

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

Complaint no. : 2030 of 2018
First date of hearing : 27.02.2019
Date of decision : 28.03.2019

Shri. Rajan Arora
Smt. Manjeet Kaur
R/o : B-4/21, DLF Phase I, Gurugram-122002 **Complainants**

Versus

M/s IREO Private Limited
**Office address : Ireo Campus, Sector- 59, Golf
Course Extension Road, Near Bharampur
Village, Gurgaon.** **Respondent**

CORAM

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

APPEARANCE

Shri Sonal Anand Advocate for complainants

Shri MK Dhang Advocate for respondent

HARERA
GURUGRAM

ORDER

1. A complaint dated 03.12.2018 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 complainants Shri Rajan



Arora and Smt. Manjeet Kaur, against the promoter M/s Ireo Private Limited on account of violation of the clause 13.3 of the buyer's agreement executed on 21.06.2013 in respect of apartment described below in the project 'Ireo City Central', Sector 59, Gurugram for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 21.06.2013 i.e. prior to the commencement of the Act *ibid*, 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 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 case are as under: -

1.	Name and location of the project	'Ireo City Central', Sector 59, Gurugram
2.	Project area	3.3 acres
3.	Current status of project	Applied for occupation certificate (as admitted



		by the respondent in the reply)
4.	RERA Registered/ not registered.	Not registered
5.	Apartment/unit no.	R-0805, 8 th floor, tower- R
6.	Apartment measuring	925 sq. ft.
7.	Date of execution of apartment buyer's agreement-	21.06.2013
8.	Payment plan	Construction linked payment plan
9.	Total sale consideration	Rs 1,36,62,853/- (as per payment plan attached with buyer's agreement)
10.	Total amount paid by the complainant	Rs. 95,04,444/-
11.	Date of delivery of possession (as per clause 13.3 of buyer's agreement : 42 months +180 days grace period from the date of approval of building plans and/or fulfilment of the preconditions imposed there under) (Date of approval of original building plan : 05.09.2013 and date of C.T.E : 07.02.2014. The date of delivery of possession is computed from the date of C.T.E	07.02.2018



	as C.T.E is one of the precondition imposed)	
12.	Delay in handing over possession till date	1 year 20 days
13.	Penalty as per clause 13.4 of the buyer's agreement	Rs.20/- per sq. ft. of the super area for every month of delay

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 21.06.2013 is available on record for the aforesaid apartment.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent appeared on 27.02.2019. The reply filed by the respondent has been perused.

FACTS OF THE COMPLAINT

6. The complainants submitted that in the year 2012, the complainants were approached by the officials of the respondent in respect of the project being developed by them. The officials of the respondent



company assured them their money will be safe and there will be huge appreciation in the price of the project as well as they could rent it out to gain more returns.

7. The complainants submitted that the associates of the respondent induced them to advance them the booking amount of Rs 12,23,775/- which was given by the complainants immediately. The acknowledgement slip of Rs 12,23,776/- dated 30.11.2012 was issued to the complainants against this amount.
8. The complainants also submitted that the respondent issued allotment letter dated 26.09.2012 and signed the buyers agreement dated 21.06.2013 after whole 9 months.
9. The complainants also submitted that the respondent raised various demands upon the complainants to make required payments which were duly fulfilled. The complainants in total paid a total sum of Rs95,04,444/-.
10. The complainants also submitted that as per buyer's agreement, the respondent had to hand over the possession of the apartment latest by 21.06.2017, but the respondent has miserably failed to do so even till date.



11. The complainants also submitted that the building plan has been modified by the respondent on 29.02.2016 without the complainants consent thereby misleading and cheating them.
12. The complainants also submitted that the complainants have been under tremendous meal stress and agony due to the conduct of the respondent.

ISSUES TO BE DECIDED:

13. The complainants have raised the following issues :
 - i. Whether the complainants are entitled for possession of the booked apartment along with delay interest for failure to hand over the possession to the complainants on due date?

RELIEFS SOUGHT

14. The complainants are seeking the following reliefs:
 - i. To direct the respondent to provide possession of the booked unit.
 - ii. To direct the respondent to pay delay interest on the money paid by the complainants.
 - iii. To provide the complainants with the information about the RERA registration status of the project



REPLY ON BEHALF OF RESPONDENT

15. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
16. The respondent submitted that there is no cause of action to file the present complaint.
17. The respondent submitted that the complainants have no locus standi to file the present complaint.
18. The respondent submitted that the complaint has been filed pre-maturely by the complainants.
19. The respondent submitted that this authority does not have the jurisdiction to decide on the imaginary interest as claimed by the complainants. It is submitted that 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 complainants.
20. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause i.e clause 34, which refers to the dispute



resolution mechanism to be adopted by the parties in the event of any dispute.

