

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

Complaint no. : 2246 of 2019
First date of hearing : 05.09.2019
Date of Decision : 05.09.2019

Mr. Pritam Chand
R/o. KADAM -205, Srishti Tower, near
Indirapuram Habitat Centre, Ahimsa Khand-I,
Indirapuram,
District Ghaziabad (U.P.)

Complainant

Versus

ILD Millennium Pvt. Ltd.
Address:- B-418, New Friends Colony,
New Delhi – 110065.
Also at:- International Land Developers P. Ltd.
9th floor, ILD Trade Center, Sector- 47,
Sohna Road, Gurugram - 122018

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Pritam Chand
Shri Pankaj Chandola,

Complainant in person
Proxy counsel for Shri Venkat
Rao, Advocate.

ORDER

1. A complaint dated 04.06.2019 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 was filed by the complainant Mr. Pritam Chand against the respondent -promoter M/s. ILD Millennium Pvt. Ltd., on account of violation of clause 10.1 of the apartment buyer's agreement executed on 21.02.2011 for unit no. 1718, 17th floor, tower 2,

block no. 18 of the project, 'ILD Spire Greens' located at Sector 37 C, Gurugram for non-delivery of possession of the unit in question by the committed date which is obligation of the promoter under section 11 (4)(a) of the Act.

2. Since the apartment buyer's agreement was executed on 21.02.2011 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016 so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation under section 34 (f) of the Act *ibid*.
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	Group housing complex
3.	Total area of the project	15.4829 acres
4.	DTCP license	13 of 2008 dt. 31.01.2008
5.	Allotted unit/apartment no.	1718, 17 th floor, tower 2, block 18.
6.	unit area	1603 sq. ft.
7.	RERA Registered/ Not Registered	Registered vide no. 60 of 2017 (Tower 2, 6 and 7)
8.	Date of booking	16.05.2008
9.	Date of apartment buyer agreement	21.02.2011
10.	Due date of delivery of possession as per the	30.06.2014

	agreement dated 21.02.2011	Clause 10.1: 31.12.2013 plus 6 months grace period.
11.	Total consideration as per the agreement	Rs. 46,35,808/- (Annx P/12)
12.	Total amount paid by the complainant	Rs. 40,70,113/- (as stated by the complainant at Pg. 5 of the complaint)
13.	Payment plan	Construction linked payment plan
14.	RERA registration valid upto	16.08.2018 (already expired)
15.	Delay in handing over of possession till date of possession i.e. 05.09.2019	5 year, 2 months and 6 days
16.	Compensation payable as per clause 10.3 of the agreement dated 21.02.2011	Clause 10.3 of the agreement i.e. – 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 as per record of the case file. An apartment buyer's agreement dated 21.02.2011 is available on record for apartment no. 1718, 17th floor, block 18, tower 2 of the project in question, according to which the possession of the aforesaid unit/apartment was to be delivered by the respondent on 30.06.2014, but the respondent has failed to fulfil its commitment till date by not handing over possession of the subject apartment till date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent through his counsel appeared on 05.09.2019. The

case came up for hearing on 05.09.2019. The reply has been filed on behalf of the respondent on 25.06.2019 which has been perused by the authority.

Facts of the case -

6. Briefly put facts relevant for the disposal of the present complaint are that on 16.05.2008, the complainant booked an apartment in the respondent's project namely 'ILD Spire Greens' located at Sector 37C Gurugram by paying Rs. 4,00,000/- as booking amount to the respondent. Pursuant to aforesaid booking of the complainant, respondent had allotted apartment/unit no. 1718, 17th floor, tower 2 in the project in favour of complainant. On 21.02.2011, apartment buyer's agreement of the subject apartment was executed between the complainant and the respondent wherein as per clause 10.1, the possession of the unit was to be delivered by 31.12.2013.
7. The total consideration of the allotted unit was fixed at Rs. 46,35,808/- as against which the complainant has made total payment of Rs. 40,70,113/- on various dates as per the payment plan and demands raised by the respondent. However, despite collecting substantial portion of the consideration, the respondent has failed to complete the construction and deliver the possession till date.

8. The complainant submitted that as per various sections of RERA Act 2016 the promoter is liable to pay interest to the allottees of the apartment for the delay or failure in handing over such possession as per the terms and agreement for the sale.

Issues to be decided -

- I. Whether the complainant is entitled to get interest on paid amount i.e. Rs. 40,70,113/- from 31.12.2013 to date?
- II. Whether the complainant is entitled to get interest on at the rate of 18% on paid amount every month on 1st day of month till the date of delivery of possession of the apartment?
- III. Whether the complainant is entitled to get possession of the unit in question inhabitable condition with time bound manner?

