

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. 698 of 2018
Date of First Hearing : 14.12.2018
Date of Decision : 05.02.2019

Mr. Binod Kumar Singh
R/o H.no. B-403, UNESCO Apartment,
Plot no.55, IP Extn. Patpargang, **Complainant**
Delhi- 110092

Versus

1. M/s IREO Grace Realtech Pvt Ltd
Office at: 5th floor, Orchid Centre, golf
course road, sector -53, Gurugram. **Respondents**
2. M/s ROI Realty Pvt. Ltd.
Redg. Office: Flat no. 100/08, Silver
Oaks DLF Phase 1, Gurugram-122002

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Sukhbir Yadav Advocate for complainant
Shri M.K. Dang Advocate for the respondents



ORDER

1. A complaint dated 09.08.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainant Mr. Binod Kumar Singh against the promoters M/s IREO Grace Realtech Pvt Ltd and ROI Realty Pvt. Ltd..

2. Since the buyer agreement dated 20.06.2014 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	The Corridor, sector 67-A, Gurgaon,, Haryana
2.	Nature of real estate project	Residential group housing colony
3.	Area of the project	37.5125 Acres
4.	Unit No.	1204,12 th floor, B8 tower
5.	Area of unit	1937.53 sq. ft
6.	Registered/not registered	Registered (Phase1, Phase2 and Phase 3)
7.	RERA registration no	377 of 2017 (Phase 1) 378 of 2017 (Phase 2) 379 of 2017 (Phase 3)
8.	Completion date as per RERA registration certificate	30.06.2020
9.	Date of booking	22.03.2013 (Cancelled vide letter dated 01.09.2016)



10.	Date of Agreement	26.06.2014
11.	Total Consideration	Rs 20,11,72,58/-
12.	Total amount paid by the complainant	Rs. 62,00,519/-,
13.	Payment Plan	Instalment payment plan
14.	Status of the project	80 % constructed
15.	Date of delivery of possession (As per clause 13.3 - 42 months from date of approval of building plans + 180 days grace period) Calculate from the date of consent to establish i.e.25.05.2016	25.05.2020
16.	Delay	premature
17.	Penalty Clause (clause 13.4)	Rs 7.50/- per sq. ft of Super Area for every month of delay

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 10.01.2019, 14.12.2018, 10.01.2019 and 05.02.2016. The reply has been filed by the respondent has been perused.



Facts of the case

5. The complainant submitted that as per section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said Act

and is under the territorial jurisdiction of this hon'ble regulatory authority. It is submitted that both respondents have joint as well as several liabilities towards complainant.

6. The complainant submitted that he visited sales gallery of respondent no. 1 at golf course extension road, Gurugram along with respondent no. 2. Local staff of respondent gave application form and assured that possession of unit will be delivering within 36 months i.e. up to March 2016.
7. The complainant submitted that the he issued a cheque of Rs. 20,00,000/- vide cheque no. 866832 drawn in HDFC Bank along with application form. Respondent no. 1 acknowledges the payment and issued payment receipt dated 22.03.2013.
8. The complainant submitted that on date 13.04.2013 respondent no. 1 issued a letter acknowledging provisional application for unit type 3BHK +S for proposed super area of 1937.53 sq. ft. in project "The Corridors".
9. The complainant submitted that on date 14.04.2013 respondent issued a demand letter and asked for payment of Rs. 17,55,114/-. Demand was paid by complainant vide cheque no. 866844 dated 06.05.2013 of Rs. 9,00,000/-, cheque no. 463449 dated 11.05.2013 of Rs. 2,00,000/- and cheque no. 866846 dated 11.05.2013 of Rs. 6,55,154/- and thereafter



respondent no. 1 issued payment receipts against above mentioned three cheques.

10. The complainant submitted that on date 07.08.2013 respondent no. 1 issued offer of allotment of residential apartment for unit no. CD-B8-12-1204. Complainant had to accept the offer of allotment under comely circumstances. Complainant lodged his protest to respondents about the unilateral terms and conditions of allotment letter, CRM Staff and Mr. Ahmed assured the complainant to take the concerns. Total cost of flat was Rs. 2,01,17,258/-.

11. The complainant submitted that on date 18.03.2014 respondent no. 1 issued another demand letter on stage of "Commencement of Excavation" and demanded Rs. 24,45,365 /-. Thereafter, respondent no. 1, issued permission to mortgage in favour of ICICI Bank Ltd. on date 26.06.2014. The demand was paid by complainant vide cheque no. 400832 dated 30.06.2014, after taking loan from ICICI bank and till date paying EMI to bank.

