

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY**

GURUGRAM

Complaint no. : 4890 of 2020

Date of decision : 20.08.2021

AMRITA SHARMA, RAJNI KAPIL,
NEETA MISHRA AND SHWETA RANJAN
R/O: Tata Primanti Housing, T-4-1201,
Sector-72, Near Vatika Chowk,
Gurgaon, Haryana- 122101

Complainant

Versus

ELAN BUILDCON PRIVATE LIMITED.
ADDRESS: L-1/1100, First Floor, Street
No. 25, Sangam Vihar, New Delhi-110062

Respondent

APPEARANCE:

For Complainant : R.K. Hans(Adv)

For Respondent: Gaurav Kamath (Adv)

ORDER

1. This is a compliant filed by Amrita Sharma, Rajni Kapil, Neeta Mishra and Shweta Ranjan (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana

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Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/promoters.

2. According to complainants, they booked a commercial unit in respondent's project **Elan Town Centre**, situated at sector-67, Gurugram on 29.07.2016 and made payment of Rs 2,44,500 as booking amount. The respondent issued an allotment letter dated 08.03.2017 and allotted a unit admeasuring 300 sq. ft. for a total consideration of Rs 26,17,500 including BSP, EDC, IDC etc.
3. Subsequently buyer's agreement dated 03.02.2018 was executed between complainants and the respondent, incorporating their respective obligations in respect of the said transactions.
4. As per the Clause 11(a) of buyer's agreement, the possession of the said premisses is proposed to be delivered by the developer to the allottee within 36 months from the date execution of buyer's agreement within an extension of further period of 12 months unless there shall be delay or failure due to Government department delay or due to any circumstances beyond the power and control of the developer or force majeure conditions.
5. In the buyer's agreement, the super area of food court unit was shown to be approximately 300 sq. ft but with the said agreement, no document was annexed showing exact dimensions of the unit. The respondent sent an offer of possession letter for fit-outs, dated 18.09.2020 and raised a

demand of Rs 37,68,638 and charged the complainants for increased super area of 490 sq. ft. The respondent increased the super area from 300 sq. ft. to 490 sq. ft. The complainants visited the project site but to their utter dismay the actual carpet area of unit was just 81.25 sq. ft i.e. the ratio of carpet area to super area was just 17% and the loading was 83 % of the size against the usual 45-50 % in the commercial units. The respondent changed the layout plan of the units and increased the super area of unit without their consent.

6. The complainants vide their letter dated 08.10.2020 requested for refund of the amount paid towards the allotted unit, on account of discrepancies and high loading, increase in super area and change in the layout plan, without consent.
7. The complainants regularly followed up with the respondent through various written and verbal reminders but to of no avail. The complainants are therefore, constrained to file the present complaint and are seeking refund of entire paid amount of Rs 10,21,763 alongwith interest at the prescribed rate
8. Brief facts in tabular form are as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	"Elan Town Centre", Sector 67, Gurugram, Haryana
2.	Project area	2.00 acres
3.	Nature of the project	Commercial Complex

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4.	DTCP license no. and validity status	84 of 2012 dated 28.08.2012 valid up to 27.08.2021
5.	Name of licensee	M/s Elan Buildcon Pvt. Ltd
6.	RERA Registered/ not registered	Registered dated 02.02.2018
7.	RERA Registration Valid upto	01.02.2022

UNIT DETAILS

1.	Unit no.	KIOSK-0224, 2 nd floor (Pg. No. 21)
2.	Unit measuring	300 sq. ft.
3.	Date of Booking	29.07.2016
4.	Date of Allotment Letter	08.03.2017 (Pg. No. 15)
5.	Date of Buyer's Agreement	03.02.2018 (Pg. No. 18)
6.	Due date of delivery of Possession (As per clause : 11(a) The Possession of the said premisses is proposed to be delivered by the developer to the allottee within 36 months from the date execution of buyer's agreement within an extension of further period of 12 months unless there shall be delay or failure due to Government department delay	03.02.2022 [✓]

	or due to any circumstances beyond the power and control of the developer or force majeure conditions) (Page. No. 32)	
7.	Offer of possession	18.09.2020
8.	Delay in handing over possession till date	No Delay
PAYMENT DETAILS		
9.	Total sale consideration	Rs 26,17,500/-
10.	Amount paid by the complainants	Rs 10,21,763/-
11.	Payment Plan	Special Possession linked payment plan

