

**BEFORE THE CHAIRPERSON, REAL ESTATE REGULATORY  
AUTHORITY, PUNJAB**

Complaint No.53 of 2017  
Date of Decision 16.10.2018

Avtar Singh Azad son of Late Shri Didar Singh, resident of 521, 'Housefed Complex' Pakhowal Road, Ludhiana

...Complainant

Versus

1. M/s IREO Waterfront (P) Limited, IREO Waterfront Sales Gallery, Sidhwan Canal Road, Off Ferozepur Road, Village Dewatwal, Ludhiana, through its Director /President Shri Madhukar Tulsi.
2. Shri Maadhukar Tulsi, Director/ President IREO Waterfront (P) Limited, 5, Dhanraj Chambers, Ist Floor, Satbari, New Delhi 110074
3. Shri Amrik Singh Gambhir, Head CRM, IREO Waterfront (P) Limited, IREO Waterfront Sales Gallery, Sidhwan Canal Road, Off Ferozepur Road, Village Dewatwal, Ludhiana,

.... Respondents

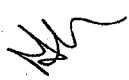
Present : Shri I.S. Ratta, Advocate for complainant  
Shri Mukesh Pandit, Advocate for respondents.

**ORDER**

This order will dispose of a complaint filed by Shri Avtar Singh Azad son of Late Shri Didar Singh against M/s IREO Waterfront Pvt.vLtd. in relation to Villa No.C-1/58 in the real estate project developed by the respondents.

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2. The main contentions are that the complainant had booked a Villa in the project named 'IREO Waterfront at village Devatwal, District Ludhiana' and agreed to purchase it for a total sum of about Rs.2.20 crores. The

deal was finalized on 31.10.2015 and a Buyers' Agreement was signed on 28.12.2015. A sum of Rs.55.00 lakhs had been paid to the respondents by 30.11.2015. After the Buyers' Agreement was signed, another sum of Rs.1.52 crores was paid after obtaining a bank loan for the purpose. The respondents had offered possession of the dwelling unit on 08.01.2016. However, on inspection various shortcomings had been noticed therein, and pointed out to the respondents. Some of these were removed; and a fresh offer was made that the possession would be handed over by 20.02.2016. However, these shortcomings had still not been removed; and there had been protracted correspondence between the complainant and the respondents since then but to no avail. It is contended that even formal notices sent to the respondents had not been replied to; and an intervention with their higher management had also not achieved the desired results. The relief claimed in the complaint is to remove all deficiencies and complete the finishing of the Villa as per the technical specifications prescribed, immediate handing over possession thereof, compensation of Rs.50 lakhs each on two counts; and reimbursement of the amount of Rs.25,000.00 per month spent by the complainant for the rented accommodation they had been forced to reside in.

 3. Notice of the complaint was served on the respondents who appeared and filed a reply. The preliminary objections raised in by the respondents in the reply regarding the maintainability of the complaint, and my decision thereon, are as follows:-

i. The Occupation Certificate of the building had been obtained on 29.07.2015, well before the commencement of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act), and hence the complaint would not be maintainable.

This objection does not carry any substance as the Partial Completion Certificate for the project was issued only on 29.11.2017 i.e after the commencement of the Act. The Occupation Certificate relates only to a particular building, whereas the Completion or Partial Completion Certificate relates to the entire project or a portion thereof. Reliance by the respondents on the Occupation Certificate dated 29.07.2015 is misplaced since an Occupation Certificate by itself does not ensure full enjoyment of a dwelling unit to the allottee. It is only when the supporting infrastructure is created, and certified by the issue of a Completion or Partial Completion Certificate, that this aspect is fully taken care of. Even Section 3(2) (b) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) exempts only those projects that have received a Completion Certificate from the purview of this Act, and not projects for which only an Occupation Certificate has been issued. Instruction conveyed by the Government (Department of Housing and Urban Development) vide No.4966-CTP(Pb)/SP-458 dated 02.09.2014 are in the same spirit. It is therefore held that receipt of an Occupation Certificate alone does not exempt a project from registration, or the other provisions of the Act.

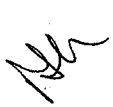
ii. The next objection is that complaint was in violation of the Act since under Section 14 thereof any defects of workmanship could be pointed out only after an allottee had taken possession of the unit, and it was responsibility of the developer to rectify these. In this case however, the complainant had started pointing out various shortcomings even before taking possession. The same could not be allowed. My view in this regard however is that once the respondents had agreed to rectify some of the shortcomings pointed out by the complainant, they cannot be allowed to

go back on their word and avoid the commitments already made. This preliminary objection too is therefore without any merit.

4. On the merits of the case, the respondents had pointed out that various items of work had been carried out by the respondents by incurring significant expenditure at the instance of the complainant. The unit was now absolutely ready in terms of the specifications prescribed in the Buyers' Agreement but the complainant was needlessly raking up new issues time and again. It was also pointed out that the complainant had physically occupied the building in June 2017 and was in *de facto* possession thereafter and hence the respondents could not be held liable for any defects arising subsequent to this development.

