

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

Complaint no. : 379 of 2019
First date of hearing : 27.09.2019
Date of decision : 21.12.2020

1. Deepak Gupta
2. Barkha Bindu
Both R/o: C-201, Rail Vihar-IV, Sector-47,
Gururgam

Complainants

Versus

M/s ALM Infotech City Pvt. Ltd.
(Through its Director Mr. Sambit Mohapatra)
Office at: B-418, New Friends Colony, New
Delhi-110025

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Akash Gupta
Shri Venket Rao

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 21.02.2019 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 apartment buyer agreement 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.	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.	12C, Block: Skylark Type: 3BR, 12 th Floor
7.	Unit measuring	1789 sq. ft.
8.	Allotment letter	26.11.2012
9.	Date of execution of apartment buyer agreement	14.04.2014

10.	Payment plan	Down Payment Plan
11.	Total consideration as per annexure P/23 at page 62 of complaint	Rs. 65,89,940/-
12.	Total amount paid by the complainants as per annexure P/23 at page 62 of complaint	Rs. 64,04,268/-
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 36 months computed from the date of execution of this agreement with further grace period of 180 days [Page 37 of said agreement annexed with complaint]	14.10.2017
14.	Delay in handing over possession till date of date of decision i.e. 21.12.2020	3 years 2 months 7 days

3. As per clause 9(i) of the apartment buyer's agreement dated 14.04.2014, 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 14.10.2017. 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 complainants submitted that the original allottee was Mr. Akshay Sahni and later on an agreement to sell dated 13.04.2014 between the original allottee and the complainants. After execution of the agreement to sale, both parties initiated the process of sale. Mr. Akshay Sahni gave a undertaking cum indemnity bond to the respondent. Further, when the complainants expressed their interest to visit the construction site, the respondent always made some excuse to avoid visiting the site.
5. The complainants submitted that they have visited the office of the respondent to make enquiry about the date of possession of the apartment, then the respondent made assurance to hand over the possession of the unit/flat by the end of September, 2019. The complainants also requested the respondent to provide some compensation for delayed possession of the apartment, so that the complainants would get the relief from burden of interest of bank loan taken by the complainants on the said property. But the respondent

did not give any heed to the request of the complainants.

Hence, this compliant for the following reliefs:

- i. Direct the respondent to hand over the unit alongwith the interest towards delay in handing over of the unit;
6. 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.
7. The respondent submitted that the first owner of the said unit signed the Agreement only after agreeing with all its terms and condition and never raised any question over the terms and conditions of the Agreement. That the Complainant purchased the unit from its first buyer after agreeing all the terms and condition of the Agreement voluntarily with free will and consent. The Agreement was executed between the Respondent and Mr. Akshay Sahni with mutual consent without having any objection regarding the date of Agreement and time of handing over of possession. However, the Complainant with malafide intention of gaining wrongful profits is making false and fictitious allegation against the Respondent. It is further submitted that the time of handing over of possession is mentioned in clause 9(i) of the Agreement as per which the unit of the Complainant shall be

hand over with a period of 36 months with further grace period of 180 days from the date of execution of Apartment Buyer Agreement. Therefore, the date of handing over of the possession as per the Agreement is 14.10.2017, which is subject to certain restrictions mentioned under clause 5, 6, 9(i), 9(iv) to (ix), 19, 30 and other provision of the Agreement. it is submitted that the delay in handing over of possession was due to the reasons beyond the control of the Respondent therefore, the clause of force majeure enforced. As per the clause of 9 (vi) of the Agreement, ***"if, however, the completion of the said unit is delayed due to force majeure as defined herein and on account of any delay on ground of statutory approvals, permissions in consequent thereof the possession is also delayed including for non-grant of the completion certificate etc., the commitment period and/or the Grace period and/or the Extended delay period, as the case may be, shall stand extended automatically to the extent of the delay caused due to force majeure circumstances or the delay as the case may be and the Allottee(s) shall not be entitled to any compensation whatsoever, including Delay Compensation for the period of such delay."***

8. It is submitted that the Project of the Respondent got delayed due to reasons beyond control of the Respondent. It is submitted that major reason for delay for the construction and possession of Project is lack of infrastructure in these areas. The twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, the Respondent faces many hurdles to complete the project. For completion of road, the Respondent totally dependent upon the Govt. Department/machinery and the problem is beyond the control of the Respondent. The aforementioned road has been recently constructed.
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 complainants, 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 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 14.04.2014, 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 14.10.2017. 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 complainants as per the terms and conditions of the apartment buyer's agreement dated 14.04.2014 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 complainants are entitled to delayed possession at rate of the prescribed interest @ 09.30% p.a. w.e.f. 14.10.2017 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. 14.10.2017 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 complainants from due date of possession i.e. 14.10.2017 till the offer of possession plus 2 months.
- ii. The arrears of interest accrued so far shall be paid to the complainants 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 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 buyer's agreement.
 - v. Interest on the due payments from the complainants shall be charged at the prescribed rate @09.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
14. Complaint stands disposed of.
15. File be consigned to registry.


(Samir Kumar)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 21.12.2020