

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

Complaint no. : 811 of 2018
First date of hearing: 15.02.2019
Date of decision : 17.05.2019

1. Mr. E.T. Premjit
2. Mrs. Dhanya Premjit
Both R/o: A2/616, Jalvayu Tower, sector 54,
Gurugram, Haryana.

Complainants

Versus

ILD Millennium Pvt. Ltd.,
9th floor, ILD Trade Centre,
Sector- 47, Gurugram, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Abhay Jain and Kamal
Sharma

Advocate for the complainant

Shri Venkat Rao

Advocate for the respondent

ORDER

1. A complaint dated 13.09.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. E.T. Premjit and Mrs. Dhanya Premjit against the promoter M/s.

ILD Millenium in respect of apartment/unit described below in the project 'ILD spire green' on account of violation of the section 11(4)(a) and 14(2) of the Act ibid.

2. Since, the apartment buyer's agreement has been executed on 20.03.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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: -

- **Nature of project :** Group housing complex
- **Registered/ not registered:** Not registered
- **DTCP license :** 13 of 2008 dated: 31.01.2008, 96 of 2010 dated: 03.11.2010 and 118 of 2011 dated: 26.12.2011
- **Building Plan :** Memo no. ZP-370/AD(RA)/2015/18145 dated: 21.09.2015
- **Occupation certificate :** 19.12.2017

1.	Name and location of the project	ILD spire green, located at sector 37 C, Gurgaon.
2.	Project area	15.4829 acres (approx.)
3.	Nature of the real estate project	Group housing complex

4.	DTCP license no.	13 of 2008 dated: 31.01.2008, 96 of 2010 dated: 03.11.2010 and 118 of 2011 dated: 26.12.2011
5.	Building plan(as per page no. 30)	Memo no. ZP-370/AD(RA)/2015/18145 Dated: 21.09.2015
6.	RERA registered/ not registered.	Not registered
7.	Apartment/flat no.	0503,5 th floor in tower 5
8.	Unit admeasuring super area	1,090 sq. ft.
9.	Revised unit admeasuring as per offer of possession dated 20.12.2017	1230 sq. ft.
10.	Payment plan	Construction linked payment plan
11.	Date of execution of apartment buyer's agreement	20.03.2010
12.	Offer of possession (page no.79)	20.12.2017
13.	Total consideration as per the statement of account dated 19.12.2017(as per page 81 of complaint)	Rs. 37,44,370/-
14.	Total amount paid by the complainants till date as per the statement of account dated 19.12.2017(as per page 81 of complaint)	Rs. 30,50,669/-
15.	Due date for delivery of possession as per clause 10.1 of the agreement: within 3 years+ grace period of 6 months from the date of execution of the apartment buyer's agreement	20.09.2013
16.	Additional amount demanded by the respondent in the possession letter for the alleged increase in super area from 1090 sq. ft. to 1230 sq. ft.	Rs. 32,33,120/-
17.	Delay in handing over possession till date	4 years 3 months

18.	Occupation certificate (as per page 39)	19.12.2017
-----	---	------------

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainants and the respondent. An apartment buyer's agreement is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 20.09.2013. There is a delay of four years three months in delivery of possession as per the terms of the apartment buyer's agreement.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his proxy counsel appeared on 15.02.2019. The reply filed on behalf of the respondent has been perused.

Facts of the Case:

6. The complainants submitted that the grievance of the complainants relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent, ILD Millennium Pvt. Ltd in

regards to apartment no-0503, floor-5, tower-5, admeasuring 1090 sq. ft. bought by the complainants, spending their hard earned money, in the project called 'ILD SPIRE GREENS' in Sector 37C, District Gurugram, Haryana.

7. The complainants submitted that the respondent possesses the land admeasuring 15.4828 acres situated at sector-37-C, Gurugram, Haryana and the Director Town & Country Planning, Government of Haryana, Chandigarh vide license bearing no. 13 of 2008 has granted permission for setting up a residential colony/group housing to be known as "ILD SPIRE GREENS". The project consists of seven residential towers with commercial shops, EWS flats, community centre, parks etc.
8. The complainants submitted that the respondent has taken a loan from Punjab National Bank by submitting their complete project as collateral, wherein the complainants had allotted the apartment. It is breach of trust and unfair trade practice as how the respondent could sell an already mortgaged property without informing the complainants of the same.

