

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

Complaint no. : 1355 of 2018
First date of hearing : 14.03.2019
Date of decision : 30.04.2019

Mr. Mukesh Kumar Gupta
R/o 906, 1st Floor, Sector 47
Gurugram-122018

Complainant


Versus

M/s ALM Infotech City Pvt. Ltd.
Corporate Address- ILD Trade Centre, 9th Floor,
Sector 47, Sohna Road , Gurugram-122018

Address: B-418, New Friends Colony, New
Delhi – 110087

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Mukesh Kumar Gupta Complainant in person
Shri Krishan Kant on behalf of
Shri Venkat Rao Advocate for respondent

ORDER

1. A complaint dated 01.11.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read

with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Mukesh Kumar Gupta, against M/s ALM Infotech City Pvt. Ltd. on account of violation of the provisions of the Real Estate (Regulation and Development) Act, 2016.

2. Since, the apartment buyer agreement has been signed on 08.03.2013 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"ILD Grand", Sector 37C, Gurugram
2.	RERA Registered/ not registered.	Registered (386 of 2017)
3.	Revised registration date	18.09.2019
4.	Nature of the project	Group housing
5.	Project Area	5.697 acres

6.	DTCP License no.	96 of 2010 dated 03.11.2010 118/2011 dated 26.12.2011
7.	Apartment/unit no.	5A,block-B2, tower- Vision, 5 th floor
8.	Date of booking	02.06.2012
9.	Apartment measuring	1819sq. ft
10.	Provisional allotment letter	20.08.2012
11.	Date of apartment buyer agreement	08.03.2013
12.	Payment plan	Construction linked payment plan
13.	Total cost of the said flat (as per apartment buyer agreement)	Rs. 81,07,103/-
14.	Total amount paid by the complainant till date(as per payment plan dated 12.06.2018)	Rs. 79,43,652/-
15.	Date of delivery of possession as per clause 9(i)of apartment buyer agreement (within a period of 36 months computed from the date of execution of the agreement with a grace period of 180 days)	08.09.2016
16.	Delay in handing over possession till date	2 years 7 months 22 days

17.	Penalty clause 10.v as per the said flat buyer's agreement	Clause 9(iii) of the agreement i.e. Rs.5/- per sq. ft. per month of the super area
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4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 08.09.2016. Neither the respondent has delivered the possession of the said unit till date to the complainant nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said flat for the period of delay as per clause 9 of apartment buyer agreement dated 08.03.2013. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The case came up for hearing on 14.03.2019. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

5. The complainant submitted that the respondent is a company, working in the field of construction and development of residential as well as commercial projects across the country in the name of ALM Infotech City Pvt. Ltd.
6. The complainant submitted that the real estate project named “ILD GRAND”, which is the subject matter of present complaint, is situated in sector-37C, Gurugram, with licence No. 96/2010 dated 03.11.2010 & 118/2011 dated 26.12.2011, therefore the hon’ble authority do have the jurisdiction to try and decide the present complaint. The subject matter of the present complaint is with respect to refund of the money paid by complainants along with the penalty and interest, therefore it falls within the provision of The Real Estate (Regulation and Development) Act, 2016 and The Haryana Real Estate (Regulation & Development) Rules, 2017.
7. The complainant submitted that they (Mukesh Kumar Gupta and Usha Gupta) had booked the flat on 19.05.2012 with booking amount Rs 6,00,000/- through cheque no. 103424 dated 26.05.2018 and cheque no. 103426 dated 01.06.2012

drawn by Axis bank and builder promised us to give possession within three years from the date of booking. The builder allotted them the unit 5A, tower-Vision(B2) in project ILD Grand on the same day.

