

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

Complaint no. : 2244 of 2018  
Date of first hearing : 12.03.2019  
Date of decision : 12.03.2019

Mr. Satish Kumar Arora  
R/o A-2/148, First Floor, Paschim Vihar,  
New Delhi-110063

Versus

**Complainant**

M/s Ireo Grace Realtech Pvt. Ltd.  
Office at: 304, Kanchan House, Karampura,  
Commercial Complex,  
New Delhi-110015

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Chetan Dhingra Advocate for the complainant  
Shri M.K Dang Advocate for the respondent

**ORDER**

1. A complaint dated 13.12.2018 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. Satish Kumar Arora, against the promoter M/s Ireo Grace Realtech



Pvt. Ltd. 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 allotment letter has been issued on 12.08.2013, 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.	CD-B4-09-902
4.	Unit area	1932.15 sq. ft.
5.	Project area	37.5125 acres
6.	Registered/ not registered	<b>For Phase I- 378 of 2017 (13.25 acres)</b>
7.	Revised date of completion as per RERA registration certificate	<b>30.06.2020</b>
8.	Applied for OC	<b>06.07.2017</b>



9.	DTCP license	05 of 2013 dated 21.02.2013
10.	Allotment letter	12.08.2013
11.	Date of Fire scheme approval	27.11.2014
12.	Date of environmental clearance	04.05.2016
13.	Date of booking	12.12.2013
14.	Cancellation letter dated	01.09.2016
15.	Date of apartment buyer's agreement	<b>NOT EXECUTED</b>
16.	Total consideration	Rs. 2,31,15,855.29/-
17.	Total amount paid by the complainant	Rs. 50,03,626/- (as per the complaint)
18.	Payment plan	Instalment payment plan
19.	Date of delivery of possession as <b>per sample agreement place on record</b> Clause 13.3 – 42 months from date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period	<b>27.11.2018</b> <b>From Fire scheme approval</b>
20.	Penalty clause <b>as per sample apartment buyer agreement</b>	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



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. A non-executed

buyer's agreement is available on record. The complainant is alleging that the promoter has failed to deliver the possession of the said unit 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 council appear on 12.03.2019. The reply has been filed on behalf of the respondent and has been perused.

#### **Facts of the complaint**

6. The complainant submitted that the respondent company is a private limited company duly registered under the Companies Act, 1956. The respondent company claims to be one of the leading companies in the real estate industry and has several projects in the NCR region.
7. The facts of the case in brief are that the complainant was approached by the respondent company in the year 2013 in respect of their project Ireo, **The Corridors** located at Sector 67A, Gurgaon, Haryana. The respondent company made



several representations regarding their project to the complainant. The respondent submitted that the project is a one of its kind and is one of the prestigious projects in the NCR region. The respondent laid down several amenities and assurances in the project, which are as follows:-

- a. One of the largest condominiums in Gurgaon,
- b. Over 10 acres of interlinked contiguous landscaped greens
- c. Sprawling 37.5 acre secured community
- d. All available amenities within the Corridors such as full fledged high school, hospital, swimming pool, club house, gym/sports club high speed elevators
- e. Green landscape
- f. Rainwater harvesting
- g. Power back-up
- h. Vastu complain project
- i. 24\*7 security
- j. Reserved parking



- k. Servant room
  - l. Dedicated 2 km long fitness trail with distance markers
  - m. Relaxing gardens and shaded seating areas
  - n. Only 20% of land usage for building
8. The complainant submitted that he made the payment of the booking amount of Rs 19,50,000/- to the respondent company on 05.04.2013.
9. The complainant submitted that on the payment of the booking amount, the respondent company further raised the demand for the second installment of Rs 20,53,626/- (rupees twenty lakhs fifty three thousand and six hundred and twenty six only) vide payment request letter dated 14.04.2013. The complainant duly made the payment of the second installment also. The complainant made the second installment vide a cheque dated 20.05.2013 bearing no. 293910 drawn on State Bank of Patiala.
10. The complainant submitted that on the payment of abovementioned amounts totaling Rs 40,03,626/- (rupees forty lakhs three thousand six hundred and twenty six only)



the respondent company issued the allotment offer letter to the complainant in respect of the mentioned unit.

11. The complainant submitted that in the terms and conditions mentioned in the offer of allotment letter dated 12.08.2013 the respondent company made several unilateral, arbitrary conditions which were not acceptable to the complainant. The complainant was provided with the draft of the buyer agreement to be later on executed for the purposes of the apartment. The complainant protested the proposal of the unilateral and arbitrary terms in the said agreement in several communications with the respondent company but the respondent company never paid any heed to the complainant. Over and above that, the respondent company continued to raise illegal demands in the terms of the non-existing and non-executed apartment buyer's agreement.

