

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

Complaint no. : 2044 of 2018
Date of first hearing : 12.03.2019
Date of decision : 12.03.2019

Mr. Abhishek Mohan Gupta
R/o W-11/10, DLF Phase-III, Gurugram,
Haryana-122002

Complainant

Versus

M/s Ireo Grace Realtech (Pvt.) Ltd.
Office at: 5th floor, Orchid Centre,
Golf course road, Sector-53,
Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Chetan Dhingra
Shri M.K Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 04.12.2018 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. Abhishek Mohan Gupta, against the promoter M/s Ireo Grace Realtech



Pvt Ltd, on account of violation of clause 13.3 of the apartment buyer's agreement executed on 12.01.2015 for unit no. 202 on 2nd floor, A9 tower, measuring super area of 1891.51 sq. ft. in the project "The Corridors" for not giving possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer's agreement has been executed on 12.01.2015, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

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

1.	Name and location of the project	"The Corridors" in Sector 67-A, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	202 on 2 nd floor, A9 tower
4.	Unit area	1891.51 sq. ft.
5.	Project area	37.5125 acres



6.	Registered/ not registered	For Phase II- 377 of 2017 (13.152 acres)
7.	Revised date of completion as per RERA registration certificate	30.06.2020
8.	Applied for OC	06.07.2017
9.	DTCP license	05 of 2013 dated 21.02.2013
10.	Allotment letter	07.08.2013
11.	Fire scheme approval	27.11.2014
12.	Date of environmental clearance	12.12.2013
13.	Date of booking	22.03.2013
14.	Date of apartment buyer's agreement	12.01.2015
15.	Total consideration	Rs. 2,06,42,842.24/-
16.	Total amount paid by the complainant	Rs. 1,86,41,899.30/-
17.	Payment plan	Instalment payment plan
18.	Date of delivery of possession Clause 13.3 - 42 months from date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period	27.11.2018
19.	Delay of number of months/ days in handing over possession till date of decision	3 months and 13 days
20.	Penalty clause as per apartment buyer's agreement dated 12.01.2015	Clause 13.4- Rs. 7.50/- per sq. ft. per month of the super area for every month of delay till the actual date fixed by the company for offering possession of the said



		apartment to the allottee
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4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement dated 12.01.2015 is available on record according to which the possession of the aforesaid unit was to be delivered by 27.11.2018. The promoter has failed to deliver the possession of the said unit by the due date to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 12.03.2019. The respondent through its counsel appeared on 12.03.2019. The reply filed on behalf of the respondent and has been perused.

Facts of the complaint

6. The complainant submitted that he booked for a flat in the project of the respondent namely, "IREO THE CORRIDOR" after paying the essential booking amount and subsequent



instalments. The complainant had availed loan from bank for the purpose of purchasing the said unit in the project of the respondent company. Thus, the complainant has to suffer both mentally and financially as he has to pay EMIs interest for the loan which he has taken and secondly for the rent which he is paying for the rented accommodation in which he is living and thirdly he is suffering due to the non-availability of the flat within the stipulated time.

7. The complainant has filed this complaint for failure on part of the opposite party to provide the possession of the said unit for which they had accepted the booking in the year 2013 and major part of the consideration has already been made to the opposite party with the promise to hand over the same by January 2017. The opposite party herein has even failed to complete the construction of the said project till date and moreover, has miserably failed to update the complainant about the construction status. It is submitted that the project is no where near completion it is still in its construction state.
8. The complainant submitted that opposite party has also failed to address the request of the complainant to refund his hard-



earned money as he no longer trusts the opposite party to complete the project and deliver the possession anytime soon. It is further submitted that the place of work of the complainant has shifted to Chennai so he is no more interested in the project of the respondent which is already in delay and therefore the complainant is seeking refund of his money. Thus, the complainant seeks the intervention of this hon'ble authority to redress the grievances of the complainant herein.

9. The complainant submitted that the respondent M/s IREO GRACE REALTECH PVT. LTD., is a company incorporated under the Companies Act 1956 and claims to be one of the leading real estate companies in the country. Somewhere in 2012 the respondent had launched the project 'IREO THE CORRIDOR' located at the Sector- 67-A, Gurugram, Haryana, India.