8. The complainant submitted that the price of said apartment was agreed at the rate of Rs. 3,752/- per sq. ft. along with Rs3,00,000/- utility charges, Rs. 1,00,000/- as for club membership and interest free maintenance charges @ Rs.50/- per sq. ft. along with other charges as mentioned in application form dated 19.05.2012.
9. The complainant submitted that respondent has issued provisional allotment letter dated 20.08.2012. The respondent assured the complainants that he would issue the apartment buyer's agreement at the earliest. The complainant time and again requested to respondent to execute apartment buyer's agreement as per promise (mail dated 18th August,2012) but respondent had neglected the request. The respondent deliberately and intentionally delayed the execution of builder buyer agreement. Builder buyer agreement was executed on 08.03.2013.

10. The complainant submitted the respondent had illegally charged an amount of Rs 1,81,900/- as preferential location charge (PLC) @ Rs100 per sq. ft. without giving enough or logical explanation for the same (three side open and pool facing) and refused to entertain the complaint from complainants. The apartment has only two side opening and the respondent had changed the location of swimming pool (From apartment facing as shown in ILD Grand project broacher) after signing of apartment buyer's agreement.
11. The complainant submitted that as per the clause - 9(i) of the said apartment buyer's agreement dated 08th March, 2013, the respondent had agreed and promised to complete the construction of the said apartment and deliver its possession within a period of three years (36 months) with a six months grace period from date of apartment buyer's agreement. However, the respondent has breached the terms of said apartment buyer's agreement and failed to fulfil its obligations and has not delivered the possession of said apartment even today, as on the date of filing of this complaint.

12. The complainant submitted that he had paid the entire sale consideration to the respondent for the said apartment. As per the ledger statement issued by the respondent on the request of complainants. The complainant has already paid Rs. 7,943,652/- towards total sale consideration as demanded time to time.

13. The complainant submitted that the complainant had approached the respondent and its officers for inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer or reply or response to the complaints about the possession and completion of said apartment. The complainant thereafter kept running from pillar to post asking for delivery of his home but could not succeed as the construction of said apartment and said project was nowhere near to completion and still has not been completed.

14. The complainant submitted that the complainant thereafter had tried their level best to reach the representative of the respondent to seek a satisfactory reply in respect of the said apartment but all in vain. The complainant had also informed

the respondent about his financial hardship of paying monthly rent Rs. 25000 per month due to delay in getting possession of said apartment. The complainant had requested to the respondent to deliver his apartment as early as possible citing the extreme financial and mental pressure he was going through but the respondent never cared to listen to their grievances and left him with the suffering and pain. By committing delay in delivering the possession of the said apartment, the respondent has violated the terms and conditions of the apartment buyer's agreement and promises made at the time of booking of said apartment.

15. The complainant submitted that the respondent is therefore, liable to pay the damage and compensation for the monetary loss and harassment suffered by the complainants due to delay in delivering the possession of aforesaid apartment. The respondent is fully liable to make payment as claimed by the complainants by returning their entire investment along with @18% interest along with compensation for rent and damages for the losses incurred by the complainants due to wrongful and fraudulent act of the respondent.

16. The complainant submitted that the complainant further declare that the matter regarding which this complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

Issues to be decided:

17. The complainant has raised the following issues:
- i. Whether the respondent is guilty of deficiency in service and had made false commitment and doing fraudulent and unfair trade practice?
 - ii. Whether the documents titled as “builder buyer’s agreement” is one sided and unilateral and it was signed by the complainants under pressure and coercion?
 - iii. Whether the complainant is liable to pay PLC?

Reliefs sought:

The complainant is seeking the following reliefs:

- i. Pass the order to direct the respondent to refund the amount paid by the complainants as per sale consideration of the said apartment along with future and pendente lite compounding interest.
- ii. The amount of compensation to be paid to the complainants for delay of project as per RERA rule.
- iii. The amount of penalty to be levied to the respondent and to be paid to the complainants.
- iv. Compensation for rental expense Rs. 25000/ per month as the complainants are paying both loan EMI and house rent.
- v. Any other relief / order or direction which this hon'ble authority may deems fit and proper considering the facts and circumstances of the present complaint.

Reply on behalf of respondent:

18. The respondent submitted that the present complaint filed by the complainant is bundle of lies and hence liable to be dismissed as it is filed without cause of action.