12. The complainant submitted that on date 26.06.2014 a preprinted apartment buyer's agreement was executed between respondent no. 1 and complainant. Complainant raised his objection on unilateral, arbitrary and one-sided



terms and conditions of agreement in front of both respondent and asked to amend the terms. Moreover, the due date of offer of possession was extended to 42 months + 6 months (original due date of possession was March 2016 i.e. 36 months).

13. The complainant submitted that licence no. 05 of 2013 was issued to (i) Precision Realtors Pvt. Ltd, (ii) Blue Planet Infra Developers Pvt. Ltd. (iii) Madeira Conbuild Pvt. Ltd. and Global Estate (a partnership firm) vide order dated 22.02.2013. In apartment buyer's agreement, the licence holder were presented as conforming party and these conforming party did not sign the agreement, moreover the apartment buyer agreement did not contain the details of collaboration / development agreements etc.

14. The complainant submitted that the said apartment buyer agreement seized the sanctity in eyes of law. The respondent no. 1 is not a competent party to get enters into any agreement for above said project, moreover agreement is not enforceable on complainant.

15. The complainant submitted that on date 02.09.2015 respondent no. 1 issued another demand on construction



stage of casting of lower basement roof slab and demanded Rs. 24,36,407/-.

16. The complainant submitted that on date 05.09.2017 complainant visited the office of respondent no. 1 along with respondent no.2 representative Mr. Ahmed. There they meet with Mr. Vikram Mehta (manager CRM — IREO) and requested for cancellation of booking and refund the full money along with interest on account of technical and legal reasons. Complainant gave a written cancellation request letter.

17. The complainant submitted that date 16.11.2015 complainant again visited to office of respondent no. 1 and requested to resolve the issue and for refund of money, both respondents assured that they will raise the matter with higher management of IREO and get it resolve in short span.

18. The complainant submitted that on date 04.08.2016 Precision Realtors Pvt. Ltd. (Group company of IREO) invited no-objection / suggestion for approval of revised building plans.



19. The complainant submitted that on date 01.09.2016 respondent no. 1 issued cancellation letter. In cancellation letter respondent acknowledged the total paid amount Rs. 62,00,519/-.
20. The complainant submitted that the calculation of respondent is also showing mischievous intention and try to embezzlement of paid money. Complainant paid Rs. 62,00,519/- to respondents and as per payment receipts service tax amount is Rs. 2,36,889/-. Respondent's claim of service tax is Rs. 7,71,904/- which shows their malafied and mischievous intention. It is further pertinent to mention here that huge/ unjustifiable brokerage given to respondent no. 2 is not concerned with complainant, moreover respondent no.1 did not obtained consent / permission on brokerage payment to respondent no. 2. The interest shown on delay payment is also against the terms and conditions of apartment buyer's agreement. (As per term no. 7.4 of ABA, company shall be entitled to cancel the allotment, if allottee fails to pay the demand within 90 days from due date). Complainant



requested to cancel the unit in November, 2015, thereafter complainant is not liable for any delayed interest.

21. The complainant submitted that he frequently raised the objection on sending demand and cancellation letter to both respondents. Respondent no. 1 told that "it is automatic system of CRM, Department and assured to pursue the matter to Higher Management of IREO.
22. The complainant submitted that in month of November, 2016 complainant again reached to respondent no. 1 and respondent no.2, Mr. Vikaram and Mr. Behal both again promised to resolve the matter very soon and thereafter informed that matter has been already forwarded to higher management for kind perusal.
23. The complainant submitted that complainant chased the respondent no. 1 and no. 2 on regular basis, but all went in vain. On 23.06.2018 complainant went to the office of respondent no. 1 and again raised his grievance to his office bearer, but they refused to refund the money.



24. The complainant submitted that the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondents are liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
25. The complainant submitted that there is an apprehension in the mind of the complainant that the respondents have been playing fraud and there is something which respondents are not disclosing to the complainant just to embezzle the hard earned money of the complainant and other co owners.
26. The complainant submitted that the complainant has also visited several times to the office of respondents for refund of money and served multiple grievances letters to the respondents at their office address and personally requested to executive / office bearer of respondents , before filing this complaint.
27. The complainant submitted that the cause of action for the present complaint arose in or around 2013 when respondents invited the application for booking without having authority



and provided wrong information and concealed material facts. The cause of action again arose on various occasions, including on: a) Aug. 2013; b) June. 2014; c) August, 2016, d) April, 2017; e) May. 2018 and , when the protests were lodged with the respondent for refund the paid money.

