



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विभाग गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

14

Day and Date	Tuesday and 21.02.2023
Complaint No.	CR/2705/2021 Case titled as PRAVEEN AGGARWAL Vs IREO PRIVATE LIMITED
Complainant	PRAVEEN AGGARWAL
Represented through	Shri Sukhbir Yadav Advocate
Respondent	IREO PRIVATE LIMITED
Respondent Represented	Shri M.K. Dang Advocate
Last date of hearing	20.10.2022
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint was filed on 08.07.2021 with the adjudicating officer and the reply on behalf of respondent was received on 28.07.2021.

Succinct facts of the case as per complaint and annexures are as under:

S. N.	Particulars	Details
1.	Name and location of the project	"Skyon", Sector 60, Gurgaon
2.	Nature of the project	18.10 acres
3.	Project area	Group Housing Colony
4.	DTCP license no.	192 of 2008 dated 22.11.2008
5.	Name of licensee	M/s High Responsible Realtors Pvt. Ltd. and M/s Five River Buildcon Pvt. Ltd.
6.	RERA Registered/ not registered	367 OF 2017 dated 24.11.2017 valid upto 21.11.2018



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CR/2105/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विभाग गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

7.	Unit no.	B0001, Ground Floor, Tower B (page no. 77 of complaint)
8.	Unit area admeasuring	2563 sq. ft. (page no. 77 of complaint)
9.	Date of allotment letter	25.02.2011 (page no. 65 of complaint)
10.	Date of approval of building plan	27.09.2011 (annexure R21 on page 105 of reply)
11.	Date of buyer's agreement	17.01.2012 (page no. 74 of complaint)
12.	Date of environment clearance	31.07.2012 (annexure R-22 page no.108 of reply)
13.	Agreement to sell	24.08.2012 (page no. 111 of complaint)
14.	Transfer agreement	28.08.2012 (annexure R8 page no. 76 of reply)
15.	Tripartite agreement	14.07.2014 (page no. 123 of complaint)
16.	Due date of possession 13.3 "The company proposes to handover the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder. The allottee further agrees	27.03.2015 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्हत तहत प्राधिकरण



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CR/210/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

	and understands that company shall additionally be entitled to a period of 180 days after expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of company."	
17.	Total sale consideration	Rs.2,39,52,252/- [as per payment plan on page no. 110 of complaint]
18.	Amount paid by the complainant	Rs.2,13,33,935/- [as per statement of account on page no. 125 of reply]
19.	Occupation certificate	14.09.2017 [annexure R-25 on page no. 121 of reply]
20.	Offer of possession	21.09.2017 [annexure R-26 on page no. 123 of reply]

The counsel for the complainant states that the due date of possession is to be determined from the date of approval of building plans as per clause 13.3 of the BBA and the building plans for the above project were approved on 29.09.2011 and hence, 42 months from the same is to be counted and due date of possession is to be 29.03.2015. The plea of the respondent that due date is to be calculated from the approval of fire NoC as has not been accepted by the NCDRC while deciding the complaint in above project and duly upheld by the Hon'ble Supreme Court. The copy of above citation is supplied during the proceedings. The counsel further states that although the OC of project was obtained on 14.09.2017 but on inspection, the complainant found the deficiencies and conveyed the same to the respondent vide email dated 27.10.2017 (Annexure C21 alongwith photographs and in response of the same, a email reply was received on 25.05.2018 confirming that the apartment shall be made ready for hand over after around 8 weeks



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from the date of final payment and hence, the unit was not in habitable condition.

The counsel for the complainant drawn attention towards para 25 of the judgment which provides as under:-

"The finding of fact which has been recorded by the NCDRC in its impugned judgment dated 22 November 2021 is that the amenities which were promised by the appellant have not been provided in the Project and the apartment. In the course of discussion, the NCDRC has, in fact tabulated the amenities which were to be but have not been provided. In this view of the matter, the direction for the refund of the amount paid together with interest, cannot be faulted. The appellant made a solemn representation to the flat buyer of the amenities which would be provided in the flat and the Project. A breach of this representation is actionable at law".

In view of the same, the complainant requests for refund of the amount deposited as the offer of the unit was not valid in view of the decision of authority in case titled as Sandeep Basu vs. Emaar MGF land Ltd.

However the counsel for the respondent states that no case of refund is made out as offer of possession was made way back on 21.09.2017 after obtaining OC from the competent authority on 14.09.2017 and a number of allottees have already taken the possession and residing in the complex which is already handed over to its RWA for maintenance. The allottee is not abiding the terms of allotment and not making the payment inspite of number of reminders R4 to R10 and R12 to R20 and further that while conveying certain short comings, the complainant has not sought the refund and the above complaint has been filed in 2021 after 4 years of offer of possession. Further, 8 weeks time for completing the finishing work was made for completing minor finishing work and i.e. to be done after receipt of outstanding amount from the allottee which is not yet cleared and hence the allottee be directed to make the outstanding payment and take the possession in terms of duties under section 19 (10) of the Act 2016, the allottee is required to take possession within 2 months after obtaining OC.

Further that the above cases relied upon by the complainant pertains to a different unit with different facts and cannot be relied upon for the above case wherein the possession has been offered after obtaining OC but not being taken by the allottee despite reminders.

The counsel for the complainant states that he has received only two reminders R27 and R28 after the offer of possession was made.



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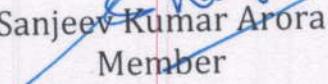
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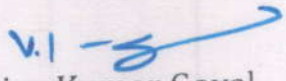
Arguments heard.

Order reserved.

Detailed order will follow. Matter stands disposed off. File be consigned to the registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member
21.02.2023