

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

**Complaint no. : 1206 of 2020**  
**Date of decision : 22.10.2021**

SANDIP BASU  
R/O : Flat No. 201,  
Crystal Apartment,  
Plot No. - 31, NS  
Road No. 3, Vile Parle,  
Mumbai

**Complainant**

Versus

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

**Respondent**

**APPEARANCE:**

For Complainant:

Mr. Sukhbir Yadav -Advocate

For Respondent:

Mr. M.K. Dang -Advocate



Ad.

22-10-21



**ORDER**

1. This is a complaint filed by Sandip Basu (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, on 01.03.2013, he booked a flat in respondent's project **The Corridor**, situated at sector-67 A, Gurugram and made payment of Rs 16,00,000 as booking amount. The respondent allotted a flat to the complainant bearing No. CD-B7-07-704 admeasuring 1726.69 sq. ft. for a total consideration of Rs 1,69,81,470.69 /- including BSP, PLC, EDC etc. A buyer's agreement was executed on 09.04.2014, in this regard.
3. As per Clause 13.3 of buyer's agreement, possession of said premises was to be delivered within 42 months from the date of approval of building plans or fulfilment of pre-conditions imposed thereunder, with grace period of 180 days. The respondent failed to complete the construction work and consequently to deliver same, till date.
4. As per payment plan and demands raised by respondent, he (complainant) made timely payment of Rs 1,67,40,181.51/-

duj

A.D.

22-10-21





but to his utter dismay, possession of the apartment has not been offered as assured by the respondent.

5. The complainant vide email dated 04.04.2019 inquired about status of his unit, in reply to which, respondent did not give any definite date of delivery of possession. It was simply informed that tower B6 is a part of Phase 2 and respondent shall apply for occupation certificate for the same.
6. As per clause 13.5 of buyer's agreement, in the event of delay by respondent in offering possession of said apartment, beyond a period of 12 months from the end of grace period then allottee shall become entitled to opt for termination of allotment/agreement and refund of actual paid up instalments along with delay compensation for 12 months.
7. The complainant through email dated 02.03.2020, sought cancellation of booking and withdrawal from project under clause 13.5 of BBA, as the extended delayed period lapsed on 27.11.2019.
8. The complainant has paid more than 95 % of the total sale consideration but respondent failed give any information about the progress of construction and definite date for delivery of possession. He (complainant) served a legal notice dated 01.10.2020 and requested to refund his amount with interest @ 18 % p.a. and compensation but respondent failed to reply till date.

*[Handwritten signature]*

A.P.

22-10-21





9. In this way, the respondent has committed gross violation of the provisions of section 18(1) of the Act, by inordinately delaying the delivery of the possession. Booking of the unit was made in the year 2013 and even in 2021, the project is nowhere near completion, and hence complainant is forced to file present complaint, seeking refund of entire amount of 1,67,40,181.51/- along with interest, Rs 10,00,000 for mental agony and Rs 1,00,000 as cost of litigation.
10. The particulars of the project, in tabular form are reproduced as under:
- 11.

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-B7-07-704
2.	Unit measuring	1726.69 sq. ft.
3.	Date of Booking	01.03.2013
4.	Date of Buyer's Agreement	09.04.2014
5.	Due Date of Delivery of Possession  As per Clause 13.3 of buyer's agreement, possession of said premises was to be delivered within 42 months from the date of approval of building plans or fulfilment of pre-conditions imposed thereunder, with grace period of 180 days	27.11.2018 (grace period granted)  • Pre-conditions completed on 27.11.2014.
6.	Delay in handing over of possession till date	3 years 05 month
<b>PAYMENT DETAILS</b>		
7.	Total sale consideration	Rs 1,69,81,470.69 /-
8.	Amount paid by the complainants	Rs 1,67,40,181.51/-
9.	Payment Plan	Construction linked

12. Upon notice, the Complaint was resisted by the respondent/ developer by filing Written reply dated 17.03.2021. It is

anl  
A.O.  
22-10-21





averred that there is arbitration clause i.e. clause 35 in the agreement and, therefore, the complaint is not maintainable before this forum. Act of 2016 was not enacted at the time of execution of BBA and hence provisions of said Act cannot be enforced retrospectively. The complainant has committed defaults in making payments and payment reminder dated 21.08.2015 was also issued to him. Payment was made only after said reminder letter. The complainant has made part - payment and he is bound pay due amount along with registration charges, stamp duty, service tax and other charges at the appropriate stage.

