

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

Complaint no. : 6130 of 2019
Date of first hearing : 16.04.2019
Date of decision : 01.10.2020

M/s Skyroto Print Pvt. Ltd.
R/o: Plot No. 189, Sector-59, Ballabgarh,
Faridabad-121004

Complainant

Versus

M/s Ireo Victory Valley Pvt. Ltd.,
Office at: 5th Floor, Orchid Centre, Golf
Course Road, Sector-53, Gurugram-122002

Respondent

CORAM:

Shri K. K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Rishabh Gupta
Shri M K Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 02.12.2019 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"IREO Victory Valley", Golf course extension road, Sector 67, Gurugram
2.	DTCP license no. and validity status	244 of 2007 dated 26.10.2007 valid Upto 25.10.2017
3.	Nature of the project	Group housing colony
4.	Name of the Licensee	KSS Properties Pvt. Ltd. and one another
5.	Registered/ not registered	Not registered
6.	Unit no.	D (21)-G02, Ground Floor, tower D (21)
7.	Unit admeasuring	3367 sq. ft.
8.	Revised Unit admeasuring	3427.59 sq. ft.
9.	Project area	24.6125 acres
10.	Date of allotment letter	29.12.2011
11.	Date of apartment buyer's agreement	29.02.2012
12.	Total consideration (as per statement of account dated 25.10.2017 at page 78 of reply)	Rs. 3,32,38,770/-
13.	Total amount paid by the	Rs. 2,77,18,926/-

	complainant (as per statement of account dated 25.10.2017 at page 78 of reply)	
14.	Payment plan	Installment payment plan
15.	Date of approved building plan	29.11.2010 (Page no. 61 of reply)
16.	Due date of delivery of possession as per clause 13.3 of apartment buyer's agreement (Within a period of 36 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder plus grace period of 180 days)	29.05.2014 (calculated from building plan approval i.e. 29.11.2010)
17.	Date of occupation certificate	28.09.2017 (Page no. 74 of reply)
18.	Date of offer of possession to the complainant	25.10.2017 (Page no. 76 of reply)
19.	Delay in handing over possession till date of offer of possession i.e. 25.10.2017	3 years 4 months 26 days

3. As per clause 13.3 of the apartment buyer's agreement, the possession of the unit in question was to be handed over within a period of 36 months from the date of execution of apartment buyer's agreement i.e. 29.02.2012 plus grace period of 6 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder which comes out to be 29.05.2014. Clause 13.3 of the apartment buyer's agreement is reproduced below:

"13. POSSESSION AND HOLDING CHARGES

13.3. Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement including but not limited to the timely payment of the total sale consideration, Stamp Duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company proposes to hand over the possession of the said Apartment to the Allottee within a period of 36 months from the date of approval of the Building Plan and/or fulfilment of the preconditions imposed thereunder ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays in obtaining the Occupation Certificate etc., from the DTCP under the Act, in respect of the IREO-Victory Valley Project."

4. The complainant submitted that the apartment buyer's agreement was executed between the parties on 29.02.2012. That the respondent offered possession of the said unit to the complainant on 25.10.2017 where, the complainant need to submit the balance amount but after visiting the site, the

complainant found that the said unit was not completed. The complainant informed the officials of the respondent for which they assured that it will be completed within 2-3 months. But after, a lapse of one year after receiving the notice of offer of possession, the respondent gave the physical possession letter on 17.1.02018 but till now, no conveyance deed has been executed by the respondent which caused a huge loss to the complainant having no legal title in favour. Hence, this complaint for the aforementioned relief:

- i. Direct the respondent to pay interest on the amount paid by the complainant at prescribed rate towards delay in handing over the possession of property in question as per the provisions of the Act and the Rules.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
6. The respondent contests the complaint on the following grounds:
 - i. That the complainant made certain payments towards the installment demands on time and as per the terms of the

allotment. However, it committed defaults in making payment towards the first installment amount. It is submitted that the respondent has raised the payment demand towards the first installment vide payment request dated 29.12.2011. However, the due amount was received from the complainant only after several reminders dated 05.03.2012 and 26.03.2012 were issued by the respondent.

- ii. 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 (v) of clause 17 of the approval of building plan dated 29.11.2010 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.
- iii. It is submitted that the environment clearance for construction of the said project was granted on 25.11.2010. Furthermore, in clause (v) of part-B of the environment clearance dated 25.11.2010 it was stated

that approval from fire department was necessary prior to the construction of the project.

- iv. It is pertinent to mention herein that the respondent received the occupation certificate from the concerned authorities on 28.09.2017 and it offered the possession to the complainant vide letter dated 25.10.2017. It is submitted that vide offer of possession, the complainant was intimated by the respondent that in order to proceed with the handing over of the possession and conveyance of the apartment, the complainant had to make the payment of the remaining due amount of Rs. 55,19,844/- which was inclusive of the stamp duty charges and complete the documentation formalities.
- v. That the complainant failed to remit the due amount and complete the documentation formalities by the due date despite a reminder dated 30.11.2017 and the stamp duty charges were paid by the complainant only on 04.07.2018 i.e. after 9 months from the date of the issuance of the offer of possession by the respondent to the complainant. Thus, there was a delay of almost a year from the date of offer of possession on the part of the complainant in adhering to its contractual obligations and the

respondent is entitled to holding charges as per the terms of the agreement.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
8. The authority, on the basis of information and other submissions made and the documents filed by the complainant and the respondent, is of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. 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.
11. On consideration of the circumstances, the documents and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13.3 of the apartment buyer's agreement executed between

the parties on 29.02.2012, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder. The grace period of 6 months is allowed to the respondent due to exigencies beyond the control of the respondent. The building plans for the said project were approved on 29.11.2010. Therefore, the due date of handing over possession comes out to be 29.05.2014. In the present case, the respondent receives the occupation certificate on 28.09.2017 and offered possession on 25.10.2017. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the apartment buyer's agreement dated 29.02.2012 to hand over the possession within the stipulated period.

12. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession charges at the prescribed rate of interest @9.30% p.a. w.e.f. 29.05.2014 till the offer of possession i.e. 25.10.2017 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

13. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 29.05.2014 till the offer of possession i.e. 25.10.2017.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate i.e. 9.30% by the promoters which is the same as is being granted to the complainant in case of delayed possession charges.

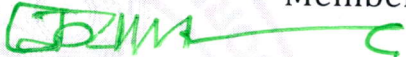
14. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in this regard against the respondent. A copy of this order be endorsed to the registration branch.

15. Complaint stands disposed of.

16. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.10.2020

JUDGEMENT UPLOADED ON 09.10.2020