Reliefs sought -

1. Direct the respondent to pay interest at the rate of 18% on the paid amount i.e. Rs. 40,70,113/- for every month for the delayed period from completion date i.e. 31.12.2013 till possession of the unit in question.
2. Direct the respondent to deliver the possession of the unit in question with time bound manner.

Respondent's reply: -

9. 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.
10. The present complaint is an abuse of the process of this authority and is not maintainable. The complainant has not approached this authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent of extracting unlawful gains from the respondent.
11. It is submitted that the complaint is devoid of merits and should be dismissed with costs.
12. The reliefs being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this authority in terms of the order passed by the Haryana Real Estate Appellant Authority in its order dated 02.05.2019.
13. The power to grant refund and compensation vest with the adjudicating officer only. Therefore, the complaint before the authority for refund and compensation is liable to dismissed.
14. It would also be pertinent to make reference to some of the provisions of the Act and rules made by the Government of

Haryana in exercise of powers conferred by sub-section 1 read with sub-section 2 of section-84 of the Act. Section 31 of the Act provides for filing of complaints with this authority or the adjudicating officer, sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of the Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Apparently, under section 71 the adjudicating officer shall be appointed by the authority in consultation with the appropriate government for the purpose of adjudging compensation under sections 12, 14, 18 and Section 19 of the 2016 Act and for holding an enquiry in the prescribed manner.

15. Apparently, in the present case, the complainant is seeking a claim for compensation along with physical possession and along with interest as also the compensation, which, from reading of the provisions of the Act and the Rules, especially those mentioned hereinabove, and also from the verdict dated 02.05.2019 of Hon'ble Appellate Tribunal, would be liable for adjudication after due deliberation, if at all, by the adjudicating officer and not by this authority. That on this ground alone, the complaint is liable to be rejected.

16. In the present case, 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 and interest. 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 authority under rule-28 as the authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
17. It is submitted that the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurugram, orders passed by NGT to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely effected the progress of the project.
18. Demonetization and the new tax law i.e., GST, also hampered the timely completion of the project. However, it is pertinent to note that the construction work of the project is in full swing and more than 70% of construction work has been completed and the same will be handed over to the complainant soon.

Determination of issues:-

19. As regards the **first, second and third issues** raised by the complainant, it is observed by the authority from perusal of records that as per clause 10.1 of the apartment buyer's agreement dated 21.02.2011, the respondent was under obligation to deliver the possession of the apartment/unit no. 1718, admeasuring 1603 sq. ft., in tower 2, block 18 in the project in question with all promised amenities on 30.06.2014 (including grace period of 6 months). The relevant portion of clause 10.1 is reproduced below -

"10.1..... 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 with grace period of six months....."

Accordingly, the due date of delivery of possession on computation comes out to be 30.06.2014. But the respondent has failed to deliver the possession till date which is in a violation of section 11(4)(a) of the Act. Hence, the authority is of the view that the complainant is entitled for delayed possession charges at the prevalent prescribed rate of interest i.e. 10.45% per annum for every month of delay in terms of section 18 (1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

Findings of the authority: -

20. 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 purposes for promoter projects 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.
21. Project is registered with the authority. Arguments heard.
22. As per clause 10.1 of the apartment buyer's agreement dated 21.12.2011, possession of the apartment in question was to be delivered to the complainant on 21.02.2011 plus 6 months grace period which comes out to be 30.06.2014, however the respondent has not delivered the possession of the apartment till date, so the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.45% p.a. with effect from 30.06.2014 as per the provision of section 18 (1)

proviso of the Real Estate (Regulation and Development) Act, 2016 till the actual offer of possession.

Decision and directions of the authority:-

23. 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 in the interest of justice :

i. The respondent is directed to pay delayed possession at the prevalent prescribed rate of interest i.e. 10.45% p.a. on the paid amount to the complainant from the promised date of delivery of possession i.e. 30.06.2014 till actual offer of possession.

ii. The interest so accrued from the due date of delivery of possession till the date of order be paid within 90 days from this date and thereafter monthly interest at the prevalent prescribed rate of interest i.e. 10.45% per annum be paid on or before 10th of each succeeding English calendar month.


iii. Complainant is also directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession. Interest on the due payments from the complainant shall be charged at the prescribed rate of

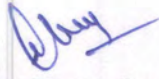
interest i.e. 10.45% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession.

iv. The promoter shall not charge any amount/ charges from the complainant which is not the part of apartment buyer's agreement.

24. The order is pronounced.

25. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2019.



AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER



Judgement uploaded on 26.09.2019

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