28. The complainant submitted that as per section 12 of the RERA Act, 2016, the promoter is liable to return entire investment along with interest to the allottees of an apartment, building or project for giving any incorrect, false statement etc.
29. The complainant submitted that the complainant is entitled to get refund of paid amount along with interest @ 20% per annum compoundable from date of booking to the date of refund. The complainant is also entitled to get Rs. 1,00,000/- towards the cost of litigation. The complainant is also entitled for any other relief which he is found entitled by this hon'ble authority.



ISSUES RAISED BY THE COMPLAINANT

13. The issues raised by the complainant are as follows: -

- i. Whether apartment buyer's agreement without attestation/signature of the license holder / conferring parties is valid or void or voidable?
- ii. Whether the complainant is entitled for refund of all money paid to respondents?
- iii. Whether the respondents are entitled for compounding interest @ 20% per annum, from date of booking to till date?
- iv. Whether forfeiture of earnest money 20% with other charges is justifiable?
- v. Whether the respondent no.1 made deliberate delay in cancellation of unit?

RELIEF SOUGHT

14. The reliefs sought by the complainant are as follows :-

- i. To direct the respondents to refund the amount paid by the complainants i.e. Rs. 62,00,519/- along with interest at the rate of 20 % per annum from the date of booking .
- ii. To direct the respondents to pay legal expenses of Rs. 1,00,000/- incurred by the complainant.



- iii. To grant any other damages, interest payments, relief which the authority may deem fit and proper under the circumstances of the case.

REPLY BY THE RESPONDENT

15. The respondents submitted that present complaint is not maintainable in law and on facts against the answering respondents and hence is liable to be dismissed at the very onset.

16. The respondents submitted that property in dispute was books much before RERA Act became applicable. Thus, the hon'ble court has no jurisdiction to entertain the present complaint.

17. The respondents submitted that allegation made out by the complainant against the answering respondents are false, frivolous and concocted and an afterthought. There is no evidence on record against allegation made out by the complainant against the respondents. The complainant shall be put to strictest proof.

18. The respondents submitted that at the very onset the answering respondents denies each and every allegation unless specifically admitted. The answering respondents work



under the name and style of ROI realty private limited, a private limited company, as an independent agency. The answering respondent enjoys good reputation and has been operating in the field of real estate from the last several years. That the answering respondents has not made any assurance and guarantees much less as is alleged by the complainant. That the answering respondents are not liable for the internal policy decision of the respondent no 1 and 2. Thus, the complaint is liable to be dismissed.

19. The respondents submitted that complainant is misleading this hon'ble court and misconceived the facts of the case hence is not entitled to any relief. It is further stated the complaint is barred by limitation.

20. The respondents submitted that the dispute is between the complainant and respondent no.1. The respondent no. 2 is unnecessarily dragged into it. The respondent no.2 can at the best be the witness to the facts and cannot be held responsible for the internal policy decision of the respondent no. 1 and 3 which is beyond the purview of the scope and authority.

21. The respondents submitted that complainant has not approached this hon'ble court with clean hands. The complainant was never asked for cancellation of the unit but



was looking for more investment for himself and his known through respondent no. 2 in IREO and Ekantam in January,2016. The complainant has defaulted in making payment of installment and when the allotment is cancelled, the complainant stated making false allegations.

22. It is wrong and denied that the complaint can be preferred under sections 12, 13,14,18,19,31 and 71 or any other applicable provisions of the Real Estate (Regulation and Development) Act, 2016. It is submitted that authority does not have the jurisdiction to decide on the present complaint. The complainant is estopped from filing the present complaint by his own acts, omissions, admissions, and laches and has no locus standi to file the present complaint.

23. It is submitted that the complainant is a clever and a shrewd type of person who has filed this baseless and false complaint in order to unnecessarily harass and pressurize the respondent. It is absolutely wrong and denied that the alleged grievance of the complainant relates to breach of contract, false promises or gross unfair trade practices committed by the respondents. It is submitted that the complainant had made the booking through his own broker company and the same has no concern with respondents no.1 and 2.