10. The complainant submitted that he was approached by the respondent company's agents and representatives who made tall claims regarding their project, its viability, various amenities it promised etc. It is submitted that the complainant was lured into by the respondent representations and decided



to apply in the project of the respondent company. The complainant was lured into investing by the respondent company and hence decided to make application for the booking in the said project of the opposite party for the unit.

11. The complainant submitted that the prime attraction given by the respondent company was the metro connectivity amongst all other attractions. It is submitted that it was only due to the said reason the complainant applied for the unit and thereafter the respondent company after a gap of almost 2 years for the reason best known to them had delayed in executing the buyers agreement. On 12.01.2015, the respondent company executed the apartment buyers agreement and entered into agreement with the complainant.

12. The complainant submitted that prior to this booking the complainant had already booked a unit i.e. CD-C3-01-103 in the same project of the respondent company. It is submitted that soon after the booking and allotment of the unit no. CD-A9-02-202, the complainant realized that he and his family won't be able to sustain and continue the payment of both the units together. Therefore, the complainant requested the



respondent company for surrender of allotment of the unit booked prior to this i.e. CD-C3-01-103 vide letter/Email dated 02.12.2014 and asked for transferring and adjusting the amount already paid that is Rs.23,84,171/- with the present unit. It is submitted that the respondent company duly accepted the request of the complainant and transferred and adjusted the money of the complainant after deducting an amount of Rs.1,69,705/- as delayed payment interest and thereafter cancelled the allotment of the unit no. CD-C3-01-103.

13. The complainant submitted that he made most of its payments on time and the respondent company had intimated and had charged interest at the rate of 20% p.a., in cases where the payments were delayed. It is submitted that the complainant, nevertheless, duly made the payments to the respondent company as and when demanded. It is submitted that despite making of payment on time, the respondent company had miserably failed to fulfil its promise of delivering the possession of the apartment by January 2017.



14. The complainant submitted that the respondent company had assured the complainant that as per clause 13.3 of apartment buyers agreement the delivery of the apartment would be done within 42 months from the date of approval of the building plan. Clause 13.3 of the flat buyers agreement is reproduced hereunder:

*“subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this agreement and not having defaulted under any provisions of this agreement including but not limited to the timely payment of all dues and charges including the total sale consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the Allottee within a period of 42 (Forty Two) months from the date of approval of building plans and/ or fulfilment of the preconditions imposed thereunder (**‘Commitment Period’**). The Allottee further agrees and understands that the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the company”.*



15. The complainant submitted that **the building plans for the project were approved on 23.07.2013 by the Directorate of Town & Country Planning, Haryana Sector-18, Chandigarh.** Thus, it is submitted that the respondent

company was supposed to deliver the possession of the apartment latest by **January 2017** if we calculate this period from the date of approval of the building plan i.e.23.07.2013.

16. The complainant submitted that he had requested the respondent to deliver the possession of the apartment several times personally and also over telephonic conversation but the respondent has failed to adhere to the request of the complainant. The respondent was already in receipt of Rs. 1,86,41,899.30/- of the total sale consideration but had not completed the construction which shows that the respondent had failed to deliver the possession of the unit and thus this amounts to deficiency in service and unfair trade practice on the part of the respondent. Further, the respondent was also guilty of not issuing the construction updates to inform the complainant of the stage of the construction.

17. It is submitted that the respondent did not adhere to the demand for the refund of the complainant and did not address the concerns of the complainant, rather, the respondent threatened the complainant with forfeiture of the earnest money in case the complainant cancelled the agreement and



sought refund, which in the present case was due to the delay in the delivery by the respondent.

18. The complainant submitted that the respondent company had illegally and malafide withheld the compensation of the complainant. It is submitted that due to the illegal and non-cooperative attitude of the respondent, the complainant has been constrained to file the present complaint. It is submitted that the respondent cannot expect the complainant to wait endlessly for the possession of the unit.

