



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

Complaint no.	:	2379 of 2018
Date of filing complaint:		19.12.2018
First date of hearing:		04.09.2019
Date of decision	:	13.07.2022

Sh. Sandeep Kumar Singh S/o Late Sh. Rajpal Singh R/O: H. No.- 514, First floor, Sector-43, Gurugram-122009	Complainant
Versus	
M/s ALM Infotech City Private Limited Regd. office: Second floor, ILD Trade Centre, Sector-47, Sohna Road, Gurugram- 122018	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. S.M. Sehrawat (Advocate)	Complainant
Sh. Venket Rao & Sh. Pankaj Chandola (Advocates)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 under

the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details	
1.	Name of the project	"ILD Grand", Sector-37C, Gurgaon	
2.	Nature of project	Group housing project	
3.	RERA registered/not registered	Registered vide registration no. 386 of 2017 dated 18.12.2017	
	Validity status	17.09.2019	
	Licensed area	41223.953 sqm.	
4.	DTPC License no.	96 of 2010 dated 03.11.2010	118 of 2011 dated 26.12.2011
	Validity status	02.11.2025	25.12.2024
	Licensed area	21.1804 acres	
	Name of licensee	M/s Jubilant Malls Pvt. Ltd.	
5.	Unit no.	15A on 14 th floor of block Skylark [As per page no. 35 of complaint]	
6.	Unit area admeasuring	1819 sq. ft. [As per page no. 35 of complaint]	



7.	Allotment letter	Not provided on record
8.	Date of apartment buyer agreement	13.03.2013 [As per page no. 32 of complaint]
9.	Total sale consideration	Rs. 81,85,500/- (BSP) Rs. 93,76,765/- (TSC) [As per page no. 37 of complaint]
10.	Amount paid by the complainant	Rs. 60,62,910/- [As alleged by the complainant on page no. 02 of CRA dated 11.04.2022]
11.	Possession clause	Clause 9(i) of apartment buyer's agreement <i>Subject to Force Majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all his obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under any part of this Agreement including but not limited to the timely payment of the total Sale Consideration and other charges/fees/taxes/levies and also subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer the Developer proposes to complete the construction <u>within a period of 36 months computed from the date of execution of this agreement with further grace period of 180 days under normal circumstances.</u></i>
12.	Due date of possession	13.09.2016 [Calculated from date of agreement dated

		13.03.2013] <i>Grace period of 180 days is allowed.</i>
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the sales team produced various maps, drawings, brochures, publications etc and impressed upon complainant that this is one of the companies, whose unique selling point is timely completion of housing projects and further claimed that their project has been sanctioned vide Director Town and Country Planning vide their licence No 96 of 2010 dated 03/11/2010 and licence No 118 of 2011 dated 26/12/2011 and all other sanctions/plans have been granted/approved by concerned government departments for execution of the project. They also claimed that construction work has already been started for the project and details of same would be made known in apartment buyer's agreement.
4. That impressed by the representations, the complainant made an application for allotment of an apartment and paid booking amount of Rs 5,82,016/- on 25.10.2012 which has acknowledged by the respondent in ledger account statement dated 31.03.2015.
5. That the complainant requested the respondent to get the deal formalized in the form of formal agreement but failed to do so within stipulated time of 3 months. Finally, on 13.03.2013, (i.e. after a gap of about 5 months),

respondent called complainant to the site office for signing of apartment buyer's agreement (hereinafter, "ABA").

