

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint no. : 1919 of 2021**  
**Date of decision : 11.04.2022**

CHANDAN KHAITAN  
R/O : Flat No. 1103,  
16<sup>th</sup> Tower, The Close North  
Niravana Country  
South City II,  
Gurugram 122002

**Complainant**

**Versus**

IREO VICTOR VALLEY PRIVATE LTD  
ADDRESS: 5<sup>th</sup> Floor, Orchid Centre,  
Golf Course Road, Sector 53,  
Gurugram- 122002

**Respondent**


**APPEARANCE:**

For Complainant: Mr. Rishab Jain Advocate

For Respondent: Mr. M. K. Dang Advocate

**ORDER**

1. This is a complaint filed by Mr. Chandan Khaitan (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read

  
A.O.  
11-4-22

with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.

2. As per complainant, on 04.01.2011, Mr Avnish Arora and Mrs Ritu Arora booked an apartment in respondent's project **Victor Valley**, situated at sector-67, Gurugram. The respondent allotted a unit No. VV-B-01-04, First Floor, Tower B admeasuring 3084 sq. ft. with two car parking slots for a total sale consideration of Rs 2,18,91,672/- A buyer's agreement was executed between original allottees and respondent on 06.07.2011, in this regard. Said flat was subsequently purchased by complainant from aforesaid allottees. The transaction was endorsed by respondent in favour of complainant, on 21.11.2014.
3. As per Clause 13 of buyer's agreement , possession of said apartment was to be delivered by the developers to the allottee within 36 months from the date of approval of building plans and/or of fulfilment of the pre-conditions imposed thereunder (Commitment Period) with further grace period of 180 days.
4. As per the demands raised by respondent, he (complainant) made timely payment of 100% of total sale consideration along with miscellaneous and additional charges i.e. EDC, IDC, two parking slots, club charges, replacement fund

*Arb*

A.D.

11/4/22



maintenance security, labour cess, applicable carrying cost etc. The complainant has also made payment of stamp duty charges, legal charges, other miscellaneous charges for executing the conveyance deed on 06.07.2018 but the conveyance deed has not been executed by respondent till date.

5. The respondent had committed to give possession of the unit by 06.01.2015 but failed to do so. The possession of the unit was offered by the respondent after expiry of due date of possession. Accordingly, complainant inspected the apartment on 15.11.2018 and noticed that the flat is not complete as promised. He (complainant) found three deficiencies (1) there was no wooden flooring in any of the living rooms (2) there was no chimney and hob in the kitchen (3) there was no modular kitchen as there were just wooden cabinets in the kitchen. The complainant immediately after inspection of the allotted apartment, apprised respondent about deficiencies through email dated 15.11.2018 and requested to rectify the same. The respondent issued a letter dated 26.12.2018 and requested complainant to take over the possession of the apartment and get wooden flooring, chimney/hob installed and made a commitment to refund Rs 1,21,000 in due course.

6. The respondent issued possession letter dated 31.12.2018. As respondent had assured through letter dated 26.12.2018

dvb  
A.O.  
11/4/22



that it (respondent) will refund Rs 1,21,000 in due course, accordingly, complainant took the physical possession of the flat on 31.12.2018.

7. Despite various requests respondent failed to fulfil its commitment and till date has not refunded Rs 1,21,000. The respondent is under legal obligation to execute conveyance deed in favour of complainant but the same has not been executed till date.
8. Contending that the respondent has breached the fundamental terms of the contract, complainant sought refund of Rs 1,21,000 as committed and assured by the respondent through letter dated 26.12.2018 along with interest from the date of on which the amount was incurred till amount is returned at the rate prescribed by the Act of 2016, Rs 1,00,000 as compensation for mental agony and Rs 50,000 as cost of litigation.
9. The complainant filed an application on 07.03.2022 and withdrew the prayer for refund of Rs 1,21,000 with interest and restricted the scope of complaint. He (complainant) has sought only following reliefs: Rs 1,00,000 as compensation for mental agony and physical harassment faced by complainant for the lapses of the respondent and Rs 50,000 as cost of litigation.

and  
A.O.  
11-4-22

10. The respondent contested the complaint by filing a reply.

The respondent took the preliminary objection that apartment buyer's agreement was executed between the parties prior to enactment of Act of 2016 and provisions of the Act cannot be applied retrospectively. The complainant has no locus standi to file the present complaint. It is further contended that this forum has no jurisdiction to try and decide the present complaint. The project is exempted from registration under Act of 2016 and Rules of 2017. The tower of the project in which the unit of complainant is situated does not fall under the ambit of 'on-going project' as defined in section 2(o) of Act of 2016.

11. Further, application for grant of occupation certificate for the block wherein the allotted unit is located was made vide application dated 09.02.2017 and consequently as per the provisions of Act of 2016 and Rules 2017 it did not require to be registered, under the said Act.

12. Moreover, there is an arbitration clause (clause 34) in the agreement and in event of any dispute the parties are supposed to adopt the dispute resolution mechanism in accordance with the agreed terms and conditions.

