

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

**Complaint no.** 2450 of 2018  
**Date of first hearing** 04.04.2019  
**Date of decision** 04.04.2019

Mr. Piyush Jain

**R/o** House No. A-4, Pushpanjali Farm,  
Bijwasan, New Delhi-110081

Mr Pradeep Goyal

**R/o** 39, Block A, Pocket 4, Sector 13 and  
16, Rohini, New Delhi-110085

**Complainants**

versus

M/s IREO Grace Realtech Pvt Ltd (Through  
its Managing Director)

**Office at:** Ireo Campus, Sector 59,  
Near Behrampur, Gurugram

**Respondent**

**CORAM:**

Dr K.K. Khandelwal  
Shri Subhash Chander Kush

**Chairman**  
**Member**

**APPEARANCE:**

Shri Pawan Kumar Ray

Advocate for complainants

Shri Garvit Gupta

Advocate for the respondent



## ORDER

1. A complaint dated 16.01.2019 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. Piyush Jain and Mr Pradeep Goyal, 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 apartment buyer's agreement was executed on 07.07.2014 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 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 67A, Gurugram
2.	Nature of real estate project	Residential group housing colony
3.	Area of the project	37.51 acres
4.	Unit no.	1004, tower B5, 10 <sup>th</sup> floor
5.	Unit area	1540.13 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 apartment buyer's agreement	07.07.2014
10.	Total consideration	Rs. 1,51,55,239.54/- (as per annexure v of the apartment buyer agreement)
11.	Total amount paid by the complainant	Rs 1,49,43,089/-
12.	Payment plan	Construction linked plan
13.	Status of the project	80 % constructed
14.	Date of delivery of possession (as per 13.3 of agreement : 42 months + 180 days from the date of approval of the building plans i.e	<b>27.11.2018</b>



	and/or fulfilment of the preconditions imposed thereunder) <b>(Due date of delivery of possession is calculated from the date of approval of fire scheme i.e 27.11.2014)</b>	
15.	Delay upto 04.04.2019	4 months 8 days
16.	Penalty clause (as per clause 13.4 of the agreement)	Rs 7.50/- 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 complainant and respondent. An apartment buyer's agreement dated 07.07.2014 executed between both the parties is available on record.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 04.04.2019. The case came up for hearing on 04.04.2019. The reply has been filed by the respondent.



### FACTS OF THE CASE

6. The complainants submitted that they applied for the booking in the project of the respondent vide their application dated 22.03.2013 for an apartment no. 1004, 10<sup>th</sup> floor, tower B5.
7. The complainants submitted that respondent on 07.08.2013 served an allotment letter on the complainants, allotting them a residential apartment no. CD-B5-07-703.
4. The complainants submitted that apartment buyer agreement was executed between the parties on 07.07.2014 under which the complainants were constrained to accept various arbitrary and unilateral clauses made in favour of the respondent as they had paid a considerable amount towards the booking of apartment.
5. The complainants submitted that the building plan of the respondent had been approved by the Directorate of Town & Country planning, Haryana on 23.07.2013 and the respondent was supposed to deliver the possession of the apartment latest by January 2017 if calculated from the date of approval of the building plan i.e 23.07.2013.



6. The complainants also submitted that as per the agreement the respondent had the authority to impose an exorbitant rate of interest on the complainants to the tune of 20% on delayed payments whereas, the respondent was only liable to pay a meagre amount in case of delayed possession to the tune of Rs. 7.50 per sq. ft. of the super built up area of the flat.
7. The complainants submitted that they requested the respondent to deliver the possession of the apartment several times personally and over telephonic conversation but the respondent has failed to adhere to the request of the complainants.
8. The complainants submitted that they have made payment of Rs 1,49,43,089/- but the respondent has failed to deliver possession by the due date i.e January 2017.
9. The complainants submitted that the authority may direct the respondent to handover immediate physical possession of the booked unit along with interest at the prescribed rate for the delay caused in delivery of possession.



### Issues raised by the complainants

10. The issues raised by the complainants are as follows: -
- i. Whether there has been failure on the part of the respondent in delivering the apartment to the complainants within the stipulated time period?
  - ii. Whether the complainants are entitled to delay compensation on the money deposited by the complainants with the respondent along with interest?

### Relief sought

11. The relief sought by the complainants is as follows: -
- i. Direct the respondent to deliver the immediate physical possession of the said unit along with interest at the prescribed rate from the schedule date of delivery till actual date of delivery.



### Reply by the respondent

12. 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 enforced retrospectively. That there is no cause of action to file the present complaint.

13. The respondent submitted that the complainants have no locus standi to file the present complaint.
14. The respondent submitted that according to the booking application form and the apartment buyer's agreement, the time period for offering the possession of the unit to the complainants has not yet elapsed and the complaint has been filed pre-maturely by them.
15. 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.





16. The respondent submitted that t this hon'ble authority does not have the jurisdiction to decide on the imaginary interest as claimed by the complainants. 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 complainants.