6. Vide such agreement, type-3 BR, apartment No. 15A on 14th floor of block – Skylark bearing super area of 1819 sq. ft. and build up area-1364 sq. ft. was allotted to the complainant. For the first time, complainant was informed that application amount of Rs. 5,82,016/- paid by him is treated as 'earnest money' and shall be forfeited if he withdraws his application.
7. That as per para 9(i) of ABA, the project was to be completed within 36 months and converting this block time to specific date, expected date of taking over the possession was 12.03.2016. The complainant financed this purchase of apartment partially through its own saving and partly through bank loan. He took loan of Rs. 44,78,396 from ICICI bank.
8. The respondent was entitled to payment from the complainant only on completion of specified stage of construction. Since the respondent kept raising demands on regular intervals, it was presumed by the complainant that construction was progressing as per schedule and by 24.04.2014, the complainant has already deposited Rs. 60,62,910/- with respondent which amounted to about 65% of total cost of unit.
9. That the complainant visited the site and saw that project was nowhere near the stage for which he has already paid. Consequently, he approached respondent and complained of that fact. He requested that it should stop asking further payment till construction progresses as promised. In view of



aforesaid circumstances, the complainant took a decision that it would not be safe to pay any further demands to respondent as there was no likelihood of respondent adhering to agreed timeline of handing over the possession of allotted apartment to complainant.

10. That the complainant continues to stay in rented accommodation in Gurugram and desperately waiting to move into his own house which never happened and continue to suffer by paying installment to the bank and rent for the rented accommodation.

C. Relief sought by the complainant:

11. The complainant has sought following relief(s):
- i. Direct the respondent to return complete principal amount paid by the complainant i.e. Rs. 60,62,910/- along with interest as per clause 9(v) of ABA read with section 2(za)(ii) of Act to the tune of Rs. 59,05,565.39/- as per the calculations provided.
 - ii. Direct the respondent to pay a sum of Rs. 1,00,000/- as cost of litigation.
 - iii. Direct the respondent to pay the compensation the complainant for harassment & mental agony caused to the complainant amounting to Rs. 5,00,000/-.

D. Reply by respondent:

The respondent by way of written reply made following submissions



12. That the possession clause 9(i) of the agreement was subject to force majeure circumstances, timely grant of all approvals, permissions, NOC's, etc. and further subject to the allottee(s) having complied with all his obligation under the terms and condition of this agreement and the allottee(s) not being in default under any part of this agreement including but not limited to the timely payment of the total sale consideration and other charges/fees/taxes/levies and also subject to allottee(s) having complied with all formalities or documentation as prescribed by the developer. However, it is submitted that the delay in handing over of the possession of the flat was due to reasons beyond the control of the respondent, due to covid-19 & all the workers have left the site.
13. That the construction work of the project is in full swing and the subject apartment will be delivered soon. The respondent is taking every possible step to complete the project and in furtherance of which SWAMIH investment fund, a special window for completion of construction of affordable and mid-income housing projects has been sanctioned for the project ILD GRAND. Also, the suo moto proceeding with respect to the project ILD GRAND are pending before the Real estate regulating Authority, Gurugram.
14. That the complainant never adhered to the payment schedule despite of various demands and reminder letter. On 28.12.2012, it raised a call notice to the complainant to clear the dues of Rs. 8,43,843/-.

15. That on 12.04.2013, the respondent sent the reminder letter for payment of the above-mentioned outstanding dues. However, the complainant failed to clear the dues on time. The respondent again on 11.07.2013, raised call notice to clear the outstanding dues for overdue outstanding dues of Rs. 8,43,843/ latest by 30.07.2013. However, the complainant again ignored the same.
16. That on 03.02.2014, the respondent issued another call notice to clear the outstanding dues of Rs. 7,31,153/- to which the complainant didn't adhere to due to which the respondent issued a reminder on 25.02.2014 for the same. That on 12.03.2014, the respondent issued a call notice to clear the outstanding dues for amount of Rs. 14,76,396/- to which the complainant once again didn't adhere to and due to which the respondent issued a reminder on 02.04.2014 and again on 23.04.2014 demanding for the same. However, the complainant ignored all the demands and reminders.
17. That the respondent issued call notices on 05.06.2014 & 01.09.2014 to clear the outstanding dues of Rs. 6,32,883/- & Rs. 16,21,545 respectively followed by reminder letters dated 11.07.2014 & 12.09.2014, 15.12.2014 to the complainant. The complainant never pay heed to the demands and reminder issued by the respondent.
18. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on

the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

19. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding force majeure conditions:

