



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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

Complaint No. : 2753/2020
Date of Decision : 10.11.2021

**Shri Kshitij Puri,
M-3/32, DLF Phase-2
Gurugram-122002**

Complainant

V/s

1. **M/s IREO Grace Realtech Pvt Ltd.
304, Kanchan House, Karampura
Commercial Complex,,
New Delhi-110015**
2. **M/s Precision Realtors Pvt Ltd
304, Kanchan House, Karampura
Commercial Complex,,
New Delhi-110015**
3. **M/s Blueplanet Infradevelopers Pvt Ltd
40/16, East Patel Nagar,
New Delhi-110008**
4. **M/s Madeira Conbuild Pvt.Ltd.
304, Kanchan House, Karampura
Commercial Complex,,
New Delhi-110015**
5. **M/s Global Estate
G-23, Ashok Vihar, Phase-1
Delhi-110052**

Respondents

du
A.O.
10-11-21

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

Present:

For Complainant: Dr. Harish Uppal, Advocate

For Respondents: Mr. M. K. Dang, Advocate

ORDER

This is a complaint filed by Shri Kshitij Puri (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 respondents (also called as developers) seeking directions to the latter to refund a sum of Rs.1,09,47,488/- alongwith interest 20% p.a. from the date(s) of payment till its realisation.

2. According to complainant, the respondent(s) launched a project in the name and style of "The Corridors" in Sector-67-A, Gurugram. On representation of the respondents, he(complainant) applied for booking of an apartment on 22.03.2013. The respondent No.1 allotted a unit bearing No.CD-A7-04-404, 4th floor, A-7 Tower, measuring 1726.19 sq. ft. for total sale consideration of Rs.1,73,08,261/-leading to execution of Apartment Buyer's Agreement(ABA) dated 09.04.2014, between the parties. Till date, the complainant has made total payment of Rs.1,09,47,488/-to the respondent. As per clause 13.3. of said 'ABA' the respondent(s) proposed to offer possession of booked unit within a period of 42 months from the date of approval of building plans and/or fulfilment of pre-conditions imposed thereunder(commitment period) with grace period of 180 days i.e. by Jan 2018.

3. In accordance with demands raised by respondent No.1, complainant has paid total amount of Rs.1,09,47,488/- till date. In order to arrange funds for the unit in question, he availed loan of Rs.1,29,75,000/- from HDFC Ltd. Facing financial hardship, he requested the respondents to remove interest charges from the total payment and further to downgrade the size of his unit. The respondents accordingly allotted another unit bearing No.CD-C11-09-903, admeasuring 1540.42 sq ft. costing Rs.1,57,24,921/- vide letter dated 09.06.2016. The lender bank gave its concurrence vide letter dated 24.06.2016 with respect to loan amounting to Rs.1,29,75,000/-. A fresh agreement in this regard was executed between the parties. The respondent had obligated to deliver possession of booked unit in Oct. \longleftrightarrow , 2017 as per terms of Agreement dated 09.04.2014.

4. In spite of making huge payments till date, the respondents failed to deliver the unit in question within stipulated period i.e. by October, 2017.

5. It is further the case of complainant that on visiting the project site, he was shocked to see the conditions of project and lack of promised amenities like club house, lawn area, play area, football, basement ramp, school, creche etc shown in the lay out plan and thus the respondents betrayed the complainant by not offering unit in question as per terms and conditions of ABA. All this led to filing of complaint before this forum seeking directions to respondents to refund amount received by them with interest and compensation.

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

Project related details		
I.	Name of the project	"The Corridors"

II.	Location of the project	Sector 67A, Gurugram
III.	Nature of the project	RESIDENTIAL
Unit related details		
IV.	Unit No. / Plot No.	CD-C11-09-903
V.	Tower No. / Block No.	Towers C-11
VI	Size of the unit (super area)	Measuring 1540.42 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)	22.03.2013
XI	Date of Allotment(original)	07.08.2013
XII	Date of execution of ABA/BBA (copy of BBA/SBA enclosed)	09.04.2014
XIII	Due date of possession as per BBA/SBA	Oct.2017
XIV	Delay in handing over possession till date	
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.1,57,24,921/-
XVII	Total amount paid by the complainants	Rs.1,09,47,488/-