9. The complainants submitted that the complainants had paid Rs.30,50,669 more than 97% of the payments of the apartment.
10. The complainants submitted that suddenly a letter of offer of possession dated 20.12.2017 is received by the complainants and an increase of more than twenty six per cent in the cost of apartment presents in the final statement of accounts.
11. The complainants submitted that the respondent is offering possession of the apartment without completing the common area facilities like, the club, nursery school, shopping plaza etc. The respondent has received the occupation certificate dated 19.12.2017 for tower-5 fraudulently since the common area facilities have still not been completed as presented by the respondent.
12. The complainants submitted that the complainants are the worst sufferer due to the greed of the respondent. The complainants are subject to pay huge amount of EMI for the loan taken from the HDFC bank for buying the apartment. Besides, the complainants have to pay huge amount of rent for

the house in which they are staying, for the lapses, faluts and unlawful acts of the respondent.

13. The complainants submitted that on the basis of above mentioned license, the company ILD Millennium Pvt. Ltd. had collected a huge amount from gullible and young buyers from 2008 to 2014 and promised the complainants to handover the possession of their apartment on 20.03.2013. After a delay of more than four years and nine months, now the company ILD Millennium Pvt. Ltd. is offering possession to the buyers, but with the increase of super area from 1090 sq. ft. to 1230sq.ft., around 13% (thirteen per cent) increase and also demanding around twenty six per cent (26%) extra cost of the apartment from the complainants. The promoter is also not paying interest for delay period in offering possession of apartment. Hence, the present complaint.

14. The complainants submitted that the complainants do not intend to withdraw from the project. But, according to section 18(1) proviso, the promoters are obligated to pay the complainants interest at the prescribed rate for every month of delay till the handing over the possession.

Issues to be Decided:

15. The following issues have been raised by the complainants:

- i. Whether the respondent can make unilateral changes/modification in terms of apartment buyer's agreement, including super area without increase in carpet area and without any justification of increase, EDC/IDC, EEC & FFC and whether the complainants are liable to pay any extra amount on account of any such unilateral changes and additions made by the respondent?
- ii. Whether the demands raised by the respondent vide letter dated 20.12.2017 is legal or more than agreed in the agreement dated 20.03.2010 without providing any additional facilities or without any justification?
- iii. Whether or not the respondent has delayed possession of the unit thereby violating the terms and conditions of the apartment buyers agreement?

Reliefs Sought :-

16. The complainants are seeking the following reliefs:

- i. Direct the respondent to withdraw/cancel/waive off the enhanced amount of the apartment which is around twenty six per cent (26%) increase in the cost of the apartment, as it was increased by the respondent illegally, unlawfully and fraudulently.
- ii. Direct the respondent to immediately hand over the possession of the unit.
- iii. Direct the respondent to refund with interest all such amounts to the complainants, which the respondent has surreptitiously charged and collected for specification charges, preferential location charges (PLC), parking space charges, club membership charges and interest free maintenance security charges, etc from the complainants.
- iv. Direct the respondent to complete the construction of common area infrastructural amenities like club, community centre, shopping plaza, swimming pool, kids splash pool, steam and sauna, billiards room, gymnasium, organic café, party lawn, tennis court, basketball court etc. for the complainants and other buyers of tower-5.

- v. Direct the respondent to pay legal expenses of Rs. 1 lakh incurred by the complainants.
- vi. Any other damages, interest, relief which the hon'ble authority may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the complainants and against the respondent.

Reply by Respondent:-

17. The respondent submitted that the Hon'ble Authority does not have the jurisdiction to try & decide the present matter as it was mutually agreed between the complainants and respondent under Apartment Buyer's Agreement to settle all or any dispute through Arbitration. **Clause 52** of the Apartment Buyer's Agreement dated 20.03.2010 clearly provides that *"All or any disputes out of or touching upon or in relation to the terms of this Agreement including interpretation and validity of any of the terms and respective rights and obligation of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration"*.

18. The respondent submitted that the respondent humbly submitted that the Hon'ble Authority is not vested with jurisdiction to decide the compensation under Real Estate (Regulation & Development) Act 2016, as claimed by the Complainants.
19. The respondent submitted that the respondent further submitted that the present complaint is an abuse on the process of law and on this sole ground alone, the present complaint is liable to be dismissed. The Hon'ble Authority lacks the jurisdiction to decide the present matter. It is humbly submitted by the respondent that the project namely ILD Spire Greens does not come under the category of "*on Going Project*" as defined under the Act as the respondent already applied for the occupation certificate on 16.05.2017 and obtained occupation certificate on 19.12.2017. Therefore, the aforesaid project is exempted from the requirement of registration under the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.