20. The respondent-promoter has raised the contention that the due date specified under clause 9(i) of buyer's agreement dated 13.03.2013, handing over of possession was subject to force majeure circumstances and timely payment by the allottee. Whereas the respondent has not specified list of force majeure circumstances faced by it except that of Covid-19. Further, in the present case, the allotted unit was booked under construction linked plan and the complainant has already paid a subsequent amount towards consideration of allotted unit and alleged that the respondent-builder has already collected amount payable against milestone that are not even achieved. Hence, the plea taken by respondent is devoid of merits.
21. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 has observed that-



"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

The respondent was liable to complete the construction of the project and handover the possession of the said unit by 13.09.2016 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession

G. Entitlement of the complainant for refund:

- G.I Direct the respondent to return complete principal amount paid by the complainant i.e. Rs. 60,62,910/- along with interest as per clause 9(v) of ABA read with section 2(za)(ii) of Act to the tune of Rs. 59,05,565.39/- as per the calculations provided.**
22. The project detailed above was launched by the respondent as group housing complex and the complainant was allotted the subject unit in tower Skylark against total sale consideration of Rs. 93,76,765/-. It led to execution of builder buyer agreement between the parties on 13.03.2013, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions and the due date of possession, etc. A



period of 36 months with a grace period of 180 days for completion of the project was allowed to the respondent and that period has admittedly expired on 13.09.2016. It has come on record that against the total sale consideration of Rs. 93,76,765 the complainant has already paid a sum of Rs. 60,62,910/- to the respondent. The complainant has already paid sufficient amount towards consideration of allotted unit and when he visited the site of the project, it was observed that the construction work nowhere near the subsequent demand raised by the respondent. So, he did not pay any amount after paying 65% of the total sale consideration. The respondent pleaded that the complainant has defaulted in making various demands. The same can be tracked as under: -

S.no	Demand dated	Demand amount	On occasion
1.	28.12.2012 Reminder- 12.04.2013 Reminder- 11.07.2013	Rs. 8,43,843/-	On excavation
2.	03.02.2014 Reminder- 25.02.2014	Rs. 7,31,153/-	On casting of 5 th floor
3.	12.03.2014 Reminder- 23.04.2014	Rs. 14,76,396/-	On casting of 7 th floor
4.	05.06.2014 Reminder-11.07.2014	Rs. 6,32,883/-	On casting of 12 th floor
5.	01.09.2014 Reminder- 12.09.2014 Reminder- 15.12.2014	Rs. 16,21,545/-	On casting 15 th floor

23. Whereas as per applicant ledger dated 31.03.2015 annexed on page 69 of complaint, an amount of Rs. 60,25,672/- has been paid by the complainant. There is nothing on record to show that the respondent has cancelled the unit of the complainant. The complainant has already a substantial amount towards consideration of allotted unit. (approx. 64.65%)
24. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
25. The due date of possession as per agreement for sale as mentioned in the table above was 13.09.2016 and even after delay of more than 4 years 11 months, the occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by **Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021

" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottee cannot be made to



wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

26. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

27. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the

amount received by him in respect of the unit with interest at such rate as may be prescribed.

28. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

The authority hereby directs the promoter to return the amount received by him i.e., Rs. 60,62,910/- with interest at the rate of 9.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to pay a sum of Rs. 1,00,000/- as cost of litigation.

29. The complainant is claiming compensation in the above-mentioned relief. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

30. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations



cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to refund the amount i.e. **Rs. 60,62,910/-** received by him from the complainant along with interest at the rate of 9.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
 - ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
31. Complaint stands disposed of.
32. File be consigned to the registry.

V-1-3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

[Signature]
(Dr. KK Khandelwal)

Chairman

Dated: 13.07.2022

HARERA
GURUGRAM