

SANJEEV KUMAR V. M/S. IREO GRACE REALTECH PVT. LTD.

1. SANJEEV KUMAR

S/o Shri Madan Lal Chaudhary, R/o Flat No. 214, First Floor,
Sector – 22, DDA SFS Flats, Pocket – 1, Dwarka,

Delhi – 110075

.....Complainant(s)

Versus

1. M/S. IREO GRACE REALTECH PVT. LTD.

Through its Directors, 304, Kanchan House, Karampura
Commercial Complex,

New Delhi

110015

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 3316 OF 2017

Date of Judgement: 23 Jan 2023

Judges:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER

HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Mr. Deepak Kr. Khushalani, Advocate

Mr. Aditya Parolia, Advocate,

Ms. Sumbul & Ms. Priya, Advocates

Ms. Medhya Ahluwalia, Advocate

For the Opp.Party : Mr. Rahul Ahuja, Advocate

Ms. Sadhvi Swaroup, Advocate

Mr. Gaurav Sharma, Advocate

Mr. Arvind Lamba, Advocate

Ms. Ruchi Kumar, Advocate

Mr. Sunil Mund, Advocate with
Ms. Archana Yadav, Advocate for OP-3

Facts

Case involves complaints filed by multiple buyers against developer IREO Grace Realtech Pvt. Ltd. and others regarding delays in offering possession for housing project "The Corridors" in Gurgaon. Complainant Vijay Shekar booked a 2BHK apartment in 2013 by paying booking amount. He regularly paid instalments as demanded by developer. As per Builder Buyer agreement, possession was to be offered within 42 months + 180 days grace period from the date of building plan approval i.e. by July 2017. But developer failed to handover possession due to delays in getting occupation certificate. Similar issue of delays faced by other complainants who booked units in the project around the same timeframe of 2013-2014. Total payments made by them ranged from Rs 1.3 crores to Rs 1.5 crores.

Court's Opinions

Notes that dispute regarding this same project already considered by Supreme Court in Ireo Grace Realtech vs Abhishek Khanna case of 2021. SC had held that 42 month timeline for possession will be counted from date of fire NOC i.e. November 2014. So possession was due by November 2018. For buyers of towers where construction was completed first, SC upheld obligation to take possession. For other buyers, SC ordered refund with interest. OC for complainant's tower issued only in Jan 2022. But developer had issued notice of possession in June 2019 without valid OC. Thus offer was not legally valid. Holds that buyers are entitled to compensation in the form of interest @6% p.a. on payments from due date of possession in Dec 2018 till date of OC in Jan 2022. Allows complaints partly. Directs developer to give statement of account adjusting delayed compensation. Buyers can then take possession after settling accounts.

Arguments by Parties

Complainant:

Developer started collecting money before building plan approved. Misrepresented specifications and facilities in brochures. Failed to handover possession after repeated follow-ups. Seeks refund of amount paid with interest or possession with compensation.

Developer:

Delays were due to awaiting regulatory approvals beyond their control. Have completed construction and applied for OC. Issuance got delayed. Have offered possession to buyers multiple times but buyers did not accept. Seeks dismissal of complaint as refund claim premature.

Sections and Laws Referenced

Section 24A, Consumer Protection Act 1986 – Time limit for unfair trade practice allegations.; Real Estate (Regulation & Development) Act 2016; Haryana Fire Safety Act 2009

Cases Referred

Ireo Grace Realtech vs Abhishek Khanna (SC 2021)

Rahman Khan vs DLF Southern Homes (SC 2020) – Compensation for delay

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Court

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Full Text of Judgment:

1. Heard Mr. Deepak Kr. Khushalani, Advocate, for the complainant and Mr. Rahul Ahuja, Advocate, for the opposite parties.

2. Above bunch of the complaints have been filed against same opposite parties in respect of same project “The Corridors”. As the complainants, in these complaints pressed for the relief of possession at the time of arguments as such these complaints are decided together. For appreciating the controversy between the parties, the facts of CC/111/2019 are mentioned in the judgment. Necessary facts of the complaints

are given in a table below:-

COMPLAINT NO.	COMPLAINANT NAME	UNIT NO.	DATE OF BOOKING	TOTAL PAYMENT
CC/106/2019	M. Vijay Shekar	CD-C5-05- 504	06.05.2013	Rs.14919375.47
CC/2258/2018	Nupur Gupta	CD-C-7-06-602	05.05.2013	Rs.15218377/-
CC/2365/2019	M/s HBR Chemicals Pvt. Ltd.	CD-C5-04-404	06.05.2013	Rs.9356207.47
CC/3316/2017	Mr. Sanjeev Kumar	CD-C7-02-201	22.03.2013	Rs.12917304/-

3. Marella Vijay Shekar has filed CC/111/2019, for directing the opposite parties to (i) refund Rs.14919375.47 with interest @20% per annum from the date of respective deposit till the date of actual payment, or in alternative (ii) pay interest @20% per annum on the deposit of the complainant, from the date of each deposit till the date of handing over possession of Unit No. CD-C-5-05-504, (iii) pay Rs.500000/-, as compensation for mental agony and harassment and litigation cost; and (iv) any other relief which is deemed fit and proper in the facts and circumstances of the case. At the time of arguments, the counsel for the complainant pressed for the relief for possession, delayed compensation, dispensing with interest and holding charges.