13. It is further contended that as per terms of agreement and booking form, the due date for possession was to be computed from the date of receipt of all requisite approvals. Construction could not be raised in absence of necessary approvals. Building approval was granted on 23.07.2013 and the last pre-condition, i.e., Fire Safety Scheme Approval was granted only on 27.11.2014, therefore, in terms of the Clause 13.3 of the Agreement, the proposed time for handing over the possession must be computed from 27.11.2014. The stipulated time for offering possession according to term of BBA would have expired only on 27.11.2019.
14. Moreover, the construction work of the tower in which unit allotted to complainant is located is already complete and it (respondent) has applied for grant of occupation certificated

*dhj*

AD,

22-10-21



vide application dated 10.09.2019. The stipulated time period for possession given in BBA, is subject to force majeure circumstances which are beyond the control of respondent.

15. It is further averred that non-payment of instalments by allottees has hampered the project. The demonetisation also adversely affected construction work. Due to sudden scarcity of valid currency notes and consequent lack of funds could not make payment to labour in cash. The work at site was halted for 7-8 months.
16. Further, due to orders passed by National Green Tribunal in the year 2015, 2016, 2017 and 2018 to protect the environment of NCR, the contractors of respondent could not undertake construction for 3-4 months. The Environment Pollution Prevention and Control Authority released a press note for stoppage of construction activity in year 2018. Again, due to heavy rainfall in Gurugram in the year 2016 and unavoidable weather conditions, all the construction activities were badly affected
17. Respondent denied that complainant has paid 98 % of total sale consideration. According to it, total sale consideration amount was exclusive of registration charges, stamp duty, service tax and other charges and same are to be paid by complainant. It is submitted that there has been no default



A.O.

22-10-21





on the part of the part of respondent and complainant is not entitled to get refund of his money.

18. Contending all this, respondent prayed for dismissal of complaint.
19. It is not plea of respondent that completion certificate was received when this Act of 2016 came into force. The respondent was obliged to apply for registration within 3 months. In this way, provisions of Act of 2016 are well applicable in this case.
20. So far as contention of respondent about arbitration clause is concerned, none of parties appear serious about this provision. Even respondent did not invoke any proceedings under Arbitration Act. Moreover, Act of 2016, being a special legislation for protection of interest of consumers in real estate sector, has overriding effect over other laws in existence, even over agreement between the parties.
21. It is an admitted position that occupation certificate for the said tower has not been obtained by the respondent till now. As per buyer's agreement, possession of apartment in question was to handed over to complainant within 42 months from the date of approval of building plans or fulfilment of pre-conditions imposed thereunder, with grace period of 180 days. Even according to respondent building plans were approved on 23.07.2013 and last pre-condition, i.e., Fire Safety Scheme Approval was granted on 27.11.2014. In this way, the possession ought to have been delivered by





27.05.2018. It is well settled that builder/developer is entitled for grace period only when same failed to complete the project due to reasons beyond its control.

22. So far as demonetization of some currency notes is concerned, same was remotely connected with completion of project. There was no restriction on payment through electronic transfer/e-banking transactions. Most of people in our country have opened bank accounts. Moreover, the demonetization came to force much after the due date of completion of project/unit in question. If other allottees failed to pay their instalments in time, same is no reason, not to complete unit of complainant, when latter claims to have paid Rs 1,67,40,181 out of total sale consideration of Rs 1,69,81,470. Respondent did not adduce any evidence to show as for what period construction work was stopped due to orders passed by NGT or any other court/institution established by law

23. When buyer/complainant made timely payment towards the allotted unit, same was well within his right to claim possession, as per agreement. A buyer cannot be made to wait indefinitely, for his/her dream unit. It is not claimed on behalf of respondent that it has obtained occupation certificate for the tower in which unit of complainant is situated.

24. Complaint in hands is thus, allowed and respondent is directed to refund the amount received from the complainants i.e. Rs 1,67,40,181.51/- to the latter, within 90

*Arb*

*Arb.*

*22-10-21*





days from today, along with interest @ 9.30% p.a. from the date of each 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.

22.10.2021

**(RAJENDER KUMAR)**

**Adjudicating Officer**

**Haryana Real Estate Regulatory Authority**

**Gurugram**

Judgement uploaded on 22.11.2021.