20. The respondent further submitted that the complainants was well aware about the fact at the time of booking that the area of flat was tentative and subject to change in future. The sale consideration of the unit/ apartment was also subject to change based on change of area of the unit at the time of possession.
21. The respondent further submitted that the allegations imposed by the complainants for illegally charging for the parking charges, specification charges, club membership charges, preferential location charges, etc. are wrong and it is further submitted that the basic cost of the unit/apartment is only the cost of the flat and charges for other amenities such preferential location charges, parking charges, specification charges, club membership etc. are exclusive of the basic sale price and the complainants were fully aware about this fact when they booked the unit and entered into the agreement and these details are clearly mentioned the agreement.
22. The respondent submitted that the demands were raised as per the payment plan at particular stage of construction and the construction and possession of project got delayed due to lack

of infrastructure in these area. The twenty four meter sector road was not completed on time. Due to non-construction of the sector road, the respondent faced many hurdles to complete the project. For completion of road, the respondent totally dependent upon the Govt. Department/machinery and the problem is beyond the control of the respondent.

23. The respondent further submitted that in case of any major alteration / modification resulting in excess of +/- 10% change in the super area of said unit or material/substantial change, in the sole opinion of and as determined by the developer, as per clause 9.2 of the apartment buyer's agreement.

24. The respondent further submitted that the complainants are not entitle to interest of delayed possession as the delay was caused due the reasons beyond control of the respondent and the same has already been stated above. It is further submitted by the respondent that he has already offered the possession of the unit way back vide letter dated 20.12.2017 and directed to clear the due against the total sale consideration of the unit. The respondent had enclosed a copy of account statements showing due to be payable by the complainants, However,

complainants have failed to complete the formalities to take over the possession of the unit.

Determination of Issues:

After considering the facts submitted by the complainants, and perusal of record on file, the issues wise findings of the authority are as under

25. With respect to **first and second issues** raised by the complainants, it is noted from the perusal of records that no prior intimation was given by the respondent to the complainants as regards changes/increase in super area. Moreover, no consent has ever been taken by the respondent from the complainants for such increase in super area from 1090 sq. ft. to 1230 sq. ft. which is in violation of section 14(4) of the act *ibid*. So, the demands raised by the respondent are arbitrary to the extent of increase in super area. However, the respondent is entitled to charge the amount as per the payment schedule which is due and payable by the complainants at the time of delivery of possession for the agreed super area.

26. As regards **the third issue** raised by the complainants, the authority came across that as per clause 10.1 of apartment buyer's agreement, the possession of the said apartment was to be handed over within 3 years from the date of execution of agreement plus grace period of 6 months has been given to the respondent due to exigencies beyond the control of the respondent. The agreement was executed on 20.03.2010. Therefore, the due date of possession shall be computed from 20.03.2010. The clause regarding the possession of the said unit is reproduced below:

"10.1: Schedule for possession of the said unit

The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said unit within a period of three years from the date of execution of this agreement with grace period of six months"

Accordingly, the due date of possession was 20.09.2013 and the possession has been delayed by four years three months till the offer of possession.

Findings of the Authority:

27. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction

of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.

28. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
29. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.

30. Arguments heard: A statement has been made at bar by the counsel for the respondent that the moot point w.r.t litigation is handing over possession of the unit to the complainant. Complainant has already an amount of Rs.30,50,669/- against a total sale consideration of Rs.37,44,370/-. Counsel for the complainant has stated at bar that all other sundry issues involved in the litigation are being withdrawn in the interest of the complainant. Counsel for the respondent has stated that the respondent has already offered them possession vide letter dated 20.12.2017 a copy of which is placed on record. In view of the letter of offer of possession issued to the complainant and occupation certificate 19.12.2017 received by the respondent, a copy of the same is also placed on record, in order to bury the hatchet inter-se the parties, it is ordered that the complainant may take possession of the unit within 30 days. As such, complainant is entitled for delayed possession charges w.e.f. 20.09.2013 till the date of offer of possession letter dated 20.12.2017.
31. It has been pointed out by counsel for the respondent that the complainant has demanded refund on account of PLC, parking

space charges, club charges, IFMS, waiver of area increase which are matter of adjudication and are being dropped per se the statement of the counsel for the complainant. For delayed payments on the part of the complainant, the respondent is also entitled to charge interest at the same rate of 10.65% which is being awarded to the complainant for getting late delivery of the unit.

Decision and directions of the authority:

32. Keeping in view the facts and circumstances of the case and perusal of record, following directions are issued to the respondent –

- i. The respondent is directed to hand over the possession to the complainant within a period of 30 days and is also directed to pay delayed possession charges @10.65% per annum w.e.f 20.09.2013 till offer of possession letter dated i.e. 20.12.2017.
- ii. The interest so accrued from the due date of delivery of possession till the date of order to be paid at the prescribed rate within 90 days from the date of this order and

thereafter monthly interest be paid on or before 10th of each subsequent one.

- iii. The respondent is also entitled to charge interest for delayed payments on the part of the complainant at the same rate of 10.65% which is being awarded to the complainant for getting late delivery of the unit.

33. The order is pronounced.

34. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated:17.05.2019

Judgement uploaded on 29.05.2019

HARERA
GURUGRAM