

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

Complaint No. : 810 of 2018
First date of hearing : 15.02.2019
Date of Decision : 17.05.2019

1. Mr Vipin Dave
2. Mrs Rakhi Dave
R/o : 512, P/5, 1st Floor, Sector 5, Gurugram,
Haryana

Complainants

Versus

ILD Millennium Pvt. Ltd.
Address : International Land Developers P.
Ltd., 9th floor, ILD Trade Center, Sector – 47,
Sohna Road, Gurgaon, Haryana – 122018

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE

Shri Vipin and Ms Rakhi Dave Advocates for complainants
Shri Venkat Rao Advocate for the respondent

ORDER

1. A complaint dated 13.09.2018 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 Vipin Dave and Mrs Rakhi

Dave, against the promoter ILD millennium Pvt Ltd on account of violation of clause 10.1 of the apartment buyer's agreement executed on 10.09.2010 for unit described below for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement was executed on 10.09.2010 i.e prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"ILD spire greens", sector 37C, Gurugram, Haryana.
2.	Nature of real estate project	Residential colony
3.	Date of offer of possession letter	20.12.2017.
4.	Occupation certificate granted on	19.12.2017
5.	Project area	15.4829 acres
6.	Unit no	0404, 4 th floor, tower 5
7.	Unit area	1090 sq. ft super area

8.	DTCP license	13 of 2008 dated 31.01.2008 118 of 2011 dated 26.12.2011
9.	RERA registered/not Registered	Not Registered
10.	Due date of delivery of possession (As per clause 10.1: 31.12.2012 + 6 months grace period)	30.06.2013
11.	Date of apartment buyer agreement	10.09.2010
12.	Total consideration	Rs 35,88,530/- (as per final statement of accounts dated 19.12.2017 and original area of 1090 sq. ft)
13.	Total amount paid by the complainant	Rs 32,66,057/- as per final statement of accounts dated 19.12.2017 Annexure A page 79 of the complaint
14.	Payment plan	Construction linked payment plan
15.	Delay in handing over possession from the due date i.e. 30.06.2013 till the offer of possession i.e. 20.12.2017	4 years 5 months 20 days
16.	Penalty clause as per buyer's agreement dated 10.09.2010	Clause 11.4 of the said agreement i.e. Rs.5/- per sq. ft. of the super area of the said unit per month for the period of delay beyond 3 years or such extended periods as permitted under this agreement

5. The details provided above have been checked as per record of the case file provided by the complainants and respondent. An apartment buyer's agreement dated 10.09.2010 is available on record according to which the possession of the aforesaid unit/apartment was to be delivered by the respondent on 30.06.2013. However the respondent has failed to deliver the possession of the booked unit till date.
6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 15.02.2019, 11.04.2019, 26.04.2019, 17.05.2019. The reply filed on behalf of the respondent on 20.02.2019 and has been perused.

Facts of the case

7. The complainants submitted that they are peace loving and law abiding young citizens of India, who nurtured an un-realized dream of having their own house in upcoming societies with all facilities and standards, situated around serene and peaceful environment for children.
8. 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 in respect of apartment no-0404, floor-4, 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

9. 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.
10. The complainants submitted that on the basis of this 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 31st December 2012. After a delay of around five years, now the company ILD Millennium Pvt. Ltd. is

offering possession to the buyers and the promoter is not paying interest for delay period in offering possession of apartment.

11. The complainants also submitted that the promoter increased the super area of apartment from 1090 sq. ft. to 1230 sq. ft, around 13% increase and also demanding around 25% extra cost of the apartment from the complainants.
12. The complainants submitted that the complainants have been living in different locations in rented houses, paying more than Rs.23,000/- per month as rent. They had bought the apartment with the great expectations that they would shift to their own house shortly. The lease agreement of their present house has been enclosed with the complaint.
13. The complainants submitted that in total, the they had paid Rs. 32,66,057/- more than 97% of the payments of the apartment till December 2017. The respondent has also charged EDC and IDC from the complainants.

14. The complainants submitted that the respondent has never informed the complainants about escalation of more than 25% of the cost of the apartment and increase of super area from 1090 sq. ft. to 1230 sq. ft. However all of a sudden a letter of offer of possession dated 20.12.2017 is received by the complainants whereby the final statement of account showcases an increase of more than 25% in the cost of the apartment which was a great shock to the complainants. No consent was taken from the complainants regarding the increase of area and cost of apartment.

15. The complainant submitted that the respondent is offering possession of the apartment without completing the common area facilities meant for the complainants including the club, nursery school, community centre, shopping plaza, swimming pool, kids splash pool, steam and sauna, billiards room, gymnasium, organic café, party lawn, tennis court, basketball court, plantation, solid waste and sewage treatment plant, amphitheatre etc. The respondent has received the occupation certificate for tower-5 fraudulently since the common area

facilities have still not been completed as presented and showcased by the respondent.

16. The complainants also submitted that as per the Town and Country Planning department, the said project, whose owner is M/s Jubilant Malls Pvt. Ltd. and others have revised building plans of group housing colony area measuring 15.4829 acres out of the total group housing scheme measuring 21.1804 acres (license no. 13 of 2008 dated 31.1.2008, license no. 96 of 2010 dated 3.11.2010 and license no. 118 of 2011 dated 26.12.2011) in Sector 37C, Gurugram Manesar Urban Complex being developed by M/s Jubilant Malls Pvt. Ltd. and others. The Town and Country Planning Department, Government of Haryana has issued various licenses to four parties. The complainants are still not aware about the agreement/memorandum of understanding (MOU) amongst these four license holders for developing the said project. Despite approaching time and again to the respondent, the complainants are still not aware under which license and on which part of the land their tower falls. The respondent has taken multiple licences from the concerned authorities

fraudulently for different projects on the same said land, confusing the complainants completely.

