

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

Complaint no. 500 of 2018
Date of first hearing 28.08.2018
Date of decision 06.12.2018

Mr. Rakesh Kumar Verma
R/o N-2/8, Ground floor, DLF City, Phase-
2, Gurugram.

Complainant

Versus

M/s IREO Grace Realtech Pvt Ltd (Through
its Managing Director)
Office at : Ireo Campus, sector- 59, near
Behrampur, Gurgaon.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Abhay Jain and Kamal
Sharma

Advocate for complainant

Shri MK Dhang

Advocate for the respondent

ORDER

1. A complaint dated 03.07.2018 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. Rakesh



Kumar Verma against the promoter M/s IREO Grace Realtech Pvt 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 unit in question was booked on 22.03.2013 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	The Corridor, Sector 67-A, Gurgaon,, Haryana
2.	Nature of real estate project	Residential group housing colony
3.	Area of the project	37.5125 Acres
4.	Unit no.	CD-C10-05-502, 5 th floor
5.	Area of unit	1483.57 sq. ft
6.	Registered/not registered	Registered (Phase1, Phase2 and Phase 3)
7.	RERA registration no	377 of 2017 (Phase 1)



		378 of 2017 (Phase 2) 379 of 2017 (Phase 3)
8.	Completion date as per RERA registration certificate	30.06.2020
9.	Date of booking	22.03.2013 (Cancelled vide letter dated 01.09.2016)
10.	Date of agreement	Not executed
11.	Total consideration	Rs 1,63,82,206/-
12.	Total amount paid by the complainant	Rs. 28,14,120/-,
13.	Payment plan	Construction linked plan
14.	Status of the project	80 % constructed
15.	Date of delivery of possession	Cannot be ascertained
16.	Delay	Cannot be ascertained
17.	Penalty clause	Cannot be ascertained

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 28.08.2018. The case came up for hearing on 28.08.2018 and 06.12.2018. The reply has been filed by the respondent on 26.09.2018 .



FACTS OF THE CASE

5. The complainant submitted that he is aged 58 years and a middle class person who thought of buying an apartment by paying his life-long hard earned money to the respondent in their project 'The Corridors', Sector 67A, Gurugram.
6. The complainant submitted that the respondent published very attractive brochure highlighting the group housing complex "The Corridors" in Sector 67A, Gurugram, Haryana. The respondent introduced itself to the complainant as the best and finest in construction and the leading real estate developer of the country in order to lure prospective customers to buy apartments in the said 'The Corridors' project.
7. The complainant submitted that in February 2013, the complainant was approached by the sales team of the M/s Axiom Land base Pvt Ltd representative of the respondent. Their sale representatives claimed and boasted of the project 'The Corridors' as the world class project. At the time of signing of application for booking, the complainant was informed that



the size of apartment would be 1350 sq. ft super area at a basic sale price of Rs. 8750/- per sq. ft., thereby the total cost of apartment would be Rs. 1,18,12,500/-. The complainant was told that the apartment buyer's agreement would be executed shortly after the booking of the apartment.

8. The complainant submitted the application for booking of residential apartment on 4th February, 2013 and paid Rs.12,00,000/- to the respondent and further paid amounts, a total of Rs.28,14,120/- by October 2013 within nine months as and when demanded by the respondent.
9. The complainant regularly contacted the respondent for execution of the apartment buyer's agreement, but the respondent sent the apartment buyer's agreement after a gap of more than a year, for signing it, after receiving twenty four per cent (24%) payment of total sale consideration.
10. The respondent increased super area to 1483.57 sq. ft from 1350 sq. ft., and also increased the basic sale price to Rs.9200/- per sq. ft from Rs.8750/- per sq. ft in the apartment buyer's agreement vis-a-vis with the application for booking. The total



cost of apartment was increased to Rs.1.63 crore from Rs.1.18 crore, thereby increasing more than thirty eight per cent (38%) of the cost of the apartment.

11. The complainant appealed to the respondent to amend the apartment buyer's agreement as per the commitments made in the application for booking. The respondent did not rectify the apartment buyer's agreement and rather issued a letter for cancelling the allotment of the apartment on 1 September 2016 and forfeited the entire paid amount of Rs.28,14,120/-, of the complainant, violating all prescribed rules and regulations of the law of the land.
12. The complainant submitted that the clause 6 of apartment buyer agreement has clearly mentioned twenty per cent (20%) of the sale consideration of the apartment as the 'earnest money,' which is illegal and unlawful. The Competition Commission of India has stated in the case no. 19/2010 dated 03.01.2013 "the company shall treat 10% of the sale price of the apartment as earnest money to ensure fulfilment". The Section 13 of the Real Estate (Regulation and Development) Act, 2016, also states that a promoter shall not



accept a sum of more than ten per cent (10%) from the buyers before entering into an agreement. Therefore, the clause 6 of the proposed apartment buyer's agreement is illegal and unlawful.