[Handwritten Signature]
A. O.
10-11-21

7. The respondent contested the claim of the complainant. It is contended that ABA was executed between the parties prior to the enactment of Act of 2016 and provisions laid down in said Act cannot be applied retrospectively. This forum has no jurisdiction to try and decide complaint in hands. Moreover, the complaint is not maintainable for the reason that clause 35 of Buyer's Agreement contains an Arbitration Clause, which provides to refer any dispute between parties to Dispute Resolution Mechanism. Moreover, the complainant was not regular in making due payments and frequently defaulted in this regard. All payments made by complainant were adjusted towards newly allotted unit.

8. The complainant was bound to abide the terms and conditions of Agreement particularly clause 13.3 and clause 13.5 where the complainant himself agreed and understood that respondent shall be additionally entitled to period of 180 days, which can further be extended for 12 months from the date of expiry of grace period. As per respondents, due date was to be computed from the date of receipt of all requisite approvals. It was specified in Sub-clause(iv) of Clause 17 of Approval of Building Plan dated 23.07.2013 of the said project, that clearance issued by Ministry of Environment and Forest, Govt of India, was to be obtained before start of construction of any project and same was granted by the competent authority on 12.12.2013. Statutory Fire Scheme was Approved on 27.11.2014. In this way, time period for offering possession would have lapsed only on 27.11.2019.

9. After obtaining all the requisite approvals, respondent has completed the project and applied for occupation certificate on 10.09.2019. Whatever delay is caused, it was due to force majeure circumstances i.e. demonetization, shortage of labour, orders of NGT with regard to checking of pollution in the NCR and non-payments by different allottees including the


complainant himself. All these circumstances, which were beyond the control of respondents, badly affected the completion of project well before time.

10. It is further the case of respondents that complainant is an investor, who himself has referred the project as 'undervalued investment' and invested money in order to make profit in short span of time and due to slump in real estate market, the calculations of complainant went wrong leading to filing of this baseless, false and frivolous complaint before this forum.

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

12. True, ABA between parties of this case was executed prior to enactment of Act of 2016. It is not disputed that it was an 'on-going' project. No completion certificate had been received by the respondent, when said Act came into force. The respondents were obliged to apply for registration within three months, when the Act came into force. By applying for registration during said period, respondents agreed to abide by provisions of the Act. I do not find much substance in aforesaid preliminary objection raised by the respondent. As per clause 13.3 of ABA, subject to allottee having complied with all his obligations-the company(respondent) proposed possession of unit within 42 months of approval of building plans or/and preconditions imposed thereunder. Even as per respondent, last approval i.e. Fire Scheme Approval was received on 27.11.2014. Counting in this way, due date for possession comes to 27.05.2018. This provision allows 180 days more grace period to respondent to overcome unforeseen circumstances, i.e. beyond its control.

13. No force majeure circumstances could be established by respondents to claim the benefit of aforesaid grace period. Respondent cannot claim benefit of this grace period, without compelling circumstances which were beyond its control. No details of orders passed by NGT (if any) is provided by respondent to show that construction remained stopped due to said orders. Demonetisation of some currency notes, remotely affected the construction activities. Payments to labourers could be made through electronic transfers. Most of people in India have opened their bank accounts. Respondents failed to handover possession of the allotted unit to the complainant in stipulated time.
14. The complainant is therefore well within his right to ask for refund of amount, along with interest and compensation. The complaint in hands is thus allowed. As per ABA, respondent No.2 - 5 were confirming parties, stated to be owner of project land. All of them vested their authority in favour of respondent No.1 (company) with regard to marketing, sale and administration of all constructed units. It is said respondent i.e. respondent No.1, who is stated to have received payments from complainant.
16. Respondent No.1 is directed to refund the amount of Rs.1,09,47,488/- received from complainant within 90 days from today, along with interest @ 9.3% per annum from the date of each payment till realisation of amount. In addition to this, said respondent is directed to pay Rs. 1,00,000/- (one lac) as costs of litigation to the complainant.
15. File be consigned to the Registry.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
10.11.2021

Judgement uploaded on 30.11.2021.