

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

Complaint no. : 4011 of 2019
First date of hearing : 03.12.2019
Date of decision : 21.12.2020

Rajeev Kumar Singh
R/o: H. No. P-510, Jal Vayu Vihar, Near Shivam
Hospital, Sector-30, Gurgaon, Haryana-122001 **Complainant**

Versus

M/s ALM Infotech City Pvt. Ltd.
Regd. Office at: B-418, New Friends Colony,
New Delhi-110087
Also at: ILD Trade Centre, 9th Floor, Sector-47,
Sohna Road, Gurugram-122018 **Respondent**

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

Chairman
Member

APPEARANCE:

Shri Venket Rao Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 09.09.2019 has been filed by the complainants/allottees 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:

S. No.	Heads	Information
1.	Project name and location	"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.	Unit no.	7A, Block: Panaroma(B1) Type: 3BR, 7 th Floor
7.	Unit measuring	1819 sq. ft.
8.	Allotment letter	23.11.2015 (as annexed by complainant)
9.	Date of execution of apartment buyer agreement	17.03.2016 (as annexed by complainant)
10.	Payment plan	Possession Linked Payment

		Plan
11.	Total consideration as per statement of account dated 01.10.2019(page 18 of Reply)	Rs.88,22,150 /-
12.	Total amount paid by the complainants as per statement of account dated 01.10.2019(page 18 of Reply)	Rs. 56,20,585/-
13.	Due date of delivery of possession as per clause 9(i) of the said agreement i.e. the developer proposes to complete the construction within a period of 24 months computed from the date of execution of this agreement with further grace period of 180 days [Page 14 of said agreement]	17.09.2018
14.	Delay in handing over possession till date of date of decision i.e. 21.12.2020	2 years 3 months 4 days

3. As per clause 9(i) of the apartment buyer's agreement dated 17.03.2016, the possession was to be handed over within a period of 24 months plus 6 months grace period from the date of execution of agreement which comes out to be 17.09.2018. 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 24 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 the complainant had approached the respondent and its officers for inquiring the status of delivery of possession, but none had bothered to provide any satisfactory answer or reply or response to the complainants about the possession and completion of said apartment. The complainant thereafter kept running from pillar to post asking for delivery of his home but could not succeed as the construction of said apartment and said project was nowhere near to completion and still not been completed. Hence, this complaint for the aforementioned relief:
 - i. Direct the respondent to hand over the unit alongwith the interest towards delay in handing over of the unit;
5. 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.

6. The respondent submitted that the present complaint is an abuse of the process of this Hon'ble Authority and is not maintainable. The Complainant has not approached this Ld. 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 and sole purpose of extracting unlawful gains from the Respondent.
7. It is submitted that the Complainant has sought reliefs which is in nature of compensation, therefore, the present Complaint is not maintainable before the Authority. Therefore, the present complaint is liable to be dismissed on this ground alone. That the complaint is pertaining to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the "said Act") are required to be filed before the Adjudicating Officer under Rule-29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as the "said Rules") read with Section 31 and Section 71 of the said Act and not before this Hon'ble Regulatory Authority under Rule-28. Section 31, Section 71, Rule-28 and Rule-29.

8. 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, interest and compensation u/s 18 of the said Act. 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 Hon'ble Regulatory Authority under Rule-28 as this Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
9. 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.
10. The Authority, on the basis of information and explanation and other submissions made and the documents filed by the complainant, is of considered view that there is no need of further hearing in the complaint.
Arguments are heard.
11. On consideration of the circumstances, the documents, 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 17.03.2016, 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 17.09.2018. 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 17.03.2016 executed between the parties.

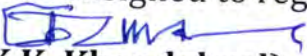
12. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at rate of the prescribed interest @ 09.30% p.a. w.e.f. 17.09.2018 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. 17.09.2018 till the expiry of 2 months from the date of offer of possession.

13. 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. 17.09.2018 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.
14. Complaint stands disposed of.
15. File be consigned to registry.


(Dr. K.K. Khandelwal)
Chairman


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 21.12.2020