12. The complainant submitted that the offer of allotment letter dated 12.08.2013 carried several terms which were prejudicial to the interests of the complainant. It is submitted that the offer of allotment letter did not even permit the amendment/ alterations/ additions/ subtractions of the terms





of the said agreement. As per the clause 3 of the offer of allotment letter dated 12.08.2013 the respondent company specifically stated that the complainant is not allowed to make any changes in the terms and conditions of the said agreement.

The same is reproduced as below:-

*“The company shall be entitled to reject and refuse to executed any Agreement wherein the proposed Allottee has made any corrections/cancellations/altercations/modifications to the Agreement.”*

13. The complainant submitted that firstly, the respondent company had not provided any firm date for the delivery of the apartment. The possession clause was conditional and the complainant proposed that the respondent ought to give the firm date of delivery. The possession clause is reproduced below for the perusal of the hon'ble authority herein:-

*“13.3 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 provision(s) 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 the Building Plans and/or fulfillment of the preconditions imposed thereunder (“**Commitment Period**”). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days (“**Grace Period**”), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.”*



14. The complainant submitted that bare perusal of the above clause makes it clear that the respondent company had proposed to deliver the possession of the apartment within 42 months from the date of the sanction of the building plan. Since it was contingent upon the sanctioning of the building plans, the complainant objected to the same and sought that the

respondent company provides a firm date for the delivery of the possession.

15. The complainant submitted that in the case of the default of the payment by the complainant, the respondent company as per the proposed buyer agreement was entitled to charge exorbitant rate of interest (20%) whereas the complainant was only entitled to meager sum of Rs 7.50/- per sq. ft. of the super area for every month of delay until the actual delivery date. The complainant was astonished at the stark difference between the treatment of the complainant in comparison to the respondent company. The respondent company was seriously trying to abuse its dominant position. In many cases, the Hon'ble National Consumer Commission and Apex Court in several judgments had already held that such unilateral agreements are not sustainable under law since it gives unfair advantage to the develop over the complainant. The law was laid by the Hon'ble Apex Court in ***Fortune Infrastructure and Ors versus Trevor D'Lima and Ors had held that:-***

*"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled*



*to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014.”*

16. The complainant submitted that the respondent company had increased the price of the apartment from the pre-launch price of Rs. 9450/- per sq. ft to Rs. 10050/- per sq. ft. At the time of the application for the apartment the price was Rs. 9450/- per sq. ft but when the complainant received the draft of the buyer agreement the price was surprisingly increased to Rs. 10050/- per sq. ft. The complainant was agreed by this unilateral change of the agreed terms between the parties.

17. The complainant submitted that the respondent company issued the demand letter dated 04.05.2014 for the payment of the installment of Rs. 30,75,436.37/-. The complainant on perusal of the same was shocked since the respondent had threatened to cancel the allotment in case of non-payment. The



complainant was in a fix since he had already made huge payments and over that the respondent company was not executing the agreement but over that it was raising demands for the payments which were never due. It is submitted that since no agreement had already been signed, the respondent company was not entitled to raise any demand.

18. The complainant submitted that that ignoring all the requests of the complainant, the respondent company continued its unfair and unethical practice of pressurizing the complainant to execute the unilateral agreement. The respondent company vide letter dated 28.05.2014 and 17.07.2014 directed the complainant to execute the same.

19. The complainant submitted that he all the while kept on requesting the respondent to amend the unilateral terms of the buyer agreement and exercising his judicial right refused to put his sign on the said agreement. Nevertheless, the respondent company continued with its illegal and unsustainable practice of issuing the demand letters. The respondent company vide letter dated 02.02.2015 issued the demand for the payment of the “**casting of lower basement**



**roof slab”** to the tune of Rs. 51,26,872.56/-. The respondent company again issued the demand for the payment of fourth installment for the payment of Rs. 30,51,436.91.

