

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint no. : 153 of 2020**  
**Date of decision : 29.10.2021**

SHARAT AGGARWAL  
R/O : D-103,  
Unesco Apartment,  
Patparganj,  
New Delhi-110092

**Complainant**

Versus

IREO GRACE REALTECH PVT. LTD.  
ADDRESS: 304, Kanchan House,  
Karampura, Commercial Complex,  
New Delhi.

**Respondent**


**APPEARANCE:**

For Complainant:

Ms. Shriya Takkar -Advocate

For Respondent:

Mr. M.K. Dang -Advocate

  
A D,  
29-10-21



**ORDER**

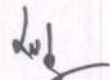
1. This is a complaint filed by Sharat Agarwal (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainant, in March 2013, he submitted 'expression of interest' for purchase of a 3BHK apartment in respondent's project **The Corridor**, situated at sector-67 A, Gurugram. He made payment of Rs 9,60,000 on 04.05.2013. After submission of said expression of interest, he was asked to sign a booking application form. The terms and conditions of said booking application form were arbitrary, unfair, unreasonable, and one-sided due to which he did not sign said booking application form. The respondent vide letter dated 22.03.2014 sent copies of buyer's agreement withdrawing earlier set of buyer's agreement sent by respondent vide letter dated 24.12.2013 and requested him (complainant) to sign and return the same.
3. He (complainant) refused to execute said buyer's agreement upon which representatives of respondent assured that the objectionable clauses in buyer's agreement would be modified or deleted and requested complainant to make further payments. Believing the said assurances of

Jvl  
A.O.  
29/10-21



representatives of respondent, he paid Rs 92,92,294 as per demands raised by respondent, out of total sale consideration of Rs 2,12,52,028.74.

4. Despite various requests respondent failed to make necessary changes in the buyer's agreement and kept delaying the matter on one pretext or the other. The complainant did not sign said agreement and requested for cancellation of expression of interest and to refund of his money.
5. The respondent instead of refunding the money kept raising demands for further payment. The respondent even sent notice of possession dated 14.06.2019 in respect of unit no. CD-B1-02-202, tower B1 and raised demand of Rs 2,71,88,804 including interest of Rs 1,11,49,971.
6. The complainant met representatives of respondent after receiving said notice of possession and requested for refund of his amount. As he did not receive any refund, again vide email dated 27.11.2019, he requested for refund of his money, followed by reminder email dated 28.12.2019.
7. In this way, the respondent has committed gross violation of the provisions of the Act of 2016, and hence complainant is forced to file present complaint, seeking refund of entire amount of Rs 92,92,294 /- along with interest at prescribed

  
A.O.

28-10-21



rate, Rs 5,00,000 for loss of opportunity, Rs 5,00,000 for mental agony and Rs 1,00,000 as cost of litigation.

8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name and location	" <b>The Corridor</b> , situated at sector-67 A Gurugram
2.	Project area	37.5125 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	05 of 2013 dated 21.02.2013 valid up to 20.02,2021
5.	Name of licensee	M/s Precision realtors Pvt. Ltd.
6.	RERA Registered/ not registered	Registered
<b>UNIT DETAILS</b>		
1.	Unit no.	CD-B1-02-202
2.	Unit measuring	1892.09 sq. ft.
3.	Date of Expression of interest	March 2013
4.	Date of Booking Application form	Not signed
5.	Date of Buyer's agreement	Not executed

*Handwritten signature*

A.O.

29-10-21



PAYMENT DETAILS		
6.	Total sale consideration	Rs 2,12,52,028.74.
7.	Amount paid by the complainant	Rs 92,92,294 /-

8. The respondent contested the complaint by filing a reply dated 13.03.2020. The respondent has raised preliminary objection regarding the maintainability of present complaint. It is contended that the application for provisional registration was signed between complainant and respondent, prior to enactment of Act of 2016 and hence provisions laid down in the Act cannot be applied retrospectively.
9. It is further claimed that complainant had agreed to be bound by the terms and conditions of application for provisional registration, of residential apartment. As per clause 'd' of said application, the complainant was to execute all documents/agreements and to pay all charges. The copies of booking application form were sent to complainant vide letter dated 26.06.2013 and 18.10.2013 but complainant refused to sign and return the same.
10. The respondent, based upon application for provisional registration issued allotment offer letter dated 07.08.2013 and allotted unit no. CD-B1-02-202 with tentative super area of

dvl

A.O.

29/10/21



1892.09 sq. ft. Three copies of apartment buyer's agreement were also sent to complainant vide letters dated 11.12.2013 and 22.03.2014. but complainant failed to execute the same despite reminders dated 28.05.2014 and 17.07.2014.