19. The complainant has already invested huge sums of money in the project of the respondent but till date neither the possession has been offered nor refund has been made. Hence, being aggrieved, the complainant has approached this authority for relief. It is only just and fair that this hon'ble authority may be pleased to hold that the respondents were liable to deliver the possession of the apartment by **January 2017**. And may be pleased to direct the respondent to refund the amount paid by the complainant along with interest @20% p.a.



20. Issues raised by the complainant

The relevant issues raised in the complaint are:

- I. Whether there has been failure on the part of the respondent in the delivery of the apartment to the complainant within the stipulated time period?
- II. Whether the complainant is entitled to refund of his money along with interest, and at what rate?

21. Relief sought

- a. The complainant is seeking refund of the money paid by the complainants till dated i.e. Rs 18,641,899.30/- along with interest at prescribed rate from the date of payment till realisation of the amount; and.
- b. May pass any other orders

Reply on behalf of the respondent

22. The respondent submitted that according to the booking application form and the apartment buyer's agreement, the time period for offering the possession of the unit to the complainant has not yet elapsed and the complaint has been filed pre-maturely by him. The respondent has filed the



present reply within the period of limitation as per the provisions of the Real Estate (Regulation and Development) Act, 2016.

23. This hon'ble authority does not have the jurisdiction to decide on the imaginary interest and compensation as claimed by the complainant. It is submitted that in accordance with section 71 of the Act ibid read with rules 21(4) and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, the Authority shall appoint an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard. It is submitted that even otherwise it is the adjudicating officer as defined in section 2(a) of the Real Estate (Regulation and Development) Act who has the power and the authority to decide the claims of the complainant.

24. The respondent submitted that the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Grand



Arch', 'Victory Valley', 'Skyon' and 'Uptown' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.

25. The complainant, after checking the veracity of the project namely, 'Corridor; Sector 67A, Gurugram had applied for allotment of an apartment vide his booking application form dated 22.03.2013. The complainant agreed to be bound by the terms and conditions of the said booking application form.
26. The respondent in accordance with the agreed payment plan and the terms of the allotment raised the payment demand towards the second installment demand dated 14.04.2013. However, the complainant made the part-payment of the demanded amount only after reminders dated 14.05.2013 and 28.05.2013 and the remaining amount was adjusted in the next installment demand as arrears.
27. The respondent submitted that based on the said application, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainant apartment no. CD-A9-02-202



having tentative super area of 1891.51 sq. ft for a total sale consideration of Rs. 2,06,42,842.24. It is submitted that the complainant signed and executed the apartment buyer's agreement on 12.01.2015 only after reminders dated 28.05.2014 and 17.07.2014 were sent to him by the respondent and the complainant agreed to be bound by the terms contained therein. It is pertinent to mention herein that when the complainant had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be applied retrospectively.

28. Vide email dated 28.11.2014 and letter dated 02.12.2014, the complainant, on account of paucity of funds, requested the respondent to merge the unit no. CD-C3-01-103 which was already allotted by the respondent in the name of Mr. Pankaj Mohan Gupta who is the brother of the complainant with the unit of the complainant. The respondent being a customer oriented company acceded to the request of the complainant vide letter dated 24.12.2014 and intimated to him that after deducting the delayed interest accrued towards the unit no.



CD-C3-01-10 and CD - A9-02-202, the balance amount of Rs. 18,58,454/- will be adjusted towards the installment of the retained unit no. CD-A9-02-202.

29. The respondent submitted that as per the agreed payment plan, the respondent raised the payment demand dated 14.03.2017 towards the eleventh installment for the net payable amount of Rs. 13,51,717.02. The complainant however made the payment of the same only after the issuance of reminder dated 18.04.2017 by the respondent.

30. Vide payment demand dated 11.09.2017, the respondent raised the payment demand towards the twelfth installment for net payable amount of Rs. 19,31,640.83. However, the complainant till date has not made the payment of the due installment amount despite reminder letter dated 22.12.2017.

It is submitted that the complainant has made the payment of the earnest money and part-amount of Rs. 1,86,41,900/- out of the total sale consideration of Rs. 2,06,42,842.24 and is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration



charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.