21. The respondent submitted that the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint.
22. The respondent submitted that the complainants undertook and accepted that they had made the booking and had signed the booking application on the basis of their own estimations and understanding and that they have not been influenced by any advertisement, representations whatsoever.
23. The respondent submitted that the complainants had also perused all documents with regard to approvals, sanctions, permissions, right, title, interest of the respondent, payment plan, terms and conditions of booking/allotment of the unit.
24. The respondent submitted that the complainants undertook that in case there are any changes in the layout plans and or drawings then in that case the complainants shall not have any objection and gave their consent to it. Furthermore, it is pertinent to mention herein that the complainants had



submitted letter dated 21.07.2012 to the respondent acknowledging that the layout plans are tentative and are subject to change.

25. The respondent submitted that the complainants have paid the part sale consideration of Rs. 95,04,444/- out of total amount of Rs. 1,36,62,853/-. However, it is submitted that the complainants are 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.
26. The respondent submitted that the possession of the unit is supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 13.3 of the buyer's agreement and clause 38 of the schedule - I of the booking application form states that the '...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)...'. From the aforesaid terms of the 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 (xv) of clause 16 of the building plan dated 05.09.2013 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 1 of part-A of the environment clearance dated 12.12.2013 it was stated that 'consent to establish' was to be obtained before the start of any construction work at site. The 'consent to establish' was granted on 07.02.2014 by the concerned authorities. Therefore the pre-condition of obtaining all the requisite approvals were fulfilled only on



07.02.2014. There has been no delay on the part of the respondent who has throughout acted in accordance with the provisions laid down by law and in accordance with the rules and regulations. In terms of the buyer's agreement the proposed time for handing over of possession has to be computed from 07.02.2014.

27. Moreover, as per clause 13.5 of the buyer's agreement 'extended delay period' of 12 months from the end of grace period is also required to be granted to the respondent. Therefore, 60 months from 07.02.2014 (including the 180 days grace period), shall expire only on 07.02.2019. The said date is yet to arrive and there is no question of any delay on the part of the respondent. The complainants have filed the present complaint with wholly mala fide motives pre-maturely and are trying to mislead this authority by making baseless, false and frivolous averments.

28. The respondent also submitted that the respondent has already completed the said project. It is pertinent to mention herein that the respondent has already applied for the grant of part- occupation certificate. The construction of the block in



which the apartment allotted to the complainants is located is complete and the photographs of the same are attached.

29. The respondent also submitted that no illegality or wrong has been committed by the respondent. The respondent company is ready to offer the possession to the complainants subject to their making payment of the outstanding dues as agreed upon by the parties in accordance with the terms and conditions of the buyer's agreement.

DETERMINATION OF ISSUES

30. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

31. With respect to the **first issue** raised by the complainants, as per clause 13.3 of the buyer's agreement, the possession of the said unit was to be handed over within 42 months plus grace period of 180 days from the date of approval of building plans and/or fulfilment of the preconditions imposed there under.

The original building plan of the project in question was approved on 05.09.2013 and the Consent to Establish was issued by the Haryana State Pollution Control Board in respect



of the project in question on 07.02.2014. The due date of delivery of possession shall be computed from the date of issue of C.T.E i.e 07.02.2014 as C.T.E is one of the precondition imposed upon the respondent. Accordingly, the due date of possession was 07.02.2018. As the possession of the apartment was to be delivered by 07.02.2018, the authority is of the view that the promoter has failed to fulfil his obligation under section 11 (4) (a) of the Real Estate (Regulation and Development) Act, 2016. Therefore the respondent is liable to pay delay interest at the prescribed rate i.e 10.75% per annum for every month of delay calculated from the due date of delivery of possession i.e 07.02.2018.

FINDINGS OF THE AUTHORITY:

32. The authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country



Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

33. In the present case, the authority has observed that by virtue of this complaint, the complainants seeks directions of this authority to direct the respondent to pay interest for delay in handing over possession of the booked unit on the amount of Rs.95,04,444/- deposited with the respondent in lieu of booking of purchase of flat/unit. Brief facts of the complaint are that the complainants had booked a unit no. R-0805, 8th floor, tower-R in the project "Ireo City Central" at sector 59, Gurugram and buyer's agreement dated 21.06.2013 to this effect inter-se the parties was executed. In terms of clause 13 (3) of the buyer's agreement, the respondent was obligated to deliver the booked unit to the complainants within a period of 42 months from the date of consent to establish i.e. 07.02.2014 + with grace period of six months which comes out to



07.02.2018. Till date the respondent has failed to deliver the unit to the complainants. The complaint had so far paid an amount of Rs.95,04,444/- against total sale consideration of Rs.1,36,62,853/-.

34. Considering all the facts and circumstances of the matter and keeping in view the progress of the project, the authority is not inclined to order refund to the complainants.

DIRECTIONS OF THE AUTHORITY:

35. After taking into consideration all the material facts adduced 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:

- (i) The respondent is directed to pay delayed possession charges w.e.f. 07.02.2018 at the prescribed rate of interest i.e. 10.75% p.a. till the offer of possession of booked unit.
- (ii) 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.

(iii) The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

36. File be consigned to the registry.

37. The order is pronounced.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 28.03.2019

Judgement uploaded on 17.04.2019

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