13. The complainant also submitted that the apartment buyer's agreement must not be one sided, abusive and unfair to the allottee. The Competition Commission of India in Case No. 19/2010 dated 3.01.2013 in the matter of Belaire Owners' Association v. DLF Ltd, Haryana Urban Development Authority and Department of Town & Country Planning, State of Haryana, has explained in detail the terms of the apartment buyer's agreement.

14. The relevant paragraph of the order is quoted as, *"The terms of the agreement to be entered into with the allottee were never shown to the allottee at the time of booking of the apartment. These terms and conditions of the agreement were prepared and framed by the company unilaterally without consulting the buyer. Once the company had already received considerable amount from the applicants/buyers, this agreement was forced upon the allottees and the allottee had no option but to sign the agreement, as otherwise the*



agreement provided for heavy penalties and deduction from the money already deposited by the allottees with the company, which itself was an abuse of dominance. The appropriate procedure would have been that a copy of the agreement which DLF proposed to enter with the allottee should have been made available to the applicants at the time of inviting applications. The agreement should be signed within a reasonable time from the date of allotment and all additional amounts should be demanded from the allottee only when the agreement has been signed. Any allottee, who was not agreeable to the terms of agreement, should have liberty to withdraw his application and should be given the entire application amount back."

ISSUES RAISED BY THE COMPLAINANT

15. The issues raised by the complainant are as follows :-
- i. Whether the respondent has a right to forfeit 24% of the cost of booked apartment i.e Rs. 28,14,120/- paid by the complainant?
 - ii. Whether the respondent increasing of super area from 1350 sq. ft stated in the application form to 1483.57 sq. ft in the proposed apartment buyer agreement by the buyer is in violation of sec 12 of Act ?



- iii. Whether the respondent increasing of basic sale price from Rs 8750/- per sq. ft stated in the application form to Rs 9200/- per sq. ft in the proposed apartment buyer agreement is illegal and in violation of sec 12 of Act ?

RELIEF SOUGHT

16. The reliefs sought by the complainant are as follows :-
- To direct the respondent to refund the total consideration amount i.e Rs. 28,14,120/- paid by the complainant along with interest at the rate of 18% per annum or at such rate prescribed under the RERA Act, 2016.
 - To direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by the complainant.

REPLY BY THE RESPONDENT

17. The respondent submitted that it is wrong and denied that the complaint can be preferred under sections 12, 13,14,18,19,31 and 71 or any other applicable provisions of the Real Estate (Regulation and Development) Act, 2016. It is submitted that authority does not have the jurisdiction to decide on the present complaint. The complainant is estopped from filing the



present complaint by his own acts, omissions, admissions, and laches and has no locus standi to file the present complaint.

18. The respondent submitted that it is not admitted that the complainant is a middle class peace loving and law abiding citizen of India. It is wrong and denied that the complainant always leads his life with full honesty, simplicity, truthfulness or epitomizes utmost kindness and humanity. It is submitted that the complainant is a clever and a shrewd type of person who has filed this baseless and false complaint in order to unnecessarily harass and pressurize the respondent. It is absolutely wrong and denied that the alleged grievance of the complainant relates to breach of contract, false promises or gross unfair trade practices committed by the respondents. It is wrong and denied that respondent no.6 has acted as a real estate agent for the respondents no. 1 to 5 or has taken money from the complainant on behalf of respondents no. 1 to 5. It is submitted that the complainant had made the booking through his own broker company and the same has no concern with respondents no.1 to 5.



19. The respondent submitted that it is not denied that the super area of the unit was increased from 1350 sq. ft to 1483.57 sq. ft. as per the agreed clauses of the booking application form. It is pertinent to mention here that the complainant himself has agreed in clause 22 of the schedule- I of the booking application form that the super area of the unit was tentative and that if there would be any change in the apartment's size then in that case the applicable sale consideration shall be payable to respondent no.1 by the complainant.
20. The respondent submitted that it is wrong and denied that at the time of signing of application for booking, the complainant was informed that the size of apartment would be 1350 sq. ft super area at a basic sale price of Rs. 8,750 per sq. ft or that the total cost of the apartment would be Rs. 1,18,12,500/-.
21. The respondent also submitted that the complaint is correct to the extent that the super area was increased to 1483.57 sq. ft in the apartment buyer's agreement which was stated as 1350 sq. ft in the application for booking. It is submitted that according to the terms and conditions of the booking



application form, the super area of the unit was tentative and the same was agreed upon by the complainant.