20. The complainant submitted that complainant raised several issues with the respondent company to which the respondent company till date has not provided any reply. Few of the points raised by the complainant are as follows:-

- i. Raising of the demands by the respondent company without signing the agreement first. It is submitted that RERA Act, 2016 prohibits the raising of the demands without execution of the agreement.
- ii. Agreement is disputed with regard to several points
- iii. Difference in price at the time of the application/prelaunch and in the agreement.
- iv. Rumours regarding the dispute on the project land

21. The complainant submitted that although no answer had been provided to the above email. The respondent company issued a demand dated 30.06.2015 for the payment of the fifth installment. Further again the complainant received the



demand dated 06.08.2015 from the respondent company for the payment of the 6<sup>th</sup> installment. The respondent company again issued the demand for the payment of the sum of Rs. 27,42,807.68/- to the complainant on 21.08.2015. It is submitted that another demand dated 23.09.2015 was raised by the respondent company for the seventh installment. It is submitted that likewise several demand letters were issued by the respondent company which are dated 19.10.2015, 05.11.2015, 12.11.2015, 07.12.2015, 05.01.2016, 07.01.2016, 10.02.2016, 16.02.2016, 04.03.2016, 14.03.2016. This was despite the complainant repeatedly requesting the respondent company to refrain from raising demands before signing the agreement. The complainant was severely aggrieved by the conduct of the respondent company. The respondent company, which was in receipt of approximately 50 Lakhs of rupees was not executing the fair version of the apartment buyer agreement and pressurizing the complainant to sign on the dotted lines, threatening to cancel the allotment on non-execution of the agreement.





22. The complainant submitted that instead of amending the draft of the buyer agreement, the respondent company cancelled the allotment of the complainant vide letter dated 01.09.2016. The complainant was shocked to receive the arbitrary cancellation of his allotment. Further, the respondent company even forfeited the amounts paid by the complainant towards the interest and penalty. The respondent company did not mention under what authority it had acted and what gave it the power to cancel the allotment of the complainant.
23. The complainant submitted that respondent company had mentioned about the clauses of the booking application and the allotment letter but that does not give the clear picture since the apartment buyer agreement is must for the allotment of the allotment letter. The allotment letter cannot be the final letter and is only provisional in nature and is for the time until the agreement is signed. Those steps are pre-requisites for the signing of the apartment buyer agreement. The respondent company, to unjustly enrich itself had cancelled the allotment of the complainant.



24. The complainant submitted that even if it is construed that the respondent company had allotted the flat before the RERA Act, 2016 came into place, it is the strong contention of the complainant that in 2016 or later on when the act was applicable, the respondent company ought not to have raised demands and the first thing by them ought to have been to execute the buyer agreement. Further, the agreement ought to have been in consonance with the Haryana Real Estate (Regulation and Development) Rules, 2017. The same provides the draft of the buyer agreement and since the complainant was only interested in the execution of the fair agreement; the respondent company ought to have executed the same. It is also submitted that the respondent company had no right to levy interest on the installment since technically no installment ever became due as no agreement was ever executed.



25. The complainant submitted that the cancellation made by the respondent company was contrary to terms of the agreement and also in contravention with the provisions of the RERA Act, 2016. The complainant had made the payment of the sum of

Rs 50,03,626/- till date and the respondent company is liable to refund the same with applicable interest. The complainant further reserves the right to seek compensation for the mental agony, loss of years, sheer harassment caused by the respondent company.

## 26. 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 flat 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?

## 27. Relief sought

- i. The complainant is seeking refund the money paid by the complainant till date i.e. Rs 50,03,626/- along with prescribed rate of interest from the date of payment till realisation of the amount.
- ii. May pass any other orders



## REPLY ON BEHALF OF THE RESPONDENT

28. The respondent submitted that this hon'ble authority does not have the jurisdiction to decide on the compensation and interest as claimed by the complainant. It is submitted that in accordance with section 71 of the Real Estate Regulatory Authority Act 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 Regulatory Authority Act who has the power and the authority to decide the claims of the complainant. The respondent has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.

29. 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 taking 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.

30. The complainant, after checking the veracity of the project namely, 'The Corridors', Sector 67-A, Gurgaon had applied for allotment of an apartment vide his booking application form and also deposited the part earnest amount of Rs. 19,50,000/- vide cheque/draft/PO no. 293906 dated 01.04.2013 drawn on State Bank of Patiala. The complainant agreed to be bound by the terms and conditions of the booking application form.

31. That as per the agreed payment schedule, vide payment request dated 14.04.2013, the respondent raised a demand for the second installment of net payable amount of Rs. 20,53,626/-. The complainant deposited the part earnest amount vide cheque/draft/PO no. 293910 dated 20.05.2013 drawn on State Bank of Patiala.



32. The respondent submitted that based on the application for booking, the respondent vide its allotment offer letter dated 12.08.2013 allotted to the complainant apartment no. CD-B4-09-902 having tentative super area of 1932.15 sq. ft for a total sale consideration of Rs. 2,31,15,855.31/-. Vide letter dated 01.04.2014, the respondent sent 3 copies of the apartment buyer's agreement to the complainant. It is submitted that as per clause 7 and 11 of the booking application form, the complainant was to execute the apartment buyer's agreement with respect to the unit allotted to him. However, despite reminders dated 28.05.2014 and 17.07.2014 by the respondent, the complainant failed to execute the same.