4. In CC/106/2019, the complainant has stated that the opposite parties were companies, registered under the Companies Act, 1956. They were engaged in the business of development and construction of group housing project and selling its unit to the prospective buyers. Opposite parties-2 to 5 were the owners of the project land. Under a Collaboration Agreement dated 05.03.2013, between the opposite parties, the work of development, construction and sale etc. of the group housing project was assigned to IRE0 Grace Realtech Private Limited (the developer). The developer launched a group housing project, in the name of "The

Corridors" at villages Dhumaspur and Maidwas, Golf Course Extension Road, Sector-67-A, Gurgaon, in the year 2012 and made wide publicity of its facilities and amenities. The developer invited booking applications and started collecting money before grant of development licence. The complainant approached the developer and inquired in respect of the price of the flat. The developer informed that Rs.9200/- per sq.ft. as basic sale price the flat which includes one car parking space, Rs.327.91 per sq.ft. as Development Charges, Rs.100/- per sq.ft. as Interest Free Maintenance Security, Rs.50/- per sq.ft. as Interest Bearing Replacement Fund and Rs.2.5 lacs towards club membership charges (optional). The complainant and his brother Sameer Kumar Marella booked a 2BHK Flat on 20.03.2013 and deposited booking amount of Rs.1450000/-. Thereafter, the complainant deposited Rs.1471976/- on 06.05.2013. The developer issued Allotment Offer Letter on 07.08.2013, allotting Unit No. CD-C5-05-504, super area 1540.42 sq.ft. and executed Apartment Buyer's Agreement on 11.07.2014. Annexure-IV of the agreement provides payment plan as "construction link payment plan". Clause-13.3 provides 42 months period from the date of approval of building plan, for offer of possession, with grace period of 180 days. Clause-13.4 provides for delayed compensation @Rs.7.5/- per sq.ft. per month on super area after expiry of grace period. Sameer Kumar Marella surrendered his right in favour of the complainant, which was duly acknowledged by the developer on 12.05.2015. The complainant diligently followed payment plan and demand letter. The developer raised demand of 10th instalment payable on "completion of stone/tile flooring" vide letter dated 21.07.2017, which was deposited on 18.01.2018. As per demands, the complainant deposited total Rs.15158046.12 and only last instalment of "offer of possession" remained due. The building plan was approved on 23.07.2013. The period of 42 months expired 22.01.2017 and 180 days grace period expired on 22.07.2017 but the developer did not offer possession. Then the complaint was filed on 17.01.2019, alleging unfair trade practice inasmuch as (i) the developer

started collecting money before approval of building plan.

(ii) the developer misguided the buyers in respect of rate of the flat, due to which, FIR No.561/2014 was registered against the Director of the developer at PS Sushant Lok, Gurgaon.

(iii) In the brochure, the developer propagated for 90 meter wide link road up to the project but acquisition of land for constructing link road of 90 meter wide was stayed by Punjab & Haryana High Court vide order dated 04.01.2014 in CWP No.8983/2014 and concealing this fact, the developer realized instalments. (iv) The developer was neither the owner of the land nor Collaboration Agreement was registered and as such it would not be able to confer title upon the buyer. Development Licence No.5 of 2013 dated 21.02.2013 expired and it was not renewed within time.

5. The opposite parties filed its written reply on 04.04.2019 and contested the matter. The material facts relating to the project, allotment of the apartment to the complainant, execution of ABA in his favour and payments made by him have not been disputed. The opposite parties stated that although building plan was approved on 23.07.2013 but "No Objection Certificate" from Fire Department was delayed and issued on 27.11.2014 although it was applied on 24.10.2013. The construction was started thereafter. The developer raised first demand for instalment of "Casting Roof Slab" from the buyers in March, 2015. The period of 42 months is liable to be counted from 27.11.2014 and due date of possession including grace period would be 26.11.2018. The construction of first phase of the project, which consisted 1356 apartments were completed. The developer

applied for issue of "occupation certificate" for Towers A-6 to A-10, B-1 to B-4, C-3 to C-7 (consisting 700 apartments) and EWS block on 21.07.2017 and for revised "occupation certificate" on 28.05.2018, which was awaited. The construction of Towers A1 to A-5, B-5 to B-8, C-8 to C-11, Community Centre, EWS Building-2, Convenient Shopping-1 and 2 was going on with full spring and likely to be completed soon. The delay in issue of "occupation certificate" was beyond the