11. The complainant had made part payment of Rs 92,92,294/- only after being aware of the terms and conditions of booking application form and apartment buyer's agreement as these documents were sent to him vide letter dated 26.05.2013 and 22.03.2014 respectively. No objections were raised by complainant at the time of issuance of booking application form and buyer's agreement.

12. Further, it (respondent) had raised various demands for payments as per payment plan but complainant failed to make payments. Moreover, the construction work of the tower in which unit of complainant is situated, has already been completed and occupation certificate for the same has also been received on 31.05.2019. Despite various defaults on the part of complainant, the respondent offered possession vide notice of possession dated 14.06.2019. The complainant is bound to make payment of Rs 2,71,88,804 and to complete documentation formalities.

13. The respondent denied that after receipt of notice of possession, complainant met its representatives for refund of his money. According to it, there were neither any requests for refund by

*[Handwritten signature]*

A.O,

Page 6 of 9

29/10-21

complainant nor he could have made so, after completion of construction work and after notice of possession.

14. Contending all this, respondent prayed for dismissal of complaint.

15. I have heard learned counsels for parties and have perused the documents on record.

16. So far as preliminary objection regarding maintainability of present complaint on the ground as described above, is concerned, it is not plea of respondent that same had completed the project till the date Act of 2016 came into force. In this way, project of respondent, in which complainant applied for a unit can be termed as "Ongoing project" in view of Rule 2 (1) (o) of Rules, 2017. According to proviso added to Section 3(1) of the Act, respondent/promoter was duty bound to apply for registration of this project within three months from the date of commencement of said Act. Provisions of this Act are squarely applicable in this case. I do not find any substance in preliminary objection raised by the respondent.

17. Clause 7.5 of Annexure A with Rules 2017 prescribes that the allottees shall have the right to cancel/withdraw his allotment in the project. According to it, where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment and interest component on the delayed payment.

*dw6*

A.O,

28/10-21



18. But this provision presupposes breach of agreement/contract by the customer. Coming to case in hands, parties had not reached stage of contract till the complainant asked for refund. As per latter, he refused to sign draft agreement finding its terms and conditions arbitrary and one-sided. Complainant did not sign even booking application form. Submission of expression of interest by complainant cannot be termed as contract for sale.
19. There is no denial that the complainant paid an amount of Rs. 92,92,294 /-. In the absence of agreement on terms and conditions of sale, this payment cannot said as payment of sale consideration. It was simply to show seriousness on the part of a customer. Even as per respondent, application filled by complainant was to seek provisional registration in project being developed by it(respondent). Despite refunding the amount, the respondent sent demand letters and notice of possession. As there was no contract between the parties till the time, complainant opted to withdraw his application for provisional registration. The complainant could not have been compelled to enter into contract, as was done by respondent in this case.
20. In circumstances as described above, in my opinion, the respondent was not entitled to retain the amount, rather was duty bound to return it to the complainant, when demanded by latter. This complaint is thus allowed. Respondent is directed to refund the amount received from the complainant i.e. Rs 92,92,294 /- to the latter, within 90 days from date of this order, along with interest @ 9.30% p.a. from the date

kwg

A.O.

29-10-21





**HARERA**  
**GURUGRAM**

when complainant asked for refund of payment, till its realisation . A cost of litigation etc, Rs 1,00,000 is imposed upon respondent to be paid to complainant.

File be consigned to the Registry.

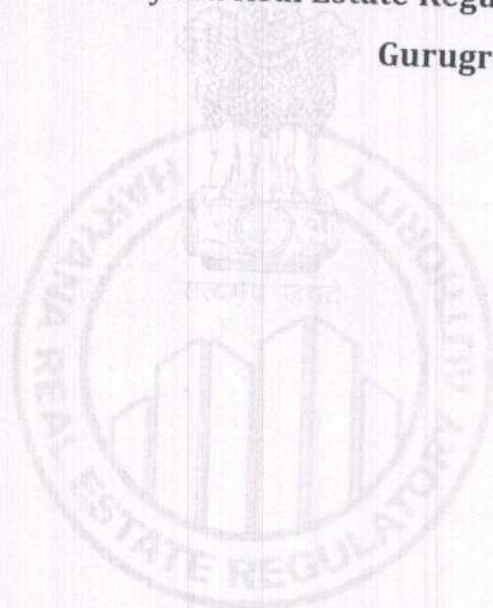
29.10.2021

**(RAJENDER KUMAR)**

**Adjudicating Officer**

**Haryana Real Estate Regulatory Authority**

**Gurugram**



**HARERA**  
**GURUGRAM**