17. The complainants also submitted that it is more shocking and beyond imagination that the respondent sent a letter of offer of possession dated 23.09.2017 fraudulently to extort money from the naive and gullible complainants despite having no occupation certificate from the concerned authorities. The respondent mislead and cheated a number of buyers of tower-5 by using fraud, illegal, unlawful and bogus letter, sent by the respondent to the complainants and all other buyers of tower-5 of ILD Spire Greens, Sector 37C Gurugram. The respondent has got the occupation certificate from the concerned authorities on 19.12.2017.

18. The complainants also submitted that the complainants do not intend to withdraw from the project.

Issues to be decided

19. The issues raised by the complainants are as follows :

- i. Whether the respondent has delayed possession of the unit thereby violating the terms and conditions of the apartment buyers agreement?

Reliefs sought

20. The reliefs sought by the complainants are as follows :

- i. To direct the respondent to handover the possession of the booked apartment immediately without collecting enhanced disputed amount
- ii. To direct the respondent to waive off the enhanced amount of the apartment which is around 25% increase in the cost of the apartment.
- iii. To direct the respondent to pay interest for delay in offering of possession of apartment since 31st December 2012 to the complainants on the amount taken from the complainants for the sale consideration amount and additional charges for the aforesaid apartment with interest of 18% per annum or at such rate prescribed under the RERA Act, 2016.
- iv. To 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, parking space charges, club membership charges and interest free maintenance security charges, etc from the complainants.

- v. To 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.
- vi. To direct the respondent to pay legal expenses of Rs 1,00,000/- incurred by the complainants.

Respondent Reply

22. The respondent further submitted that the present written statement is being filed by Mr. Sambit Mohapatra, who is authorized representative of our company and is duly authorized to act on behalf of the opposite party vide board resolution dated 05.01.2018
23. The respondent further submitted that the project got delayed due to reasons beyond control of him. It is submitted that major reason for delay for the construction and possession of project is lack of infrastructure in these area. The 24 meter sector road was not completed on time. Due to non-construction of the sector road, the respondent faces 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. The aforementioned road has been recently constructed. It is submitted that the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21/09/2015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to this reason the project got delayed.

24. The respondent further submitted that the complainant has intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement.

25. The respondent submitted that the complainant has alleged some baseless allegations without stating as to how they are being aggrieved by the respondent. That the complainant be

put to the strict proof of the same. It is humbly submitted that the complainant has not come this court with clean hands and has withheld crucial information and the said complaint is liable to be dismissed on this ground alone.

26. 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 that the project namely ILD Spire Greens does not come under the category of "*on Going Project*" as defined under the Act.

27. The respondent further submitted that they have 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 (hereinafter referred as "Act") and the Haryana Real Estate (Regulation and Development) Rules, 2017(hereinafter referred as "Rules").

28. The respondent 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 complainant.

29. The respondent further submitted that the hon'ble authority does not have the jurisdiction to try & decide the present matter as it was mutually agreed between the complainant and respondent under apartment buyer agreement to settle all or any dispute through arbitration. **Clause 52** of the apartment buyer agreement dated 10.09.2010 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*".

Determination of issues

21. As regards **the first 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 by 31.12.2012 along with grace period 6

months. Therefore, the due date of possession shall be computed from 30.06.2013. 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 by 31.12.2012 along with a grace period of six months”

Accordingly, the due date of possession was 30.06.2013 and the possession has been delayed by 4 years 5 months 20 days till the date of offer of possession i.e 20.12.2017. Therefore the respondent is liable to pay delay interest at the prescribed rate of 10.65% per annum for every month of delay.

Findings of the authority

22. 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 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory

Authority, Gurugram shall be entire Gurugram District. 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.

23. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter. 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.

24. Argument heard. As per clause 10.1 of the apartment buyer's agreement dated 10.09.2010 for unit no. 0404, 4th floor, tower-5 in project "ILD Spire Greens" Sector 37-C, Gurugram, possession was to be handed over to the complainants by 31.12.2012 plus 6 months grace period which comes out to be 30.06.2013. 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 complainants. Complainants has already paid an amount of Rs.32,66,057/-

against a total sale consideration of Rs.35,88,530/-. Counsel for the complainants has stated at bar that all other sundry issues involved in the litigation are being withdrawn in the interest of the complainants. 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 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. 30.6.2013 till the date of offer of possession letter dated 20.12.2017. 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.

25. The promoter is liable under section 18(1)(a) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. 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 10.65% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 30.06.2013 till offer of possession i.e. 20.12.2017.

Decision and directions of the authority

27. After taking into consideration all the material facts as adduced and produced 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 to the respondent in the interest of justice and fair play :

- i. The respondent is directed to hand over the possession to the complainant within a period of 30 days.
- ii. The respondent is directed to provide delay possession charges at the prescribed rate of 10.65% per annum for every month of delay from the due date of possession i.e 30.06.2013 till the date of offer of possession i.e 20.12.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 within 90 days of this order.

28. The order is pronounced.

29. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 17.05.2019

Judgement Uploaded on 30.05.2019

HARERA
GURUGRAM