

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

Complaint no. : 809 of 2018
First date of hearing: 15.02.2019
Date of decision : 17.05.2019

Ravi Kumar
Prerna Thakur
R/o 154-B, New Colony, Gurudwara Road,
Gurugram, Haryana.

Complainants

Versus

ILD Millennium P. Ltd.,
Office at: 9th floor, ILD Trade Centre,
Sector- 47, Gurugram, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Ravi Kumar Complainant no.1 in person
Shri Abhay Jain and Shri Advocate for the complainants
Kamal Sharma
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 Ravi Kumar

and Prerna Thakur 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 for delay in delivering of possession of the unit in question.

2. Since, the buyer's agreement has been executed on 08.11.2011 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 contractual 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 spire green, Sector 37 C, Gurgaon.
2.	Project area	15.4829 acres (approx.)
3.	Nature of the real estate project	Group housing colony
4.	DTCP license no.	13 of 2008
5.	RERA registered/ not registered.	Not registered
6.	Apartment/flat no.	203,2 nd floor in tower 5, block 3
7.	Unit admeasuring super area	1,090 sq. ft.

8.	Payment plan	Construction linked payment plan
9.	Date of execution of apartment buyer's agreement	08.11.2011
10.	Total consideration as per the agreement	Rs. 30,76,370/-
11.	Total amount paid by the complainant	Rs. 29,80,218/-
12.	Due date for delivery of possession as per clause 10.1 of the agreement: 30 th June 2013+ grace period of 6 months	31.12.2013
13.	Date of offer of possession letter	23.09.2017 (Annx 6) Note: A letter of offer of possession was given 20.12.2017 after receiving the OC (Annx 4)
14.	Delay in handing over possession till date	3 years 9 months 10 days
15.	Occupation certificate	19.12.2017
16.	Penalty Clause as per clause 10.3 of the agreement	Rs. 5/- per sq. ft. per month of the super Area for the entire period of such delay

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement dated 08.11.2011 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 31.12.2013. However the respondent has delivered the possession on 20.12.2017 i.e. after a delay of

more than 3 years which is in violation of section 11(4)(a) of the Act.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 15.02.2019. The respondent through his counsel appeared on 15.02.2018, 11.04.2018, 26.04.2019 and 17.05.2019. The reply has been filed by the respondent which has been perused by the authority.

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-0203, floor-2, 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 project consists of seven residential towers with commercial shops, EWS flats, community centre, parks etc.

8. It is submitted that on the basis of this license, the company ILD Millennium Pvt. Ltd. had collected a huge amount from gullible, naive, and young buyers from 2008 to 2014 and promised the allottees to handover the possession of their apartment on 30th June, 2013. After a delay of more than four years and six 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 1230 sq.ft., around 13% increase and also demanding more than 29% extra cost of the apartment from the complainants, thereby, complainants are now being forced to pay for the super area of 1230sq.ft. instead of 1090sq.ft and more than 29% extra cost of the apartment.
9. The complainants submitted that they have been living in different locations in rented houses, paying more than Rs.16,000/- per month as rent. They had bought the apartment with the great expectations that they would shift to their own house shortly.
10. The respondent has fraudulently and illegally charged from the complainants such charges separately which ought to be inclusive in basic sale price as the parking charges,

specification charges, club membership charges, preferential location charges, etc. and violates the basic nature of agreement between the parties.

11. The complainants have taken substantial amount of loan from the TATA Capital Housing Finance Limited, for which the complainants applied twice as due to the delay by the respondent the first application for loan sanction was cancelled. Thereafter, the complainants are paying more than Rs.26,500/- monthly instalments.
12. The complainants submitted that they came to know that the respondent has taken a loan from Punjab National Bank by submitting their complete project as collateral, wherein the complainants had been 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.
13. It is submitted that the illegalities and unfairness of the respondent reflect in attitude of the respondent wherein the respondent despite receipt of more than 95% of payments has failed to deliver possession of 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 29% of the cost of the apartment and increase of super area from 1090sq.ft. to 1230sq.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 twenty nine per cent 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 the apartment.
15. The complainants submitted that the complainants paid Rs. 29,80,218/- more than 95% of the payments of the apartment.
16. As per the Town and Country Planning department, the said project whose owner is M/s Jubilant Malls Pvt. Ltd. and others have received building plans of group housing colony area measuring 15.4829 acres out of the total group housing scheme measuring 21.1804 acres in Sector-37C, Gurugram

Mansesar urban complex being developed by M/s Jubilant Malls Pvt. Ltd. and others.

17. 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.

ISSUES TO BE DECIDED:

18. 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 complainant is 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 08.11.2011 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 :-

19. The complainants is seeking the following reliefs:

- i. Direct the respondent to withdraw/cancel/waive off the enhanced amount of the apartment which is around 26% increase in the cost of the apartment, as it was increased by the respondent illegally, unlawfully and fraudulently.
- ii. Direct the respondent to pay delay possession charges since June 2013 to the complainants.
- 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 cafe, party lawn, tennis court, basketball court etc. for the complainants and other buyers of tower-5.

Respondent's reply

20. The respondent denied at the outset of the each and every averment, statement, allegation, contentions of the complainant which is contrary and inconsistent with the reply and no averment, statement, allegation, contentions of the complainant will be deemed to be admitted saves those specifically admitted to be true and correct.
21. The respondent submitted that the project of the respondent got delayed due to reasons beyond control of the respondent. it is submitted that the major reason for delay of the construction and possession of the project is lack of infrastructure in these areas. The twenty four meter sector road was not completed on time. The building plan has been revised on 16.06.2014 and further revised on 21.09.2015.

22. The respondent 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 does not come under the category of ongoing project as defined under the Act.

23. The respondent further submitted that the he applied for the OC on 16.05.2017 and obtained OC on 19.12.2017. Therefore, the project is exempted from the registration under the Act
ibid.

24. The respondent submitted that the hon'ble authority do not have the jurisdiction to try and decide the present matter as it was mutually agreed between complainant and respondent under the agreement to settle all or a dispute through arbitration.

DETERMINATION OF ISSUES:

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

25. Regarding **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 complainant as regards increase in super area. Moreover, no consent has ever been taken by the respondent from the complainant for such increase in super area from 1090 sq. ft to 1230 sq. ft at the time of offer of possession vide letter dated 23.09.2017 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. Hence, the Hence, the authority is of the considered view that the complainants are entitled for delayed possession charges @

10.65% per annum for every month of delay in terms of section 18(i) proviso of the Act.

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 by 31.12.2013. The promoter have violated the agreement by not giving the possession on the due date, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. 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 31.12.2013 along with a grace period of six months"

FINDINGS OF THE AUTHORITY:

27. 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 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. 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. The complainants has already paid an amount of Rs.29,80,218/- against a total

sale consideration of Rs.30,76,370/-. The 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. The 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 complainants 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, complainants are entitled for delayed possession charges w.e.f. 31.12.2013 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 complainants. For delayed payments on the part of the complainants, the respondent is

also entitled to charge interest at the same rate of 10.65% per annum which is being awarded to the complainants for getting late delivery of the unit.

Decision and directions of the authority:

32. 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:

(i) The respondent is directed to hand over the possession to the complainants within a period of 30 days and is also directed to pay delayed possession charges @ 10.65% per annum w.e.f 31.12.2013 till the date of offer of possession letter dated 20.12.2017.

33. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

34. The complaint is disposed of accordingly.

35. The order is pronounced.

36. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 17.05.2018

Judgement uploaded on 31.05.2019



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