

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

Complaint no. : 1380 of 2019
First date of hearing : 14.08.2019
Date of decision : 21.12.2020

Mrs. Krishna Singh
R/o: 583, Air Force Naval Officers Enclaves,
Plot No. 11, Sector-7, Dwarka,
New Delhi-110075

Complainant

Versus

M/s ALM Infotech City Pvt. Ltd.
R/o B-418, New Friends Colony,
New Delhi: 110087

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Sanjeev Sharma
Shri Venket Rao

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 04.04.2019 has been filed by the complainant/allottee 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 apartment buyer's agreement executed inter se them.

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

1.	Name and location of the project	ILD Grand, Sector 37 C, Gurugram
2.	Project area	5.697 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no.	96 of 2010 dated 03.11.2010 118 of 2011 dated 26.12.2011
	License valid/renewed upto	02.11.2016 25.12.2017
	Name of licensee	Jubilant Malls
5.	HRERA registered/ not registered	Registered vide no. 386 of 2017 dated 18.12.2017
	License valid/renewed upto	18.09.2019
6.	Date of execution of apartment buyer's agreement	21.09.2012
7.	Residential floor space/unit no.	3B, 3 rd floor, block-Panaroma, type-3BR
8.	Unit measuring (as per provisional allotment letter dated 16.06.2012)	1819 sq. ft.
9.	Payment plan	Subvention plan



10.	Total consideration amount as per apartment buyers agreement pg.30	Rs. 82,52,623/-
11.	Total amount paid by the complainant as per receipts attached pg. 96-99	Rs 78,97,645/-
12.	Date of delivery of possession as per clause 9(i) of apartment buyer's agreement i.e. 36 months from the execution of apartment buyer's agreement + grace period of 180 days	21.03.2016
13.	Delay in handing over possession till date of date of decision i.e. 21.12.2020	4 years 9 months

3. As per clause 9(i) of the apartment buyer's agreement dated 21.09.2012, the possession was to be handed over within a period of 36 months plus 6 months grace period from the date of execution of agreement which comes out to be 21.03.2016. Clause 9(i) of the apartment buyer agreement is reproduced below:

9. Completion Of Construction And Compensation For Delay
i. Subject to force majeure, circumstances as defined herein and subject to timely grant of all approvals. Permissions, NOC's etc. and further subject to the allottees(s) having complied with all his obligations under the terms and conditions of this agreement and the allottee(s) not being in default under any part of this agreement including but not limited to the timely payment of the total sale consideration and other charges/fees/taxes/levies and also subject to the allottees(s) having complied with all formalities or documentation as prescribed by the

Developer, the Developer proposes to complete the construction within a period of 36 months computed from the date of execution of this agreement with further grace period of 180 days under normal circumstances."

4. The complainant submitted that he booked/ purchased a flat/unit bearing No 3B on 3rd floor Tower - Panaroma admeasuring 1918 Sq. Ft. for total consideration of Rs. 82,52,623/- including additional charges, on the assurance that possession would be handed over in time. At the time of booking Rs. 3,00,000/- was paid to promoter on 02.04.2012.
5. The complainant submitted that the promoter/developer was issued provisional allotment letter to the complainant on 16.06.2012. According to provisional allotment letter the complainant was to pay Rs. 12,70,390/- to the promoter till 16.06.2012.
6. The complainant submitted that the apartment buyer's agreement dated 21.09.2012 was signed between both the parties i.e. M/s. ALM Infotech City Pvt. Ltd. That as per the apartment buyer's agreement the possession of the unit in question was to be handed over within 36 months plus grace period of 180 days i.e. 6 months from the date of the said agreement as provided under clause 9 of the agreement. That as per the possession clause the possession was to be handed over lastly by March 2016.