33. The respondent submitted that it is pertinent to mention herein that the respondent had also intimated to the complainant vide letter dated 14.03.2016 about the outstanding amount along with the delayed interest accrued on account of non-payment of the installments by the complainant. It is submitted that the respondent vide email dated 01.08.2016 again requested the complainant to make the payment of the due amount along with the delayed interest





accrued towards the total sale consideration of the unit allotted failing which the allotment was to be terminated and the earnest money along with other charges were to be forfeited as per the terms of the booking application form.

34. It is submitted that according to clause 43 of schedule- I of the booking application form, the respondent was to offer the possession to the complainant within a period of 42 months + 180 days grace period from the date of approval of the building plans and/or fulfillment of the preconditions imposed thereunder. Furthermore, the complainant had undertaken in clause 44 of schedule- I of the booking application form for an extended delay period of 12 months from the date of expiry of the grace period. From the aforesaid terms of the booking application form, 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 memo of 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. 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 duly was to be duly approved by the fire department before the start of any construction work at site. It is submitted that the fire scheme approval was granted on 27.11.2014 and the time period for offering the possession, according to the agreed terms of the booking application form, would have expired only on 27.11.2019. There could not be any delay till 27.11.2019.

35. The respondent submitted that it is pertinent to mention here that according to clause 16 and 49 of schedule 1 of the booking application form, timely payment of installments within the agreed time schedule was the essence of allotment. The complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, his calculations went wrong on account of slump in the real estate market and the complainant did not possess



sufficient funds to honour his commitments. The complainant was never ready and willing to abide by his contractual obligations and he also did not have the requisite funds to honour his commitments.

36. That on account of non-fulfillment of the contractual obligations by the complainant despite several opportunities extended by the respondent, the allotment of the complainant was cancelled and the earnest money deposited by the complainant was forfeited vide cancellation letter dated 01.09.2016 in accordance with clause 7 read with clause 11 of the BFA and the complainant is now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment. Despite failure of the complainant to adhere to his contractual obligations of making payments and executing the apartment buyer's agreement, the respondent has completed the construction of the tower in which the unit allotted to the complainant was located and the photographs of the same are attached as **annexure R-31(Colly)** and has even applied for the grant of occupation certificate dated 06.07.2017.



### Determination of issues

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

37. With respect of the **first issue** raised by the complainants, the authority came across **the sample agreement placed on record as originally no BBA has been executed between both the parties** and as per clause 13.3 of the sample agreement – 42 months from date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. In present case, the due date of delivery of possession is taken from **fire scheme approval. Therefore, due date of possession comes out to be 27.11.2018**

38. 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. Complainant due to his personal compulsions is not interested to continue with the project and wants to get back the amount



deposited with the respondent alongwith interest. Considering the personal compulsion of the complainant as well as failure on part of the respondent to deliver the unit on time, the authority is of the opinion that the respondent be directed to forfeit 10% of the basic sale price and refund the balance amount deposited by the complainant within a period of 90 days from date of this order.

#### Findings of the authority

39. **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.

40. 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 complainants at a later stage.

41. 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.

42. 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.

43. 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*.

44. 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.

45. Complaint was filed on 13.12.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 14.12.2018, 03.01.2019 and 18.1.2019. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 3.01.2019 and on 18.01.2019 for non-filing of reply even after service of notices.

46. A final notice dated 26.02.2019 by way of email was sent to both the parties to appear before the authority on 12.3.2019. Shri M.K. Dang, advocate has appeared on behalf of the respondent.



47. Complainant had booked a flat bearing no.CD-B4-09-902, in project “The Corridors”, Sector-67-A, Gurugram but no BBA to this effect was executed inter-se the parties. It was a instalment payment plan. Complainant has already paid Rs.50,03,626/- to the respondent against a total sale consideration of Rs.2,31,15,855/-.

48. Complainant due to his personal compulsions is not interested to continue with the project and wants to get back the amount deposited with the respondent alongwith interest.

49. Considering the personal compulsions of the complainant as well as failure on part of respondent to deliver the unit on time, the authority is of the opinion that the respondent be directed to forfeit 10% of the basic sale price and refund the balance amount deposited by the complainant within a period of 90 days from today.

#### **Decision and directions of the authority**

50. 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 directs:

- i. The respondent to forfeit 10% of the basic sale price and refund the balance amount deposited by the complainant within a period of 90 days from today.

51. The complaint is disposed of accordingly.

52. The order is pronounced.

53. 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



HARERA  
GURUGRAM