



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. : 2393/2021
Date of Decision : 11.11.2021

**Shri Shyam Sunder Goyal
House No.16, TatvamVillas,
Sohna Road, Sector-48
Gurugram**

Complainant

V/s

**M/s IREO Pvt Ltd.
C-4, Ist Floor, Malviya Nagar,
New Delhi-110017**

**5th Floor, Orchid Centre, Golf Course
Road, Sector-53, Gurugram**

Respondent

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

Present:

For Complainant:

For Respondent:

**Ms Vaishali, Advocate
Mr. M K Dang, Advocate**

ORDER

This is a complaint filed by Shri Shyam Sunder Goyal (also referred as buyer) under Section 31 of The Real Estate(Regulation and

A.O.

11.11.21

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 the latter to refund a sum of Rs.79,28,6567/- alongwith interest 9% p.a. from the date(s) of payment till its realisation.

2. It is case of complainant that on 30.01.2013, he applied for allotment of commercial unit in the project of respondent-company known as "IREO CITY CENTRAL" located in Sector 59, Gurugram, Haryana. The respondent allotted unit No.FF-41 having super area of 998.18 sq ft vide its allotment letter dated 06.05.2013, for total sale consideration of Rs.1,79,40,191/-. A Buyer's Agreement was executed between the parties on 21.11.2013(Annexure C-2). As per clause 13.3 of said agreement, respondent was obliged to offer possession of booked unit within a period of 42 months from the date of approval of buildings plans with grace of six months. Building plans of this commercial project were approved by the competent authority on 05.09.2013. He (complainant) has so far made a payment of Rs.79,28,657.26p. to the respondent. It was in the knowledge of respondent, that in case of its failure to hand over possession within the stipulated period, complainant had a right to cancel the allotment and to seek refund, but in order to escape its liability to hand over possession within due date, respondent cancelled his allotment vide letter dated 23.01.2017 and forfeited all this paid money(Annexure C-4). He(complainant) shad booked one residential unit also in the project of same developer known as "The Corridors" which was also got delayed as per agreed time schedule.

3. Being in financial distress, he requested the respondent vide his email dated 30.01.2017 to merge IREO CITY CENTRAL unit with downsized IREO flat in "The Corridors" project but with malafide intention of respondent, it

never responded to his request. Lastly he tried to contact concerned staff of respondent for seeking refund but all went in vain, forcing him to serve legal notice dated 26.05.2021 on the respondent, with request to refund his paid amount. In this way, the respondent acted unilaterally and illegally to cancel his allotment and forfeiture of amount paid by him, forcing him to knock the doors of this forum for directions to respondent to refund the money with interest and compensation.

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

Project related details		
I.	Name of the project	"IREO CITY CENTRAL"
II.	Location of the project	Sector 59, Gurugram
III.	Nature of the project	Commercial
Unit related details		
IV.	Unit No. / Plot No.	FF-41
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 998.18 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	Commercial
X	Date of booking(original)	30.01.2013
XI	Date of Allotment(original)	06.05.2013
XII	Date of execution of ABA/BBA (copy of BBA/SBA enclosed)	21.11.2013

and
A.D.
11-11-21

XIII	Due date of possession as per BBA/SBA	04.09 2017
XIV	Delay in handing over possession till date	More than 4 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.1,79,40,191/-
XVII	Total amount paid by the complainants	Rs.79,28,657.26p.

5. The respondent contested the claim of the complainant. It raised preliminary objection stating that Buyer's Agreement was executed between the parties prior to enactment of Act of 2016 and hence provisions laid down in said Act cannot be applied retrospectively. Moreover, as per clause 34 of Buyer's Agreement, there is an arbitration clause, bind parties to refer any dispute, to Dispute Resolution Mechanism. Further it(respondent) regularly sent payment demands/reminders which the complainant failed to adhere to pay in time and is a defaulter from very inception. According to Clause 13.3. of Buyer's Agreement and Clause 43 of the Schedule -I of booking application, the complainant himself at his own sweet will had agreed for completion of project in 42 months with grace period of 180 days and further period of 12 months from the expiry of grace period.. From the terms of Buyer's agreement, it is evident that time was to be computed from the date of receipt of all requisite approvals and last statutory approval which form a part of pre-conditions was the Fire Scheme Approval which was obtained on 07.02.2014. Thus time period, for

completing the project would have expired only on 07.02.2019 i.e. 60 months from 07.02.2014. The complainant, after going through and understanding the pros and cons of terms and conditions, signed the Agreement, at his own sweet will and no material fact was hidden from his knowledge. Respondent denied that complainant was kept in dark, instead all his concerns were attended by officials of respondent from time to time.

6. It is further the case of respondent that timely payment of instalments was essence of allotment and the complainant being real estate investor had booked the unit in question with a view to early quick profit. On account of non-fulfilment of contractual obligations by the complainant, despite several opportunities extended to him, allotment of complainant was cancelled and earnest money alongwith other charges has been forfeited vide letter dated 23.01.2017.

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

8. True, unit in question was allotted and Buyer's Agreement was executed between the parties of this case prior to enactment of the Act of 2016. ^{Admittedly} Completion certificate had not been received by the respondent, when said Act came into force. In such a way, it was an ongoing project. The respondent was obliged to apply for registration within three months, when the Act came into force. 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.

9. As stated earlier, as per respondent, same was obliged to handover possession of unit in question within 42 months of receipt of all requisite approvals and last approval i.e. Fire Scheme Approval was granted on 07.02.2014. Counting in this way, the date of possession comes to

07.08.2017. It is well settled that developer is entitled to grace period only when same failed to complete the project due to circumstances, beyond its control. Respondent cancelled the allotment vide letter dated 22.01.2017 i.e. before due date of possession. It is claimed that on account of non-fulfilment of contractual obligations by the complainant and despite several opportunities extended to him (complainant) allotment of complainant was cancelled. Respondent did not explain as how complainant had failed to fulfil contractual obligations, which forced it (respondent) to cancel allotment of unit. As per complainant, he paid Rs.79,28,657.26p. as per demands raised by respondent. Onus was upon respondent to prove circumstances which led to cancellation of unit, which it failed to prove.

10. 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. Respondent is directed to refund amount of Rs.79,28,657/- 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, the respondent is directed to pay Rs. 1,00,000/- (one lac) as costs of litigation to the complainant.

11. File be consigned to the Registry.



(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
11.11.2021

Judgement uploaded on 27.11.2021.