19. The respondent submitted that the complainant has sought reliefs which is in nature of compensation, therefore, the present complaint is not maintainable before the authority. Further stated that the complaint is pertaining to compensation and interest for a grievance under section 12,14,18 and 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under Rule 29 of Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble regulatory authority under rule 28.
20. The respondent submitted that the complaint pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint under Rule-28 of the said rules and is seeking the relief of refund, interest and compensation u/s 18 of the said Act. The complaint, if any, is still required to be filed before the Adjudicating officer under Rule-29 of the said rules and not before this Hon'ble Regulatory Authority under Rule-28 as this Hon'ble

Regulatory Authority has no jurisdiction whatsoever to entertain such complaint and thus, liable to be rejected.

21. The respondent further submitted that the said project was delayed due to slump in real estate market and non- payment of instalment on time by allottees of the said project. It is further submitted that the building plan were revised in year 2015 by 2015 by DTCP Haryana and the construction work has been completed 70 to 80%.

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

i. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 9(i) of apartment buyer agreement, the possession of the said apartment was to be handed over within 36 months from the date of the execution agreement plus 180 days grace period. Grace period of 180 days has been given to the respondent due to

exigencies beyond the control of the respondent. The apartment buyer agreement was executed on 08.03.2013. Therefore, the due date of possession comes out to be 08.09.2016 and the possession has been delayed by 2 years 7 months 22 days till the date of decision. The relevant clause is reproduced as under:

9.(i)“.....the Developer proposes to complete the construction 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.”

Therefore, under section 18(1) proviso the respondent has to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the apartment buyer agreement as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.70% per annum on the amount deposited by the complainant with the promoter

on the due date of possession i.e. 08.09.2016 upto the date of offer of possession.

ii. With respect to the **second issue** raised by the complainant, as examined in the above stated case:

Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017), wherein the Bombay HC bench held that :

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

iii. With respect to the **third issue** raised by the complainant, the authority came across a provision as stipulated in allotment letter dated 20.08.2012 i.e. PLC charges Rs. 100/- (p. sq. ft) so the respondent is well within his rights to charge such sum. Hence, the issue decided negative and against the complainant.

Findings of the authority:

25. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial

jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

26. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

27. Vide proceedings dated 30.04.2019, a Local Commissioner was appointed to ascertain the status of project, the overall progress of the project is 55% only. The work progress in tower-B is 50% only and the work progress in the unit of the complainant is 60% only.

28. The possession was to be handed over to the complainant from the execution of apartment buyer agreement plus 180 days grace period and due date comes to be 08.09.2016

However, the respondent has not delivered the unit in time. As such, the complainant is entitled to delayed possession charges at the prescribed rate of 10.70% per annum w.e.f. 08.09.2016 till the offer of possession as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act,2016.

Arguments Heard:

29. The following direction were directed during the proceedings:

- a. As per clause 10.1 of the apartment buyer agreement dated 08.03.2013 for unit no.5A, block-B2, tower vision, 5th floor, in project "ILD Grand" Sector 37C, Gurugram.
- b. Complainant has already paid Rs.79,43,652/- to the respondent against a total sale consideration of Rs. 81,07,103/-.
- c. Complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f. 08.09.2016 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

Decision and directions of the authority:-

26. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- i. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.70% p.a. from due date of possession i.e. 08.09.2016 till the offer of the possession on account of delay in handing over of possession to the complainants.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed possession.
- iii. The respondent is directed not to charge anything from the complainants which is not the part of the apartment buyer agreement.
- iv. The respondent is further directed to charge interest on the due payments from the complainant at the prescribed rate of

interest i.e. 10.70% by the promoter which is the same as is being granted to the complainants in case of delayed possession.

- v. The arrears of interest so accrued @ 10.70% p.a. so far shall be paid to the complainant within 90 days from the date of this order. Therefore, monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

27. The order is pronounced.

28. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:30.04.2019

Judgement uploaded on 28.05.2019

HARERA
GURUGRAM