5. Arguments were heard on 21.09.2018. Written arguments have also been submitted on behalf of the complainant.

6. Shri I.S. Ratta, Advocate, appearing on behalf of the complainant reiterated the contents of the complaint and highlighted that despite the deposit of more than Rs.2.00 crores by the complainant possession had still not been delivered to him. He pointed out the following defects/shortcomings in the dwelling unit:-

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- i. Paint work in the unit was poor;
  - ii. Marble of the stair case had cracks in it;
  - iii. Marble from Oman had been used instead of the promised Italian marble;
  - iv. Water pressure was totally inadequate;
  - v. WC fittings not in proper working order;
  - vi. ACs needed to be properly serviced;
  - vii. The lawn was not in proper shape, and the complainant has to spend his own money to develop it, and

viii. The road by the side of the house had not been constructed.

Counsel submitted that defects of workmanship were so numerous that they could not have been pointed out after one inspection; and every subsequent visit revealed new problems. The respondents had in fact admitted their lapse and agreed that they would rectify the shortcomings but nothing had been done in this regard. The offers of possession therefore were merely a sham and an attempt by respondents to evade their obligation. He pointed out that the complainant was a retired government servant and was forced to live in a rented accommodation. He concluded that though one of the reliefs claimed in complaint was the cancellation of agreement and refund of amount paid, yet the complainant wanted to live in the premises and sought a direction to the respondents to rectify all shortcomings and hand over possession at the earliest.

7. On the other hand Shri Mukesh Pandit, Advocate counsel for respondents pointed out that there were internal contradictions in the relief claimed by the complainant and this showed a lack of seriousness on the part of the complainant. Nevertheless, the respondents had spent considerable resources in rectifying the shortcomings pointed out, and the President of the company had also visited the premises to assess the situation at first hand. The complainant however, was in the habit of pointing out fresh problems at regular intervals, and thus could not be satisfied despite best efforts. He pointed out that in the first email written by the complainant dated 14<sup>th</sup> January (Annexure R-6) it had only been pointed out that the final coat of paint may be applied after the wood work had been got completed by the complainant. Subsequently, on 24<sup>th</sup> January, the complainant pointed out 17 items that required to be attended to and the respondents had replied on 1<sup>st</sup> February that they would do the needful. However, even thereafter new issues were brought

up by the complainant at regular intervals. He submitted that some of the new items were as follows:-

- i. Change of marble on the staircase;
- ii. Cleaning of entire roof top and balcony;
- iii. Change of lights in various areas, and
- iv. Repair of name plate and surrounding area etc.

It was submitted that the complainant had been in *de facto* possession of the premises since June 2017 and was himself responsible for the new defects that were pointed out. Counsel concluded. From the above it was clear that the present complaint was only an abuse of the process of law, and was liable to be dismissed.

8. The rival arguments have been carefully considered and the entire record perused. It is clear that the complainant has raised new issues and pointing out different shortcomings at various times. Some of these developments have been noted in the preceding paras, and are established from the record. Hence, to my mind the respondents can only be held to be responsible for the works they had committed to do in their email dated 01.02.2016 (Annexures C-6 and R-8). Shri Ratta's contention that the defects were so numerous that it was not possible to identify them at one go cannot be accepted. It is the responsibility of the purchaser to satisfy himself about these matters and alleged shortcomings cannot be raked up time and again. Further, it is true that while preliminary objections about maintainability of the complaint in view of provisions of Section 14 of the Act have been rejected, the complainant, who has sought the protection of the Act, should be obliged to follow the provisions thereof. Section 14 provides that an allottee can point out defects of workmanship etc. within a period of 5 years after taking

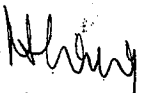
possession; and the developer is obliged to rectify the same. This is however, a case where possession has not officially been taken over but defects are being pointed out time and again. This cannot be allowed. As a result the only direction that can be given to the respondents is to address items agreed to in their email dated 01.02.2016.

9. As a result of above discussion, the complaint is disposed of with the following directions:-

- i. The respondents are to ensure that the works agreed to be done in their email of 01.02.2016 are completed. It is clarified that the works have to be completed as per technical specifications prescribed in Annexure 3 of the Buyers agreement dated 08.12.2015. These works should be completed by 30.11.2018.
- ii. The complainant shall thereafter take possession of the premises after paying the balance due to the respondents without further objection at this stage. If they are dissatisfied about the workmanship etc. recourse to Section 14 of the Act can be taken thereafter.
- iii. Respondents had offered a discount of Rs.10.00 lakhs to the complainant in December 2016. In the circumstances of this case, it would be appropriate if the discount were now to be of the order of Rs.5.00 lakhs on the agreed price.

The petition is disposed of on above terms.

Announced.

  
Chairperson  
Real Estate Regulatory Authority  
Punjab