdiction

55. 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.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & 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.

Decision and directions of the authority

56. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, complainant has already paid Rs.42,44,286/- to the respondent against a total sale consideration of Rs.1,38,83,798/- and as such complainant is well within his right to claim refund along with prescribed rate of interest i.e 10.75% after deducting 10% of the total sale consideration.
57. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to forfeit 10% of the total sale consideration amount and refund the balance amount deposited by the complainant along with prescribed rate of interest i.e. 10.75% per annum within 90 days from today



58. The order is pronounced. The file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 09.01.2019

Judgment Uploaded on 02.03.2019



HARERA
GURUGRAM

