

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

**Complaint no. : 1880 of 2019
650 of 2021**
Date of decision : 25.10.2021

RASHMI GARG
R/O : Flat No. 8A,
Tower-10, M3M Golf
Estate, Sector-65,
Gurgaon, Haryana

Complainant

Versus

1. IREO GRACE REALTECH PVT. LTD.
ADDRESS: 304, Kanchan House,
Karampura, Commercial Complex,
New Delhi.
2. M/s PRECISION REALTORS PVT. LTD.
ADDRESS: 304, Kanchan House,
Karampura, Commercial Complex,
New Delhi.
3. M/s BLUE PLANET INFRA DEVELOPER
PVT. LTD.
ADDRESS: 304, Kanchan House,
Karampura, Commercial Complex,
New Delhi.

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4. M/s MADERIA CONBUILD PVT. LTD.
ADDRESS: 304, Kanchan House,
Karampura, Commercial Complex,
New Delhi.
5. M/s GLOBAL ESTATE
ADDRESS: 304, Kanchan House,
Karampura, Commercial Complex,
New Delhi.

Respondents

APPEARANCE:

- For Complainant: Sh. Chander Mohan -Advocate
For Respondents: Sh. M.K. Dang -Advocate

ORDER

1. This is a complaint filed by Ms. Rashmi Garg (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 respondents/developers.
2. As per complainant, on 22.03.2013, she 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

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amount. The respondent allotted a flat to her bearing No. CD-A1-01-101 vide allotment letter dated 07.08.2013. The complainant sought for change of unit, vide letter dated 30.04.2014. The unit was immediately changed by respondent vide confirmation letter dated 24.06.2014. the respondent allotted a new unit no. CD-C9-00-02, admeasuring 1507.35 sq. ft. for a total consideration of Rs 1,66,40,788.24 /- including BSP, PLC, EDC etc. An Apartment Buyer's Agreement (ABA) was executed on 24.09.2014, in this regard.

3. She never opted for preferential location unit, but respondent charged preferential location charges by allotting a PLC unit without her consent. She (complainant) raised objection to such charges, but respondent never resolved this issue.
4. As per Clause 13.3 of buyer's agreement, possession of said premisses 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 building plans were approved on 23.07.2013 and accordingly, due date of possession was 22.01.2017. The respondent failed to complete the construction work and consequently to deliver possession of unit, within stipulated period.

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5. The respondent represented that it is fully competent to develop transfer and convey right, title and interest of residential units pursuant to which complainant had booked the unit. Subsequently, she (complainant) came to know that that license with respect to project has been granted to respondents 2 to 5. The latter (respondent no. 2 to 5) unilaterally without any prior permission/approval of DTCP transferred whole project to respondent no. 1 by virtue of some inter-se agreements between them. DTCP vide memo dated 18.02.2015 has laid down certain parameters for allowing change in beneficial interest but no such permission was granted in favour of respondent.
6. The respondent at the time of booking had advertised a 90 meter road access approaching to the project and assured that a link road of 90 meter wide, flanked by 18 meter wide green belt further flanked by 24 meter wide service road as an approach to project but no such road exists at the site/project.
7. She (complainant) visited the office of respondent on 22.08.2016, and it was conveyed to her that possession will not be delivered within the period promised by respondent. She (complainant) requested for refund of her money. She even sent an email in this regard, dated 26.08.2016.

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8. The respondent soon after the request of refund of money by the complainant, raised a demand of Rs 15,92,916 vide letter dated 31.08.2016 to be paid by 22.09.2016. The respondent cancelled the allotment vide letter dated 01.09.2016, on the ground of non-payment of instalment and has illegally forfeited the entire amount paid by her (complainant).
9. As per payment plan and demands raised by respondent, she (complainant) made timely payment of Rs 50,77,255/- but to her utter dismay, respondent unilaterally cancelled the allotment. In this way, she (complainant) is forced to file present complaint, seeking refund of entire amount of Rs 50,77,255/- along with prevailing interest @ 10.75 % p.a.
10. The particulars of the project, as given by complainant in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" The Corridor , situated at sector-67 A Gurugram
2.	Project area	37.5125 acres
3.	Nature of the project	Residential Group Housing Colony

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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