9. The respondent contested the complaint by filing a written reply dated 03.02.2021. It is contended that the complaint is false and fabricated and complainants have no locus standi to file the present complaint. It is further contended that complainants had booked a KIOSK and not a food court, which is evident from the allotment letter and buyer's agreement. There is no question of providing kitchen or service corridor. The complainants have filed present complaint to avoid the payment of due instalment as per the agreed payment plan.

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10. It is further contended by the respondent that complainants have made payment of merely Rs 9,83,254 (plus service tax of Rs 38,509) out of total consideration of Rs 42,75,250/- a huge amount is due towards them. The project is complete, and complainants have filed the present compliant on frivolous grounds.
11. There is no denial that the complainants booked a commercial unit with the respondent measuring 300 sq ft. They have already paid a sum of Rs.10,21,763/- till now. According to them (complainants), unit was sold to them stated to be a unit in Food Court. It has not denied on their behalf, that respondent sent a letter offering possession for fit outs dated 18.09.2020. It is not plea of the respondent even that said unit was worth occupying, at that time. According to complainants when same visited the spot and found the carpet area of nearly 81.25 sq ft. having loading i.e. about 83% of super area. In their opinion, general carpet area of such commercial unit is given between 45-50%. All this was not made clear to them, at any time by the respondent.
12. As described BBA between the parties was entered into on 03.02.2018. The Act has already come into force till then. Section 11 of the Act enumerates the functions and duties of promoter including that promoter shall mention in advertisements/prospectus prominently the details of registered project. According to sub-section 3, the promoter at the time of booking and issue of allotment letter, is duty bound to make available to the allottee, following informations, namely:

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- (a) Sanctioned plans, lay out plans alongwith specifications approved by the competent authority.....
- (b)

13. Section 19 of the Act provides for corresponding rights of allottees including that the same is entitled to obtain information (from the builder) relating to sanctioned plans, lay out plans alongwith specifications approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder.
14. It is not plea of the respondent even that the same had clarified it to the complainants that actual carpet area of the unit being sold to them i.e. complainant will be 81.25 sq ft only. Needless to say that it is not denied by the respondent that actual carpet area of unit allotted to the complainant came out 81.25 sq ft, as alleged by the latter.
15. Rule 4(2) of the Rules, 2017 obliges the promoter to disclose the size of apartment based on carpet area even if sold on any other basis. Such super area or super built -up area etc. No such information was given by the respondent/promoter to the complainants. All this amounts to failing of respondent/promoter in discharging his obligations imposed upon it under this Act.
16. Similarly, the respondent was duty bound to take consent of buyer in case same was changing site plan or size of allotted unit. Although, according to respondent, the same sent a letter of possession for fit outs on 18.09.2020. It is not its plea that same has already received

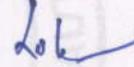
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the completion certificate or occupation certificate till that date or the unit was worth occupying.

17. On the basis of above discussion, in my view, the promoter/respondent has failed to discharge its obligation as per Act/Rules and hence the complainants are entitled to claim refund of their amount along with interest and compensation.
18. Accordingly, the respondent is directed to refund the amount paid by the complainants along with interest @ 9.30% p.a. within 90 days from the date of this order. The same is also burdened with a cost of Rs.1,00,000/- to be paid to the complainant.

File be consigned to the Registry.

20.08.2021



(RAJENDER KUMAR)
Adjudicating Officer

Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 03.09.2021