control of the developer and is a force majeure as provided in Clause-13.3 and 13.6 of the ABA. The developer is entitled for extension of the period, for which "occupation certificate" is being delayed. The developer wrote emails to the complainant and other buyers to change their allotment in phase-1 construction and take possession but the complainant did not reply. As per clause-13.5 of the ABA, the developer is entitled for one year as "extended period" and the claim for refund was pre-mature. The complainant can claim refund only after 27.11.2019, in case the developer, failed to offer possession till then. This Commission has no jurisdiction to alter the terms of the contract. After fully satisfying with the title of the opposite parties, the complainant booked apartment and deposited money. After signing the agreement, the complainant is not entitled to question the title of the opposite parties and avoid the terms of the agreement. In any case, limitation of two years as provided under Section 24-A of the Consumer Protection Act, 1986 has expired for alleged allegations of unfair trade practice. It has been denied that the developer had misrepresented anything. Haryana Government has framed Rules and constituted Adjudicatory Authority, under Real Estate (Regulation and Development) Act, 2016. The Act of 2016 is a special enactment on the subject as such the complainants be relegated to go before that authority for his grievances. The project "The Corridor" was registered under the Act of 2016. There was no deficiency in service on part of the developer and the complaint is liable to be dismissed.

6. The complainant filed Rejoinder Reply and Affidavit of Evidence and Affidavit of Admission/Denial of documentary evidence of M. Vijay Shekar. The opposite parties filed Affidavit of Evidence and Affidavit of Admission/Denial of documentary evidence of Subhasis Lahiri. Along with Affidavit of Evidence, the opposite parties filed copy of "occupation certificate" issued on 31.05.2019 and letter of offer of possession dated 17.06.2019, issued to the complainant.

7. We have considered the arguments of the counsel for the parties and examined the record. The dispute of

possession/refund with regard to the project "The Corridor" came up for consideration before Supreme Court in IERO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna, (2021) 3 SCC 241 (decided on 11.01.2021). Supreme Court found that Building Plan was approved on 23.07.2013 but it was conditional for obtaining Fire NOC, which was issued on 27.11.2014. Fire NOC was mandatory under Haryana Fire Safety Act, 2009, for raising construction. The period of 42 months and grace period of 180 days has to be counted from the date of issue of Fire NOC and expired on 27.11.2018. The developer first started construction of phase-I, (which consist Towers A-6 to A-10, B-1 to B-4, C-3 to C7 and EWS block). After completing the construction, the developer applied for issue of "occupation certificate" on 05.07.2018, for phase-I, which was issued on 31.05.2019. Thereafter, possession was offered in June, 2019. There was no inordinate delay in offer of possession and the buyers of phase-I construction were obligated to take possession. So far as remaining buyers were concerned, Supreme Court upheld order of this Commission for refund, with interest @9% per annum, from the date of their respective deposit till the date of actual payment.

8. After completing Phase-II construction, the developer applied for "occupation certificate" of Towers A-1 to A-5, B-5 to B-8, C8 to C-11, Community Centre, EWS Building-2, Convenient Shopping 1 and 2 on 10.09.2019, which has been issued on 27.01.2022. Although the developer issued Notice of Possession letter on 17.06.2019 to the complainant but on that day the developer did not have "occupation certificate" in respect of the flat allotted to the complainant as such offer of possession was not legally valid. The complainant is entitled for delayed compensation from due date of possession till issue of "occupation certificate". Supreme Court in Wg. Camdr Arifur Rahman Khan Vs. DLF Southern Home Pvt. Ltd., (2020) 16 SCC 769, held that compensation for delayed possession at the rate of Rs.5/- per month, per sq.ft. on super area is a meagre amount and just compensation for delayed possession would be interest @6% per annum on the

deposit of the buyer, from due date of possession till the date of offer of possession.

9. As the complainants want possession and the developer has not cancelled the allotment till today as such the complainants can take possession in terms of the agreement. As last instalment was payable on offer of possession, the developer will not be entitled to charge interest on last instalment and holding charges till the date of issue of "occupation certificate" from those buyers who have paid instalments (except last instalment). If instalment (except last instalment) of any buyer is due, the developer shall charge interest @9% per annum on such dues. The developer shall charge interest @9% per annum, after 27.01.2022, on the dues payable by the home buyers.

ORDER

In view of aforesaid discussions, the complaints are partly allowed. The opposite party-1 is directed to issue a fresh Statement of Account, to the complainants, in terms of the ABA duly crediting compensation for delayed possession in the form of interest @6% per annum on the deposit of the buyers, from December, 2018 till January, 2022, within a month. The opposite party-1 will not charge interest and holding charges till the date of issue of "occupation certificate" except from those buyers, whose instalment (except last instalment) was due. The opposite party-1 shall charge interest @9% per annum on such dues. The opposite party-1 will charge interest from February, 2022 @9% per annum on the amount payable by the buyer. If the developer will be liable to pay any amount, which is in excess of its demand, it will be paid along with statement of account. If the buyers are liable to pay any amount, they will be given one month time for deposit. On settlement of account, the opposite parties shall execute conveyance deed in favour of the buyers and handover possession of the flat complete in all respect as per specification without any further delay.