24. The respondents submitted that it is not denied that the super area of the unit was increased from 1350 sq. ft to 1483.57 sq. ft. as per the agreed clauses of the booking application form. It is pertinent to mention here that the complainant himself has agreed in clause 22 of the schedule- I of the booking application form that the super area of the unit was tentative and that if there would be any change in the apartment's size then in that case the applicable sale consideration shall be payable to respondent no.1 by the complainant.
25. The respondents submitted that it is wrong and denied that at the time of signing of application for booking, the complainant was informed that the size of apartment would be 1350 sq. ft super area at a basic sale price of Rs. 8,750/- per sq. ft or that the total cost of the apartment would be Rs. 1,18,12,500/-.
26. The respondents also submitted that the respondents are correct in increasing the super area to 1483.57 sq. ft in the apartment buyer's agreement which was stated as 1350 sq. ft in the application for booking. It is submitted that according to the terms and conditions of the booking application form, the super area of the unit was tentative and the same was agreed upon by the complainant.



27. The respondents also submitted that it is wrong and denied that the respondents have in a clandestinely manner charged development charges at the rate of Rs. 327.91/- per sq. ft., preferential location charges at the rate of Rs. 1196/- per sq. ft. of super area and club membership charges at an aggregate of Rs. 2,50,000/- and charged interest free maintenance security at the rate of Rs. 100/- per sq. ft. of the super area and IBRF at the rate of Rs. 50/- per sq. ft. of the super area or that the same has ultimately increased the total cost of the apartment by more than Rs. 45,69,000/-. It is submitted that according to clause 2 of the booking application form and clause 5 of the schedule -I of the booking application form, the complainant had agreed to pay aforesaid charges. The complainant is now taking baseless, false and frivolous pleas in order to justify his own wrongs, illegalities and laches.

DETERMINATION OF ISSUES:

28. With regard to **first issue** raised by the complainant from the perusal of the agreement it is seen that the agreement signed inter say by the allottees and also duly signed and stamped by the authorized signatory of the respondent and also for and on the behalf of conforming parties. It is wrong to say that apartment buyer's agreement is without attestation and



signature of the conforming parties /license holder. Hence the authority is of view that the agreement dated is valid in eyes of law.

29. With regard to **second, third, fourth, fifth issue** raised by complainant the authority is of the view that as per clause 21.1 of apartment buyers agreement time is the essence of the agreement for the payment of sale consideration, maintenance charges and other deposits and amounts, including any interest. If the allottee fails in timely performance of its obligations agreed to pay in time any of the instalments to the company, the company shall be entitled to cancel the allotment and terminate the agreement. There have been letters issued by the respondent to the complainant demanding the payment of due instalments. Thus the respondent has abided by the agreement and has cancelled the allotment of the unit vide letter dated 1.09.2016. It is pertinent to note that the respondent cannot forfeit more than 10% of consideration amount as earnest money. The promoter is liable to deduct only 10% of the consideration amount and refund the balance amount.



30. In the case of *DLF Ltd. v. Bhagwati Narula*,¹ revision petition no. 3860 of 2014 it was held by the National Consumer Dispute Redressal Commission, New Delhi that agreement for forfeiting more than 10% of sale price would be invalid and 20% of the sale price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can show that it had only suffered loss to the extent the amount was forfeited by it. Earnest money is said to be the only amount that is paid at the time of concluding the contract. Thus, amount beyond 10% cannot be forfeited and if done so that would be unreasonable

Findings of the Authority

31. Jurisdiction of the authority-

Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the



¹ 1(2015) CPJ 319 (NC)

adjudicating officer if pursued by the complainants at a later stage.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

32. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observed that as per clause 13.3 of the builder buyer agreement dated 26.06.2014 for unit no.1204, 12th floor, B8 tower, in project "The Corridor", Sector-67A, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of approval of building plans or from the date of consent to establish i.e. 25.5.2016 + 6 months grace period which comes out to be 25.5.2020. Complainant has already paid



Rs.62,00,519/- to the respondent against a total sale consideration of Rs.2,01,17,258/-.

33. Since there is no hope and scope for completion of project, hence no choice is left with the authority but to direct the respondent to refund the entire amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order, after deducting 10% of the total consideration amount + actual service tax paid by the complainant and deposited by the respondent with the competent authority. Brokerage to be borne by the respondent.

Decision and directions of the authority

34. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent is directed to refund the entire amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order, after deducting 10% of the total



consideration amount + actual service tax paid by the complainant and deposited by the respondent with the competent authority. Brokerage to be borne by the respondent.

35. The order is pronounced.

36. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated:05.02.2019

Judgement uploaded on 30.03.2019