UNIT DETAILS

1.	Unit no. (old)	CD-A1-01-101
2.	Unit No. (new)	CD-C9-00-02
3.	Unit measuring	1507.35 sq. ft.
4.	Date of Booking	22.03.2013
5.	Date of Buyer's Agreement	24.09.2014
6.	Due Date of Delivery of Possession As per Clause 13.3 of buyer's agreement, possession of said premisses 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	22.01.2017 <ul style="list-style-type: none">• Building plans approved on 23.07.2013.
7.	Cancellation Letter	01.09.2016

PAYMENT DETAILS

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8.	Total sale consideration	Rs 1,66,40,788.24 /-
9.	Amount paid by the complainants	Rs 50,77,255/-
10.	Payment Plan	Construction linked

11. Upon notice, the complaint was resisted by the respondents/ developers by filing written reply dated 21.06.2021. It is averred that there is arbitration clause i.e. clause 35 in the agreement, therefore, this 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. The demand for seventh instalment was raised for Rs 77,22,074.28 vide demand letter dated 11.07.2016. The complainant failed to remit demanded amount, despite reminders dated 09.08.2016 and 31.08.2016 as well as final notice dated 28.07.2016. As complainant failed to make the payment, accordingly the allotment of her unit was cancelled vide letter dated 01.09.2016. The earnest money along with interest on delayed payments, brokerage charges and service tax were forfeited vide cancellation letter dated 01.09.2016 as per clause 7.4 of agreement. The complainant is left with no right, claim or interest whatsoever.

12. It is further stated that as per terms of agreement and booking form, the due date for possession was to be computed from the

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date of receipt of all requisite approvals. Even otherwise, construction can't 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 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.

13. Moreover, the construction work of the tower in which the unit allotted to complainant is located is already complete. It (respondent) has applied for grant of occupation certificated vide application dated 10.09.2019. It is denied that there was a 90 meter road in the layout plan. The responsibility to construct the road was of the state authorities and particularly Haryana Sehri Vikas Pradhikaran. Respondents have already deposited substantial amount towards EDC and they cannot be held responsible for not providing of 90 meter road. All the charges were demanded by respondent no. 1 as per the terms of booking form. The complainant just to create the false evidence sent emails dated 26.08.2016 and 29.08.2019. It is denied that complainant visited the office of respondent no. 1 and met Mr. Sujit Kumar, director.

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

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15. It is not plea of respondents that even completion certificate had been 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.
16. So far as contention of respondent with respect to arbitration clause is concerned, none of parties appeared serious about this provision. Even respondent did not invoke any proceedings under Arbitration Act rather opted to cancel unit allotted to complainant, on ground of non-payment of instalment. 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.
17. It is not claimed by respondent that occupation certificate for the said tower has been obtained till date of arguments. As per terms of buyer's agreement, possession of the apartment in question was to be 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. As per respondent, building plans were approved on 23.07.2013 and the last pre-condition, i.e., Fire Safety Scheme Approval was granted only on 27.11.2014. Even counting from this date, due date for possession comes to 27.05.2018. It is well settled that a developer is entitled for benefit of grace period only when same could not complete

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construction due to force majeure circumstances i.e. beyond his control.

18. The respondent did not dispute the payment of Rs 50,77,255/- by the complainant towards the subject unit. If complainant had failed to pay the instalment despite several reminders, same (respondent) could charge interest as per buyer's agreement but it was not proper to cancel the allotment particularly when same (respondent) failed to fulfil its own obligation to raise construction as per agreement. Similarly, It is not proper for respondent to blame Haryana Sahari Vikas Pradhikaran for not constructing link road, when as per agreement, it was its own (respondent's) responsibility to complete project including link roads
19. In ABA, executed between parties respondent no. 2 to 5 are collectively referred as 'conforming parties' and again as absolute owners of project while respondent no. 1 is stated to be a company upon which other respondents have vested complete authority and appropriate powers to sell, administer all constructed units comprising the Corridors project. In this way respondent no.1 appears to be liable to allottee i.e. complainant.
20. Complaint in hands, is accordingly allowed and respondent no. 1 is directed to refund the amount paid by the complainant i.e. Rs 50,77,255 within 90 days from date of this order, along with interest @ 9.3 % p.a. from the date of each

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payment, till realisation of amount. The respondent is burdened with cost of litigation Rs 1,00,000 to be paid to the complainant.

File be consigned to the Registry.

25.10.2021

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(RAJENDER KUMAR)
Adjudicating Officer

Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 22.11.2021.

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