31. The possession of the unit is supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 13.3 of the apartment buyer's agreement and clause 43 of the Schedule - I of the booking application form states that *'...subject to the allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the preconditions imposed thereunder (Commitment Period). The allottee further agrees and understands that the company shall be additionally be entitled to a period of 180 days (Grace Period)...'*.. Furthermore, the complainant has further agreed for an extended delay period of 12 months from the date of expiry of the grace period as per clause 13.5 of the apartment buyer's agreement.



32. The respondent submitted that from the aforesaid terms of the apartment buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub- clause (iv) of clause 17 of the approval of building plan dated 23.07.2013 of the said project that the clearance issued by the ministry of environment and forest, Government of India has to be obtained before starting the construction of the project.
33. It is submitted that the environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan was to be duly approved by the fire department before the start of any construction work at site.
34. The respondent submitted that the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and that the time period for offering the possession, according to the



agreed terms of the buyer's agreement, will expired only on 27.11.2019. However, the complainant has filed the present complaint prematurely prior to the due date of possession and no cause of action had accrued till date. The complainant is trying to mislead this hon'ble authority by making baseless, false and frivolous averments. The respondent has already completed the construction of the tower in which the unit allotted to the complainant is located and the photographs of the same are attached herewith as **annexure R-25(Colly)**. It is pertinent to mention herein that the respondent has already applied for the grant of occupation certificate on 06.07.2017

35. The respondent submitted that the complainant along with his other family members are real estate investors who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that his calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to somehow get out of the concluded contract made by him on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed.



Determination of issues

After considering the facts submitted by the complainant, respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

36. With respect of the **first issue** raised by the complainant, the authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtained clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be **27.11.2018** and the possession has been



delayed by **3 months and 13 days** till the date of decision. As the promoter has failed to fulfil its obligation under section 11(4)(a) of the act *ibid*, therefore, the respondent is liable under proviso to section 18 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 27.11.2018 upto the date of offer of possession.

37. With respect to **second issue** raised by the complainant, the project is registered with the authority and the revised date of completion as per the registration certificate is 30.06.2020. The respondent has also applied for grant of OC on 06.07.2017 for the tower in question. Thus, keeping in view the status of the project and the interest of other allottees, the authority is of the consistent view that refund cannot be allowed at this stage. However, the complainant is entitled to delayed possession charges at 10.75% per annum to the complainant from the due date of possession 27.11.2018 till the offer of possession.



Findings of the authority

38. **Jurisdiction of the authority-** The project “The Corridors” is located in Sector 67-A, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint.

39. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. 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 adjudicating officer if pursued by the complainant at a later stage.

40. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon’ble Supreme Court, particularly in *National Seeds Corporation Limited v. M.*



Madhusudhan Reddy & Anr. (2012) 2 SCC 506, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

41. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in ***civil appeal no.23512-23513 of 2017*** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

42. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter under section 11 of the Act *ibid*.



43. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.
44. Complaint was filed on 04.12.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 07.12.2018, 19.12.2018 and 05.01.2019. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 19.12.2018 and on 05.01.2019 for non-filing of reply even after service of notices.
45. A final notice dated 26.02.2019 by way of email was sent to both the parties to appear before the authority on 12.03.2019.
46. As per clause 13.3 of the apartment buyer agreement dated 12.01.2015 for unit no.202, A9 tower, in project "The Corridors" Sector-67A, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of approvals of building plans i.e. 23.07.2013 + 6 months grace period which comes out to be 23.07.2017. However, the respondent has not delivered the unit in time.



Complainant has already paid Rs.1,86,41,899/- to the respondent against a total sale consideration of Rs.2,06,42,842/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 23.7.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

Decision and directions of the authority

47. 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 issue the following direction to the buyer in the interest of justice and fair play:

1. The respondent is directed to handover possession of the said apartment by 30.06.2020 as committed in the registration certificate.
2. The respondent is directed to pay interest at the prescribed rate of 10.75% per annum on the amount



deposited by the complainant with the promoter from the due date of possession i.e. **27.11.2018** up to the date of offer of possession.

3. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
4. Respondent is directed to deposit the penalty imposed on the previous dates with the authority.

48. The complaint is disposed of accordingly.

49. The order is pronounced.

50. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.03.2019

Judgement Uploaded on 11.04.2019