



**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. : 3184/2020**  
**Date of Decision : 10.11.2021**

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

**Complainant**

**V/s**

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

**M/s Precision Realtors Pvt Ltd  
304, Kanchan House, Karampura  
Commercial Complex,,  
New Delhi-110015**

**M/s Blueplanet Infradevelopers Pvt Ltd  
40/16, East Patel Nagar,  
New Delhi-110007**

**M/s Madeira Conbuild Pvt.Ltd.  
304, Kanchan House, Karampura  
Commercial Complex,,  
New Delhi-110015**

**M/s Global Estate  
G-23, Ashok Vihar, Phase-1  
Delhi-110052**

**Respondents**

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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 Respondent:** Mr. M .K .Dang, Advocate

**ORDER**

This is a complaint filed by Shri Sahil Puri (also 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.1,17,36,135/- 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-B7-06-602, 6<sup>th</sup> floor, B7 Tower, measuring 1592.84sq. ft. for total sale consideration of Rs.1,62,51,527/-. Apartment Buyer's Agreement(ABA) was executed between the parties on 09.04.2014. Till date, the complainant has made total payment of Rs.1,17,36,135/- to the respondent.

3. By virtue of clause 13.3. of said 'Agreement'(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(for unforeseen delays beyond the reasonable control of the company) i.e. by Jan 2018(inclusive grace period).

4. In accordance with demands raised from time to time by the respondent No.1, he had paid an amount of Rs.1,17,36,135/- till date. In order to pay timely instalments, he had to arrange funds and availed loan of Rs.1.18 crore from HDFC <sup>Ltd</sup> ~~Bank~~. He made representations to respondent, to remove interest charges from the total payment and further to downgrade the size of unit. The respondent acceded to his request and allotted smaller unit bearing No.CD-C4-02-203, admeasuring 1350 sq ft. costing Rs.1,33,15,179/- vide letter dated 19.05.2017. Accordingly, a Fourpartite agreement for availing loan amounting to Rs.99,86,000/- was executed among the parties.

5. In spite of making payments as stated above, the respondent failed to deliver unit in question, as per terms and conditions of agreement and there is no clarity as when the same is likely to be delivered. On his visit to project site, he was shocked to see that project is still under construction and the respondents failed to comply with construction plan, as promised vide allotment letter, brochures and advertisement. The respondent enjoyed his(complainant's) hard-earned money, thus cheated him.

6. All this led to filing of complaint in hands before this forum seeking directions to respondents to refund amount received by them with interest and compensation.

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

Project related details
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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-C4-02-203
V.	Tower No. / Block No.	Towers <del>A6</del> C4
VI	Size of the unit (super area)	Measuring 1350 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 ABA/SBA	
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.1,33,15,179/-
XVII	Total amount paid by the complainants	Rs.1,17,36,135/-

  
A.O.  
10-11-21

8. The respondent No.1 contested the claim of complainant. It raised preliminary objection stating that ABA was executed between the parties prior to enactment of Act of 2016 and thus provisions laid down in said Act cannot be applied retrospectively. This forum does not have jurisdiction to try and decide the complaint in hands. Moreover, this complaint is not maintainable for reason that clause 35 of ABA contains an Arbitration Clause, which requires parties to refer dispute (if any) to Dispute Resolution Mechanism. Further, the complainant was not regular in making due payments and frequently defaulted in this regard. It (respondent No.1) acceded to his demand to downgrade the size of allotted unit due to financial crunch being faced by him and re-allotted unit No.CD-C4-02-203 in said project. All payments made by complainant were adjusted towards newly allotted unit. It (respondent) also conceded demand of complainant with regard to flexible payment plan. The complainant was bound to abide by terms and conditions of Agreement particularly clause 13.3 and clause 13.5 where the complainant himself agreed and understood that respondent shall be entitled to grace period of 180 days and further agreed for an extended grace period of 12 months, from the date of expiry of earlier grace period.

9. It is further averred by respondent No.1 that time to offer possession of unit in question is to be computed from the date of receipt of all requisite approvals. It has been 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, is 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 Approval was got on 27.11.2014. In this way, time period for offering possession would have lapsed only on 27.11.2019. It (respondent) has completed the project and

applied for occupation certificate on 06.07.2017 and the competent authority granted the same on 31.05.2019 leading to offer of possession to the complainant on 17.06.2019 i.e. prior to lapse of due date of handing over of possession. The complainant was bound to take possession of allotted unit by paying all dues.

10. 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 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.

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

12. Even if ABA between the parties of this case was executed prior to enactment of Act of 2016, it is not denied that it was an 'on-going' project. No completion certificate had been received by the respondents, when said Act came into force. The developer was obliged to apply for registration within three months, when Act came into force. By applying for registration during said period, respondent agreed to abide by provisions of said Act. I do not find much substance in aforesaid preliminary objection raised by the respondent.

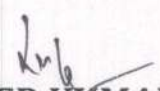
13. According to complainant, respondent No.1 was obliged to handover possession of unit in question within 42 months of approval of building plans or fulfilment of pre-conditions imposed thereunder with grace period of 180 days. As per respondent No.1, Fire Scheme Approval (last approval) was granted by competent authority on 27.11.2014. Counting in this way, the date of possession comes to 27.05.2018. It is well settled that a developer is

entitled to grace period only when same failed to complete project due to force majeure circumstances. Apparently, the respondents failed to <sup>complete</sup> project the project within the stipulated period, what to say offering of its possession. Circumstances of demonetization of currency notes, shortage of labour or non-payment of other allottees cannot be termed as force majeure. The respondent could pay to workers electronically. Most of people in India have bank accounts. If other allottees did not pay their dues in time, complainant cannot be made to suffer. Undisputedly, same has paid Rs.1,17,36,135/- out of total sale consideration of Rs.1,33,15,179/-.

14. The complainant is therefore well within his right to ask for refund of amount paid by him along with interest and compensation. The complaint in hands is thus allowed.

15. It is claimed by complainant that it was respondent No. 1, who developed project in question. As per ABA, respondent No. 2 - 5 were confirming parties, stated to be owner's 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. The latter i.e. respondent No.1 is directed to refund the amount of Rs.1,17,36,135/- received from complainant to latter within 90 days from this order, along with interest @ 9.3% per annum from the date of payments till realisation of amount. The respondent is directed to pay Rs. 1,00,000/- (one lac) as costs of litigation etc.to the complainant.

16. File be consigned to the Registry.

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