17. The respondent 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 35 of the apartment buyer's agreement.



18. 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. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:

- A. 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 having taken 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.

- B. That the complainants, after checking the veracity of the project namely, 'Corridor; Sector 67A, Gurugram had applied



for allotment of an apartment vide their booking application form. The complainants agreed to be bound by the terms and conditions of the booking application form agreed upon by them.

- C. That based on the said application, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainants apartment no. CD-B5-10-1004 having tentative super area of 1540.13 sq. ft. for a total sale consideration of Rs. 1,51,55,239.54. Vide letter dated 09.04.2014, the respondent sent 3 copies of the apartment buyer's agreement to the complainants. It is submitted that the complainants signed and executed the apartment buyer's agreement only on 07.07.2014 after reminder dated 28.05.2014 were issued by the respondent. It is pertinent to mention herein that when the complainants had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be enforced retrospectively.



D. That the respondent kept on raising payment demands from the complainants in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan and the complainants made the payment of the part-amount of the total sale consideration. It is pertinent to mention herein that the complainants had committed defaults in making timely payments of some of the instalment demands and from sixth instalment onwards started committed defaults in making payments .

E. 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 43 of the schedule – i of the booking application form states that '*...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 fulfilment 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)...*. It is pertinent to mention here that the complainants vide clause 13.5 of the apartment buyer's agreement and clause 44 of the schedule - i of the booking application form had further agreed to the 'extended delay period' of 12 months from the end of grace period.

- F. That 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 (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. A copy of the building plan dated 23.07.2013 is attached as annexure r-7 and a copy of environment clearance dated 12.12.2013 is attached as annexure r-8. It is submitted that the fire scheme approval was granted on 27.11.2014 and the time period for calculating the date for offering the possession, according to the agreed terms of the buyer's agreement, would have commenced only on 27.11.2014. Therefore, 60 months from 27.11.2014 (including the 180 days grace period and extended delay period) shall expire only on 27.11.2019. There cannot be any delay till 27.11.2019. The time period for offering the possession of the unit has not yet elapsed and the complainants have pre-maturely filed the present baseless and false complaint. A copy of fire scheme approval dated 27.11.2014 is attached. The complainants are trying to re-write the agreed terms and conditions of the agreement. It is submitted that even as per the terms and conditions of the agreement, no defaults or illegalities have been committed by respondent with respect to offering the possession of the unit to the complainants and the complainants have made false



averments in order to unnecessarily harass and pressurize the respondent to submit to their unreasonable demands.

G. The respondent submitted that the respondent company has already completed the construction of the tower in which the unit allotted to the complainants is located and the photographs of the same.

H. That it is submitted that the complainants are real estate investors who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainants now wants to somehow get out of the concluded contract made by them on highly flimsy and baseless grounds. Such malafide tactics of the complainants cannot be allowed to succeed.

**Determination of issues:**

19. With respect to the **first issue** raised by the complainants, as per clause 13.3 of buyer's agreement, the possession of the unit was to be handed over within 42 months plus 180 grace



period from the from date of approval of buildings plans and/or fulfilment of preconditions therein. The due date of possession is calculated from the date of approval of fire scheme i.e 27.11.2014. The due date of possession shall be 27.11.2018. The possession of the said unit has been delayed by 4 months and 8 days till the date of decision. The promoter has failed to fulfill its obligation under section 11(4)(a) of the Act *ibid*.

20. With respect to **second issue** raised by the complainants, as the promotor has failed to deliver the possession of the booked unit on due date of possession, the promotor is liable under section 18 (1) proviso read with rule 15 to pay delay interest to the complainants at the prescribed rate i.e. 10.75% per annum for every month of delay till the offer of possession.

### **Findings of the Authority**

21. Jurisdiction of the authority-

### **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 & 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.



22. 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 & Another. (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.

23. Further, in ***Aftab Singh and others. v. Emaar MGF Land Ltd and others., 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.

24. In the present case, the authority has observed that due date of delivery of possession is 27.11.2018, which has been agreed to by both the parties. As per clause 13.3 of the apartment



buyer's agreement dated 07.07.2014 for unit no-1004, tower-B5, in the project "The Corridor" Sector-67, Gurugram, possession was to be handed over to the complainants within a period of 42 months from the date of approval of building plans or getting fire clearance i.e. 27.11.2014 + 180 days grace period which comes out to be 27.11.2018. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.1,49,43,089/- to the respondent against a total sale consideration of Rs.1,51,55,239/-.

### **Decision and Direction of Authority**

24. After taking into consideration all the material facts produced by 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: -

- i. The complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 27.11.2018 as per the provisions of section



18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

- ii. Complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The promoter shall not charge anything from the complainants which is not part of the apartment buyer's agreement.
- iv. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as being granted to the complainants in case of delayed possession.
- v. 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 10<sup>th</sup> of subsequent month.



25. The order is pronounced.

26. File be consigned to the registry.

**(Dr K.K. Khandelwal)**  
Chairman

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 04.04.2019

Judgement uploaded on 25.04.2019



HARERA  
GURUGRAM