22. The respondent also submitted that it is wrong and denied that the respondents have in a clandestinely manner charged development charges at the rate of Rs. 327.91/- per sq. ft, preferential location charges at the rate of Rs. 1196 per sq. ft of super area and club membership charges at an aggregate of Rs. 2,50,000/- and charged interest free maintenance security at the rate of Rs. 100/- per sq. ft of the super area and IBRF at the rate of Rs. 50/- per sq. ft of the super area or that the same has ultimately increased the total cost of the apartment by more than Rs. 45,69,000/-. It is submitted that according to clause 2 of the booking application form and clause 5 of the schedule -I of the booking application form, the complainant had agreed to pay the charges as stated by the complainant in this sub-para in addition to the basic sale price of the unit. The complainant is now taking baseless, false and frivolous pleas in order to justify his own wrongs, illegalities and laches.

DETERMINATION OF ISSUES :



23. With regard to **issue 1**, the authority is of the view that as per clause 21.1 of builder buyer agreement time is the essence of the agreement for the payment of sale consideration, maintenance charges and other deposits and amounts, including any interest. If the allottee fails in timely performance of its obligations agreed to pay in time any of the instalments to the company, the company shall be entitled to cancel the allotment and terminate the agreement. There have been letters issued by the respondent time and again to the complainant demanding the payment of due instalments. However the complainant has failed to clear the dues in terms of agreement. Thus the respondent has abided by the agreement and has cancelled the allotment of the unit vide letter dated 1.09.2016 under the terms of clause 7 r/w clause 11 of the booking form and clause 3 of allotment letter.

24. It is pertinent to note that the respondent cannot forfeit more than 10% of the earnest money. As per settled proposition of law, the promoter is liable to deduct only 10% of the consideration amount and refund the balance amount after



forfeiting 10% of the total consideration paid by the complainant.

25. In the case of *DLF Ltd. v. Bhagwati Narula*,¹ revision petition no. 3860 of 2014 it was held by the National Consumer Dispute Redressal Commission, New Delhi that agreement for forfeiting more than 10% of sale price would be invalid and 20% of the sale price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can show that it had only suffered loss to the extent the amount was forfeited by it. Earnest money is said to be the only amount that is paid at the time of concluding the contract. Thus, amount beyond 10% cannot be forfeited and if done so that would be unreasonable

Findings of the Authority

26. Jurisdiction of the authority-



¹ 1(2015) CPJ 319 (NC)

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.

27. In the present case the counsel for the complainant intimated the authority that that he has paid Rs.28,14,120/- to the respondent against unit no.CD-C10-05-502 in the project "The



Corridor” at Sector-67A, Gurugram. He further stated that since the terms and conditions of BBA were changed by the promoter without his consent, therefore, he did not sign the BBA supplied by the promoter to him. In the meantime, the promoter as per provisions of clause no. 7 and 11 of booking application forfeited his entire amount whereas the booking amount was only Rs.12 Lakhs. Counsel for the respondent pointed out that complainant intentionally did not sign the BBA and kept on lingering the same, therefore, they have forfeited the entire amount deposited by him. After considering the arguments put forward by both the counsels, the authority is of the opinion that since BBA has not been signed by the complainant, therefore as per provisions of booking application, the builder was only entitled to forfeit the booking amount of Rs.12 Lakhs.

Decision and directions of the authority

28. 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



Corrected vide order dated 24.05.2022

25.05.22

the following directions to the respondent in the interest of justice and fair play :

1. The respondent i/ builder was only entitle to forfeit the booking amount of 12 lakhs & refund the balance amount of Rs. 16,14,120/- alongwith prescribed rate of interest i.e. 10.75% p.a to the complainant within 90 days.

The respondent is directed to refund the balance amount of Rs.16,14,120/- after deducting 10% of the sale consideration from the paid amount of the complainant along with prescribed rate of interest i.e. 10.75% per annum calculated from the date of last payment by the complainant i.e 31.10.2013 till the date of issuance of this order i.e 06.12.2018 amounting to Rs. 8,84,901.69/- to the complainant within 90 days of this order.

29. Complaint stands disposed of.

30. The order is pronounced.

31. The file is consigned to the registry




(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated : 06.12.2018