



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह.सिविल लाईस. गुरुग्राम, हरियाणा

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

Complaint No. : 932/2019
Date of Decision : 22.10.2021

Shri Mahanbir Singh Gill
R/o 15, Bodhi Marg,
DLF, Phase-I, Gurugram-122002

Complainant

V/s

M/s Ireo Grace Realtech Pvt Ltd
304, Kanchan House, Karampura Commercial
Complex, New Delhi-110015

IREO Campus Sector-59, near Behrampur
Gurugram-122004

Respondent

Complaint under Section 31
of the Real Estate(Regulation
and Development) Act, 2016

Present:

For Complainant:

Ms Shimpy Sharma, Advocate

For Respondent:

Mr. M K Dang, Advocate

ORDER

This is a complaint filed by Shri Mahanbir Singh Gill (hereinafter referred as buyer) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (in brief Act of 2016) read with Rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 (in brief 'Rules') against respondent (also called as developer) seeking directions to

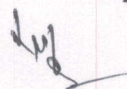
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the latter to refund a sum of Rs.59,42,314/- alongwith interest 24% p.a. from the date(s) of payment till its realisation.

2. According to complainant, the respondent launched a project in the name and style of "Corridors" in Sector-67-A, Gurugram. On representation of the respondent, he(complainant) applied for booking of an apartment on 15.03.2013 by paying initial amount of Rs.16,00,000/- vide cheque No.282975 dated 15.03.2013. Acknowledgment of said receipt was intimated by respondent On 16.03.2013. The respondent allotted a unit bearing No.CD-A7-08-803, 8th floor, A7 Tower, measuring 1902.22 sq ft.for total sale consideration of Rs.1,92,17,760.34p.

3. As per clause 43 of Schedule-1 of booking application form, the respondent was liable to handover possession of booked unit by 27.11.2018. Despite his repeated requests, respondent failed to execute 'Apartment Buyer's Agreement(ABA) on one pretext or the other, instead it (respondent) sent demand after demand. On being enquired about the status of project, it came to his notice that respondent had not received requisite approvals from the competent authority until September, 2013 and no excavation work had commenced. After making payments of three instalments as per schedule, he refused further payment until and unless an appropriate ABA is executed and clear-cut terms and conditions are settled.

4. Despite making personal enquiries from the office of respondent, when he got no positive response, he(complainant) made applications dated 26.04.2016, 24.05.2016 and 24.06.2016 asking the respondent to refund amount on the grounds that respondent failed to stand on its own commitment by not completing the project in time. Respondent vide its letter dated 19.05.2016 tried to justify its failure in executing the ABA and threatened to cancel allotted unit. Being aggrieved, he (complainant) sent legal notice on 18.07.2016 but without pacifying the complainant,


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respondent resorted to act of cancellation of allotted unit vide its letter dated 01.09.2016. On being aggrieved by the acts of respondent, he(complainant) filed a complaint before the National Consumer Disputes Redressal Commission in 2017 and later on withdrew the same to approach this authority/forum seeking directions against respondent to refund the amount paid by him. Contending all this, complainant has prayed for refund of amounts paid by him as described above.

5. Brief facts of complainant's case in tabular form, are as under:

Project related details		
I.	Name of the project	"Corridors"
II.	Location of the project	Sector 67A, Gurugram
III.	Nature of the project	RESIDENTIAL
Unit related details		
IV.	Unit No. / Plot No.	CD-A7-08-803 ,8 th floor,
V.	Tower No. / Block No.	Tower A-7
VI	Size of the unit (super area)	Measuring 1920.22 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	15.03.2013
XI	Date of Allotment(original)	07.08.2013
XII	Date of execution of ABA/BBA (copy of BBA/SBA enclosed)	NIL

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XIII	Due date of possession as per ABA/BBA/SBA	March 2017
XIV	Delay in handing over possession till date	More than 3 years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	
Payment details		
XVI	Total sale consideration	Rs.1,92,17,160/-
XVII	Total amount paid by the complainants	Rs.59,42,314/-

6. The respondent contested the claim of the complainant. It raised preliminary objection about maintainability of this complaint stating that allotment of unit in question was terminated prior to the enactment of Act of 2016 and thus this forum has no jurisdiction to try and decide this complaint. Moreover, the present complaint is not maintainable for the reason that booking form contains an Arbitration clause which provides for reference of any dispute to the dispute resolution mechanism, by the parties.

7. Further that, the complainant on being satisfied and after checking the veracity of project in question, had applied for allotment. He had agreed to be bound by terms and conditions of application for provisional allotment. However, on account of formatting deficiency, respondent requested the complainant vide its letter dated 24.12.2013 to return back the copies of old ABA but complainant failed to do so, despite issuing several reminders.

8. Again, the complainant was not forthcoming to pay due instalments, despite issuance of several reminders and on account of non-fulfilment of contractual obligations by the complainant, allotment was cancelled vide letter dated 01.09.2016. Earnest money paid by the complainant was

forfeited in accordance with clause 7 read with clause 11 of booking application. Thus, the complainant is left with no right, claim, lien or interest in the said booking/allotment. Furthermore, construction work of project is complete, occupation certificate has already been granted by the competent authority on 31.05.2019.

9. Delay occurred in completion of project, was on account of non-payment of due instalments by the allottees, including the complainant himself and certain force majeure circumstances, such as, demonetisation, orders of various constitutional bodies like NGT to stop construction work, in order to contain impact of air pollution etc.

10. It is further the plea of respondent that complainant is an investor and on account of slump in real estate market, he could not make anticipated gains.

11. As such, the complainant is not entitled to any relief and his complaint is liable to be dismissed, with heavy costs.

12. I have heard learned counsels for both of parties and have gone through the record.

13. It is not claim of respondent that completion certificate had been received by it(respondent), when Act of 2016 came into force. The respondent was obliged to apply for registration within three months of enforcement of this Act. By applying for registration during said period, respondent agreed to abide by provisions of the Act. I do not find much substance in aforesaid preliminary objection raised by the respondent.

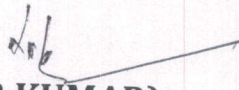
14. None of parties appears to have intended to apply 'Arbitration Clause'(if any) in their agreement. Even respondent opted to terminate the allotment of unit observing that complainant was not paying instalments in

time. Even, otherwise Act of 2016 is a special Act, which prescribes for mechanism for redressal of grievance under this Act. Being special Act, its provisions override other laws and even covenants between the parties, which are contrary to object of said Act and its specific provisions.

15. It is claimed by respondent that draft ABA sent by it was not signed by complainant. ~~In this way~~, Both parties had not agreed on terms and conditions of agreement. Application for booking filed by complainant cannot be termed as contract. At the most, same can be an offer to invite offer'. By sending draft ABA, respondent made offer, which was not accepted by complainant. In this way, no written contract could be reached between parties. It is not claim of any one that it was an oral contract. The complainant claims that after payment of three instalments, he stopped payment saying that until ABA is executed, he will not pay further. In such a circumstance, respondent was duty bound to refund money paid by complainant. Respondent had no right to retain money paid by complainant.

16. Complainant is thus entitled to get money paid by him refunded from the respondent. Complaint in hands is thus allowed. The respondent is directed to refund amount of Rs.59,42,314/- received from complainant within 90 days from today alongwith interest @ 9.30% p.a. from the date of each payment till realisation of whole amount. Respondent is also burdened with cost of litigation Rs.1,00,000/- to be paid to the complainant.

17. File be consigned to the Registry.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory
Authority
Gurugram
22.10.2021