

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

Complaint no. : 1941 of 2018
Date of first hearing : 12.03.2019
Date of decision : 12.11.2020

1. Smt. Garima Gupta
2. Shri Tarun Kumar Gupta
R/o: 216/B, First floor, DDA Flats,
Pitampura, Delhi

Complainants

Versus

M/s ILD Millennium Pvt. Ltd.
Address: 9th floor, ILD Space Tower,
Sohna Road, Gurugram, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Smt. Tarun Kumar Gupta Complainant no. 2 in person
Shri Venket Rao, Advocate Advocate for the respondent

ORDER

1. The present complaint dated 26.11.2018 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the

Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	ILD Spire Green, Sector 37 C, Gurugram
2.	Project area	15.4829 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	13 of 2008 dated 31.01.2008
5.	Name of the Licensee	Jubliant Malls Pvt Ltd and 3 others
6.	Registered/ not registered	60 of 2017 dated 18.08.2017 for 6.5 acres approx. (tower 2, 6 and 7)
7.	RERA registration valid up to	16.08.2018
8.	Unit no. (As per page no. 30 of complaint)	0104, Tower 07, 1 st Floor
9.	Unit admeasuring (As per page no. 30 of complaint)	1355 sq. ft. (Super area)

10.	Date of provisional allotment (At page no. 21 of complaint)	19.12.2012
11.	Date of apartment buyer's agreement (As per page no. 29 of complaint)	11.01.2013
12.	Total consideration (As per page no. 32 of complaint)	Rs. 62,38,830/- (Excluding taxes)
13.	Total amount paid by the complainants (As per SOA dated 05.12.2018 at page no. 21 of reply)	Rs. 53,22,613/-
14.	Payment plan (As per page no. 59 of complaint)	Construction linked payment plan
15.	Due date of delivery of possession (As per clause 10.1 of the said apartments buyer's agreement i.e. 3 years from the date of execution of agreement + 6 months grace period)	11.07.2016
16.	Delay in handing over possession till date of decision i.e. 12.11.2020	4 years 4 months 1 day

3. As per clause 10.1 of the apartment buyer's agreement, the possession of the unit in question was to be handed over within a period of 36 months from the date of execution of apartment buyer's agreement i.e. 11.01.2013 plus grace

period of 6 months which comes out to be 11.07.2016. Clause 10.1 of the apartment buyer's agreement 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....."

4. The complainants submitted that on their various site visits it was noted that the flat under construction was too small in size compared to what they had expected or had booked for. Further, on actual measurements, it turned out to be of a carpet area of less than 700 sq. ft.
5. The complainants submitted that with this carpet area, the super area of the flat comes to merely 875 sq. ft. ($700 + 25\%$ of $700=875$) in comparison to the super area of 1355 sq. ft. that was mentioned in the builder-buyer agreement and for which the builder has charged the complainants. That the builder has cheated the complainants and has over-charged them for a super area to the extent of 480 sq. ft. ($1355 - 875 = 480$). This

is certainly an unfair trade practice of the lowest kind and has been resorted to by the builder knowingly, intentionally and under a well thought out plan.

6. The complainants submitted that by resorting to this kind of cheating, the builder has overcharged the complainants by Rs.18,40,896/- till 2nd November 2014 [(88% BSP of 480 sq. ft. = $480 \times 3840 \times 0.88 = 16,22,016$) + (100% PLC on 480 sq. ft. = $480 \times 125 = 60,000$) + (100% EDC + IDC on 480 sq. ft. = $480 \times 331 = 1,58,880$)]. Not only this, by constructing a much smaller flat than the one booked by the complainants, the builder/promoter has completely shattered the complainant's dream of living comfortably in their own house.
7. The complainants submitted that when clarifications were sought from the respondent regarding the difference between the carpet and the super areas of the flat under construction, the Senior Manager-CRM, Mr. Arunjeet Arora wrote back on 26th September 2017 that "We have already forwarded your concern to the concerned department after getting revert from

them will reply you” and no further reply has since been received from the respondent’s side till now.

8. The complainants submitted that the cause of action for the present complaint first arose when a pre-printed builder-buyer agreement, which was completely one-sided, and contained unfair and unreasonable terms and conditions, was thrust upon the complainants for signing after receiving more than rupees Ten Lakhs from them. The cause of action further arose when the builder failed to hand over the possession of the completed flat to the complainants on the promised date, and that continues to be so even now. Further, the cause of action is there on the builder for constructing a much smaller flat than the one promised in the builder-buyer agreement.

9. Hence, this complaint for the relief mentioned herein below:
- i. Direct the respondent to compensate the complainants by paying interest at an appropriate rate on the money paid by the complainants to the builder from the promised

date of hand over of flat (viz. 11th January 2016) till the actual date of hand over of the flat to them.

- ii. Direct the respondent party to return the over charged amount to the complainants as a result of misrepresentation in the area of the flat, along with interest at an appropriate rate

10. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

11. The respondent contested the complaint on the following grounds:

- i. That the offer of possession to the complainants was made on 28.10.2016 however, the complainants failed to accept the same nor have they adhered the schedule of payment by not paying a single penny since December 2014. Huge amount is pending towards total sale consideration.
- ii. That the major reason for delay in possession is lack of infrastructure which was beyond the control of the respondent.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.
13. The authority, on the basis of information and other submissions made and the documents filed by the complainants and the respondent, is of considered view that there is no need of further hearing in the complaint.
14. On consideration of the circumstances, the documents and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the apartment buyer's agreement executed between the parties on 11.01.2013, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the execution of agreement. The grace period of 6 months is allowed to the respondent due to exigencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 11.07.2016. Accordingly, it is the failure of the promoter to

fulfil its obligations, responsibilities as per the apartment buyer's agreement dated 11.01.2013 to hand over the possession within the stipulated period.

15. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate of interest @9.30% p.a. w.e.f. 11.07.2016 till the handing over of actual possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
16. Further, an issue was raised during the hearing by the complainant that the promoter/builder has unscrupulously increased the super area and there is a loading factor of 83% and that there is also an increased super area by Rs.96/- per square feet. Also, there are certain other irregularities on the part of the promoter on account of other charges. The Authority is of the view that Since, the unit has not been handed over, as such, it is too early to take a plausible view in this context and it shall be taken into account at the time of actual handing over and taking over of the possession. In the meantime, the promoter/builder is restrained from raising

untoward demands. The matter shall also be covered by the talents of suo motu provisions.

17. The counsel for the respondent stated during the hearing that the authority has already taken a suo motu action plan on the askance of RWA w.r.t Tower-6 and 7 of this project and a resolution plan in this context is very much in the site in near future. Besides this, the promoter/builder has applied for occupation certificate in the month of July' 2020 which shall be forthcoming in near future.
18. Hence, the authority hereby passes the following order and issue directions under section 34(f) of the Act:
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 11.07.2016 till the handing over of actual possession after obtaining OC.
 - ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and subsequent interest to be paid on or before the 10th of each succeeding month.

- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainants which is not part of the apartment buyer's agreement.
 - v. Interest on the delay payments from the complainants shall be charged at the prescribed rate i.e. 9.30% by the promoters which is the same as is being granted to the complainants in case of delayed possession charges.
15. Complaint stands disposed of.
16. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.11.2020

JUDGEMENT UPLOADED ON 28.11.2020