

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

Complaint no. 880 of 2018
Date of first hearing 08.02.2019
Date of decision 14.03.2019

Mr. Rajeev Gupta
Ms Pritika Gupta

R/o : Krishna Kutir, 28, Union Park,
Bandra (w), Mumbai-400050

Complainants

versus

M/s Ireo Private Ltd

Registered office : A-11, 1st floor, Niti
Bagh, New Delhi-110049

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Adarsh Priyadarshi and
Aditya Ghadge

Advocate for complainants

Shri MK Dhang

Advocate for the respondent



ORDER

1. A complaint dated 10.09.2018 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 complainants Mr. Rajeev Gupta and Ms Pritika Gupta against the promoter M/s Ireo Private Ltd for not giving possession on 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 was executed on 21.01.2013 i.e prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the 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	Ireo Gurgaon Hills, Sector , Gurgaon,, Haryana
2.	Nature of real estate project	Group housing colony
3.	Area of the project	11.07 Acres
4.	Unit no.	A14-41, 13 th floor, Tower A
5.	Unit area	6388.05 sq. ft
6.	Registration status	Not registered



7.	RERA registration no	Not applicable
8.	Completion date as per RERA registration certificate	Not applicable
9.	Date of apartment buyer's agreement	21.01.2013
10.	Total consideration	Rs 6,77,83,599/-
11.	Total amount paid by the complainant	Rs 6,05,11,831/-
12.	Payment plan	Construction linked plan
13.	Date of delivery of possession (As per clause 14.3 of the agreement : 42 months + 180 days grace period from the date of approval of the building plans i.e 17.05.2012 and/or fulfilment of the preconditions imposed thereunder. (Due date of possession is calculated from the date of C.T.E i.e 26.05.2013)	26.05.2017
14.	Delay	1 year 9 months 16 days
15.	Penalty clause (As per clause 14.4 of the apartment buyer's agreement)	Rs 10/- per sq. ft of the super area for every month of delay



4. The details provided above have been checked as per the case file available on record provided by complainants and respondent.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 19.03.2019. The case came up for hearing on 19.03.2019. The reply has been filed on behalf of the respondent.

FACTS OF THE CASE

6. The complainants submitted that they made application for booking a 4 BHK apartment having super area of 6388.05 sq. ft bearing no A14-41, 13th floor, tower A at sector 2, Gwal Pahari in Ireo Hill project, Gurugram. The complainants paid a cheque of Rs 45,00,000/- towards booking amount and the total cost of the said apartment was Rs 6,77,83,599/-
7. The complainants submitted that the respondent issued allotment letter in favour of complainants on 22.08.2012.8.
8. The complainants submitted that the complainants and respondent entered into apartment buyer's agreement on 21.01.2013.



9. The complainants also submitted that during the period 2012-2017, as per the payment schedule various payments were made by cheque by the complainants to the respondent.
10. The complainants also submitted that since the construction of the project in question was not being carried on and possession was not handed over within the stipulated time, the complainants terminated the agreement and requested the respondent to refund the entire amount paid by the complainants along with interest and compensation vide letter dated 09.01.2018. Since there was no response to the letter, the complainants were constrained to send a legal notice dated 13.02.2018 to the respondent seeking refund.
11. The complainants submitted that respondent had admitted that the approval for the building plan was granted in May 2012 in an email of the respondent.
12. The complainants also submitted that no construction activity has been carried out in the proposed building for last many months. The respondent has failed to deliver the possession



of the flat within 60 months-time frame after approval of building plan or even thereafter.

13. The complainants also submitted that the present complaint is not pending before any court of law or any other tribunal.

ISSUES RAISED BY THE COMPLAINANTS

14. The issues raised by the complainants are as follows :-
- Whether the complainants are entitled to the refund of total amount of Rs 6,05,11,831/- paid to the respondent along with interest on the ground of failure by respondent in handing over the possession of the booked unit?

RELIEF SOUGHT

15. The reliefs sought by the complainants are as follows :-
- To allow the present complaint in favour of the complainants and against the respondent.
 - To direct the respondent to refund the entire amount of Rs 6,05,11,831/- paid to the respondent with an interest of 18% from the date of receipt to the date of realization.
 - To direct the respondent to pay the cost of litigation



REPLY

16. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the complainants and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
17. The respondent submitted that there is no cause of action to file the present complaint.
18. The respondent submitted that the respondent has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.
19. The respondent submitted that this authority does not have the jurisdiction to decide on the imaginary interest and compensation as claimed by the complainants. It is submitted that in accordance with Section 71 of the Real Estate (Regulation and Development) 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 Act who has the power and the authority to decide the claims of the complainants.

20. The respondent also submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 36 of the buyer's agreement, which is reproduced for the ready reference of this authority -

"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding



upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".



21. The respondent submitted that the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts. The

conduct of the complainants has been malafide and they are not entitled to any relief at all.

22. The respondent submitted that no illegality or wrong has been committed by the respondent. The respondent is ready to offer the possession to the complainants subject to payment of the outstanding dues as agreed upon by the parties in accordance with the terms and conditions of the buyer's agreement and on grant of the occupation certificate by the concerned authorities.

DETERMINATION OF ISSUES

23. With regard to **sole issue** raised by the complainants, after perusal of the payment request letter dated 06.09.2016 issued by the respondent wherein the respondent has raised demand of thirteenth instalment due on completion of top floor roof slab and payment of same by the complainant vide receipt dated 07.10.2016 acknowledges that the respondent has already constructed the top floor roof slab of the tower in which the booked unit is located. Therefore keeping in view the current status of the project, the refund cannot be allowed.



The relief of refund in the present case will hamper the interest of the other allottees as well as the project in question.

However as the respondent has failed to deliver the possession of the booked unit on the due date i.e 26.05.2017, therefore the complainants are entitled to delay interest at the rate of 10.75% per annum for the period of delay till the date of offer of the possession.

Findings of the Authority

24. Jurisdiction of the authority जयते

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



Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and 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.

25. In the present case the authority has observed that the counsel for the respondent submitted that respondent has applied for occupation certificate. As per clause 14.3 of the apartment buyer agreement dated 21.01.2013 for unit no. A14-41, 13th floor, tower A in the project "Ireo Gurgaon Hills", Gurugram possession was to be handed over to the complainants within a period of 42 months plus 06 months grace period from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder. The due date of possession is calculated from the date of consent to establish i.e. 26.05.2013. Accordingly the date due date of delivery of



possession is 26.05.2017. However, the respondent has not delivered the unit in time. Complainants have already paid Rs. 6,05,11,831/- to the respondent against a total sale consideration of Rs. 6,77,83,599/-. Grace period of 180 days was taken by the respondent to cover up all sorts of delay and it is bounden duty of the respondent to hand over the possession to the complainants in time failing which complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 26.05.2017 till offer of possession as per proviso to section 18 (1) of Real Estate (Regulation and Development) Act, 2016.

Decision and directions of the authority

26. 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 complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 26.05.2017 till offer of possession as per proviso to section 18 (1) of Real Estate (Regulation and Development) Act, 2016.
 - ii. The arrears of interest accrued so far shall be paid to the complainants 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.
27. The order is pronounced.
28. The file is consigned to the registry

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 14.03.2019

Judgement uploaded on 17.04.2019