7. The complainant submitted that as per circumstance the complainant entered into a tripartite agreement between promoter/developer and Dewan Housing Finance Corporation Limited dated 26.10.2012. According to EMI Scheme the complainant has got the loan sanctioned from M/s. Dewan Housing Finance Corporation Limited on 31.10.2012 for paying the instalments to the promoter from January 2016 onwards. The loan arrangement was made for the complainant by the developer itself.
8. The complainant submitted that the complainant again entered into tripartite agreement between complainant, promoter/developer and HDFC Limited dated 21.07.2016 after clearing the loan with M/s. Dewan Housing Finance Corporation Limited. The complainant has transferred the loan from M/s. Dewan Housing Finance Corporation Limited to HDFC Limited on 21.07.2016 for paying remaining instalments to the promoter from September 2016 onwards and the flat/unit was to be handed over within 3½ years as agreement clause no. 9.
9. The complainant submitted that he has paid total Rs. 80,25,295/- to promoters through cheque and thereafter the financial institute M/s. HDFC Ltd. paid the instalment on behalf

of tri party agreed between company + buyer + Financial Institute. Hence, this compliant for the following reliefs:

- The respondent shall be directed to pay the interest for the delayed period of handing over the possession from the time as stated under clause (Za) of section 2.
 - The respondent shall also be directed to pay interest for the period of complaint, pending before the Real Estate Regulatory Authority as it was an obligation cast upon him under the act to provide and pay the interest automatically under the act. The respondent failed to pay the interest when demanded.
 - The respondent shall be ordered not to charge any holding charges, interest on the pending payments at the time of offer of handing over the possession after the settlement of dues as per RERA Act.
10. The respondent submitted that the complainant has intentionally concealed material facts filed present complaint with the sole purpose of avoiding the agreed terms of the agreement.
11. The respondent submitted that the handing over of possession got delayed due to reasons beyond the control of the respondent. It is further submitted that the major delay for the

construction of and possession of the project is lack of infrastructure in these areas. The twenty-four-meter road was not completed on time. Due to non-construction of the sector road, he faced many hurdles to complete the project.

12. The respondent submitted that the complainant never adhered the payment schedule duly agreed upon by the complainant and always made payment after termination of stipulated time. Further the complainant is himself a defaulter as made default in making payment as per schedule of payment.
13. The respondent submitted that the complainant had booked the unit under subvention scheme and a tripartite agreement was signed between the complainant, respondent and Dewan Housing Finance Corporation Limited as per which respondent agrees to pay the Pre-EMI interest on the loan disbursed by the DHFL for a period of 36 months from the date of first disbursement. The respondent being a customer centric company and to fulfil its promises has made approx. payment of Rs. 20,00,000/- against the interest occurred on the loan disbursed by the DHFL, upto year 2015.
14. 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.

15. The authority, on the basis of information and other submissions made and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.
16. Arguments heard.
17. The authority has complete jurisdiction to decide the complaint regarding 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.
18. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 9(i) of the apartment buyer agreement executed between the parties on 21.09.2012, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the date of execution of



agreement. The grace period of 6 month 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 21.03.2016. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the apartment buyer's agreement dated 21.09.2012 executed between the parties.

19. With respect to relief regarding holding charges, Hon'ble NCDRC in its order dated 03.01.2020 in case titled as Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015 held as under:

"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall

not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

20. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the Civil appeal nos. 3864-3889 of 2020 against the order of NCDRC (supra). Thus, the respondent shall not charge holding charges from the complainant.

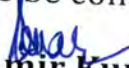
21. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at rate of the prescribed interest @ 09.30% p.a. w.e.f. 21.03.2016 till the offer of possession plus 2 months as per provisions of section 18(1) of the Act read with rule 15 of the Rules. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The allottee comes to know about the receipt of occupation certificate, on the date he receives the letter for offer of possession. Therefore, in the interest of natural justice, the complainant is given 2 months' time from the date of offer of possession. This 2 months' of reasonable


time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. However, the respondent has not offered the possession of the unit in question to the complainant. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 21.03.2016 till the expiry of 2 months from the date of offer of possession.

22. Hence, the Authority hereby pass 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. 09.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 21.03.2016 till the offer of possession plus 2 months.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession plus 2 months shall be paid before 10th of each subsequent month.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - v. Interest on the due payments from the complainant shall be charged at the prescribed rate @09.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
21. Complaint stands disposed of.
 22. File be consigned to registry.


(Samir Kumar)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 21.12.2020

HARERA
GURUGRAM