13. The complainant had purchased the subject unit from original allottees Avnish Arora and Ritu Arora and subsequently parties signed nomination/transfer



agreement on 18.11.2014 and submitted the same to the respondent. The complainant as per clause 7 and 8 of said nomination agreement admitted that he (complainant) would forego and waive his right to receive any compensation for delay in handing over the possession or any rebate from the respondent and to that extent the apartment buyer's agreement would stand modified. The complainant through letter dated 18.11.2014, had acknowledged that he would bound by all the terms and conditions of the respondent including the terms and conditions of the agreement. furthermore, the complainant had submitted an affidavit dated 18.11.2014 wherein vide clause 4 he had acknowledged that he would wave and forego the right to receive compensation for delay in handing over the possession and to that extent the apartment buyer's agreement would stand modified. The same undertaking was again given by complainant under clause 1 of Indemnity Bond cum Undertaking dated 18.11.2014.

14. It is further averred that unit was supposed to be offered as per clause 13.3 of buyer's agreement within 36 months from the date of approval of building plans and/or of fulfilment of the pre-conditions imposed thereunder (Commitment Period). The allottee further agreed for a period of 180 days

dwj

A.O.

11-4-22



grace period. Furthermore, the complainant had also agreed for an extended delay period of 12 months from the date of expiry of the grace period as per clause 13.5 of apartment buyer's agreement.

15. Moreover, the building plans were approved on 29.11.2010 and as per the said building approval plan clearance issued by Ministry of Environment and Forest has to be obtained before starting the construction of the project. the Environment clearance for the construction of the said project was granted on 25.11.2010. As per clause (v) of Part B of Environment Clearance dated 25.10.2010 approval from fire department was necessary prior to the construction of the project. The last statutory approval which forms a part off pre-conditions was the Fire Scheme Approval which was obtained on 28.10.2013. Accordingly, as per the terms and conditions of buyer's agreement the time-period for offering the possession expired only on 28.04.2018.

16. It is further averred that the occupation certificate was received by respondent on 28.09.2017 and accordingly possession of the unit was offered to the complainant vide notice of possession dated 13.06.2018. The complainant was requested to complete the formalities and documentation. He(complainant) made complete payment for the allotted



unit and took possession of the unit vide possession letter dated 31.12.2018.

17. The respondent denied that possession was to be delivered by 06.01.2015 and there has been delay of more than two years and three months. It is contended that the possession as per the terms of the agreement was scheduled to be offered by 28.04.2018. Due to continuous defaults of complainant and certain events which were beyond the control of respondent, unit was offered vide notice of possession dated 13.06.2018.

18. It is admitted that complainant was to get Rs 1,20,000. However, the said amount has already been provided as an additional mark up of 20 % on the original amount. The respondent denied that complainant is to get refund of Rs 1,20,000 or any interest or compensation is to be given to the complainant on the said amount. The respondent had also given him (complainant) the benefit of early payment discount of Rs 3,23,041/- and the same is evident from the statement of account attached with notice of possession.

19. Further, it is denied by respondent that the conveyance deed has not registered due to its fault. The registration of conveyance deed is usually done for several allottees at one given time by respondent. Due to insufficient number of conveyance deeds to be executed for the project as well as

Am  
A.O.  
11-4-22





some of the administrative reasons beyond the control of respondent, the conveyance deed of complainant could not be registered. The respondent has completed all its obligations and has handed over the possession of the unit and it will soon register the conveyance deed in favour of complainant.

20. Contending all this, respondent prayed for dismissal of complaint.

21. The plea of respondent that Act of 2016 or Rules 2017 are not applicable in this case, cannot be accepted. It is not claim of respondent that completion certificate was received when this Act came into force. The respondent was obliged to apply for registration within 3 months. In this way, provisions of Act of 2016 are well applicable, in this matter.

22. The Apex court through a recent judgment given in case titled as **M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors Etc in Civil Appeal No.6745-6749 of 2021** held that

*"From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-*

*dmk*  
A.O.  
11/4/22

*going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016. "*

23. So far as contention of respondent with respect to arbitration clause is concerned, none of parties appeared serious about this provision. Even respondent did not invoke proceedings under Arbitration Act. Moreover, Act of 2016, being a special legislation for protection of interest of consumers in real estate sector, has overriding effect over other laws in existence, even over agreement between the parties.

24. As stated earlier, by filing an application on 07.03.2022, the complainant relinquished all of his prayers except compensation of Rs 1 lac for mental agony and physical harassment as well as claim of Rs 50,000 as cost of litigation.

25. The respondent failed to handover possession of unit in question as per BBA. Despite issuing offer for possession the flat had certain deficiencies. It was right of allottee/complainant to get possession of unit, which was complete i.e. having no deficiencies. When respondent failed to make those deficiencies good, all this constrained the complainant to file present complaint. In this way respondent deprived complainant of his legal right.


*Handwritten signature*

A.O.

11-4-22



26. To deprive a person from his right apparently causes mental agony to the sufferer. It is not necessary that such person should have suffered mental illness. There is an old proverb "*ubi jus ibi remedium*" meaning where there is right there is remedy. A sum of Rs.1,00,000/- is awarded to the complainant for harassment and mental agony.
27. Although, the complainant has not filed any receipt of payment as litigation fee of his counsel, it is evident from the record that the same is being represented by an advocate. He (complainant) is entitled to costs of litigation. In my opinion Rs 50,000 is sufficient to meet out litigation expenses by the complainant.
28. The respondent is directed to pay said amounts, along with interest @ 9.3 % p.a. from date of this order till realisation of amount
29. A decree sheet be prepared accordingly.  
File be consigned to registry.

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