

PROCEEDINGS OF THE DAY

Day and Date	Friday and 08.02.2019
Complaint No.	1048/2018 Case titled as Harvinder Verma V/S M/S ILD Millennium Pvt. Ltd.
Complainant	Harvinder Verma
Represented through	Complainant is person alongwith Mr. Dhruv Rohtagi, Advocate
Respondent	M/S ILD Millennium Pvt. Ltd.
Respondent Represented through	None for the respondent
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

Complaint was filed on 20.09.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 04.10.2018, 29.10.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 29.10.2018 and on 29.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in

the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into account legal/factual propositions, as raised, by the complainant in his complaint.

A final notice dated 31.01.2019 by way of email was sent to both the parties to appear before the authority on 08.02.2019.

Argument heard.

As per clause 10.1.of the Builder Buyer Agreement dated 05.04.2014 for unit No.1704, Tower 07, 16th Floor in project ILD Spire Green Sector 37-D, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of BBA + six months grace period which comes out to be 05.10.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.56,79,810/- to the respondent against a total sale consideration of Rs. 66,92,755/=. Complainant shall be entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 05.10.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

Revised date of delivery of possession has already been expired and the respondent have applied for extension which can only be granted for another one year. If the respondent does not deliver the possession of the booked unit to the complainant within the extended period of year, in that case, the complainant shall be entitled to get refund of the deposited amount alongwith prescribed rate of interest i.e. 10.75% .

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 shall be paid before 10th of subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
8.2.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 1048 of 2018
First date of hearing : 08.02.2019
Date of Decision : 08.02.2019

Mr. Harvinder Verma
Shri Krishan
R/o H. no. 143, Sunaro wali gali,
Dundahera, Gurugram

Complainant

Versus

M/s ILD Millennium Pvt. Ltd.
Regd. office: 9th floor, ILD Trade Centre,
Sector 47, Sohna Road,
Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Dhruv Rohtagi with
complainant in person

Advocate of complainant

None for the respondent

Advocate for the respondent

EX-PARTE ORDER



1. A complaint dated 29.09.2018 was filed 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 by the complainants Mr. Harvinder Verma and Shri Krishan, against the promoter M/s ILD

Millennium Pvt. Ltd., in respect of unit/flat no. 1704, measuring 1335 sq. ft. of the project 'ILD Spire Green' located at sector-37, Gurugram for not starting with the construction of the project and by not handing over of possession, which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer's agreement dated 05.04.2014 was executed 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 contractual obligation on the part of the respondent in terms of the provision of 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 37 -C, Gurugram
2.	Project area	15.4829 acres
3.	Unit no.	1704, tower 07, 16 th floor
4.	Nature of real estate project	Group housing colony



5.	DTCP license no.	13 of 2008
6.	Total unit area	1335 sq. ft.
7.	RERA registered/unregistered	Registered (60 of 2017)
8.	Revised date of completion as per registration certificate	16.08.2018
9.	Date of execution of apartment buyer agreement	05.04.2014
10.	Payment plan	Construction linked payment plan
11.	Total consideration amount (clause 1.1)	Rs. 66,92,755/-
12.	Total amount paid by the complainant (as alleged by the complainant)	Rs. 56,79,810 /-
13.	Due date of delivery (clause 10.1 - 3 years + 6 months grace period from the date of execution of agreement)	05.10.2017
14.	Delay in handing over possession till date	1 year 3 months approx
15.	Penalty clause (clause 10.3)	Rs. 5/- per sq. ft. per month of the super area

4. The details provided above have been checked as per record available in the case file which has been provided by the complainants and the respondent. An apartment buyer's agreement is available on record dated 05.04.2014 for the aforesaid unit no. 1704. However, the due date of possession is 05.10.2017 and promoter has failed to deliver the



possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his obligation which is violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor filed their reply to the complaint and case is being proceeded ex-parte against the respondent.

Facts of the complaint

6. The complainants submitted that they made a booking with the promoter in the project and paid a booking amount of Rs.2,00,000/-. Accordingly, the promoter issued a receipt bearing No. 996 dated 02.07.2012 to the complainants.
7. The complainants submitted that soon thereafter, the promoter/ developer raised demands from the complainants which were duly paid by the complainants.
8. The complainants submitted that pursuant to the said payments made by the complainants, the respondent got executed the apartment buyer's agreement dated 05.04.2014



from the complainants. As per the specific clause 10.1 of the said agreement, the promoter/developer was under an obligation to handover the possession of the flat booked by the complainants, within 3 years from the date of execution of the agreement, i.e. on or before 05.04.2017 with an additional grace period of six (6) months, i.e. on 05.10.2017.

9. The complainants submitted that as on 05.04.2014, the complainants had already made a total payment of Rs.31,12,000/- out of total agreed basic sale price of Rs.57,58,750/- .
10. It is submitted that the complainants made a further payment of Rs. 2,50,000/- against receipt bearing no. 1766 dated 14.04.2014 and further payment of Rs. 2,15,000/- against receipt bearing no. 1789 dated 27.04.2014 to the respondent.
11. It is submitted that on 21.05.2014, the respondent issued a provisional allotment letter to the complainants, whereby the respondent had allotted flat no. 1704, admeasuring super area of 1355 sq. ft. in block/ tower no. 7, floor no. 16th in the above-mentioned project to the complainants.



12. It is submitted that as on 05.12.2015, the complainants had made a total payment of Rs. 56,79,810/- out of the total basic sale price of Rs. 57,58,750/-.
13. It is submitted that they, having made almost full payment of the basic sale price of the allotted unit as early as on 05.12.2015, have not been handed over the possession of the unit allotted in the said project.
14. The complainants submitted that they have waited long enough for the respondent to handover the completed unit in the said project and even as on the date of filing of the present complaint, the respondent has failed to complete the said project in all respects and have further not yet offered the possession to the complainants.
15. The complainants submitted that they have invested all their hard-earned money in the said project on the demands so raised by the respondent, in order to get the possession and start residing there, however, the respondent has clearly failed to honour its commitments under the representations made and also the terms and conditions of the apartment buyer's agreement dated 05.04.2014.



16. The complainants submitted that as per the specific clause 10.1 of the apartment buyer's agreement dated 05.04.2015, the respondent was under an obligation to handover the possession of the unit to the complainants as early as on 05.04.2017, which time has long elapsed and even the grace period so mentioned in the said agreement has also expired and there is no sign of the respondent handing over the possession of the completed unit to the complainants.

17. The complainants submitted that the conduct of the promoter/developer is vexatious and deficient. It is submitted that despite repeated requests of the complainants to cancel the booking and for refund of the amounts paid, the promoter/developer has failed to attend the said grievances of the complainants. It is submitted that the said acts of the respondent are unsatisfactory, arbitrary and amounts to deficiency in service.

18. The complainants submitted that as on date almost 6 years have passed since the complainants made the booking in the said project of the promoter/developer, however, till date the respondent has failed to complete the project and handover



the possession of the allotted unit to the complainants. The complainants have lost all hope of delivery of possession, leave alone the timely delivery of possession as the said date has long passed. The complainants are no longer interested in retaining the unit in the said project, which has still not been completed and have lost all trust on the respondent. The complainants now want to recover all the amounts already paid to the promoter/developer.

19. It is submitted that promoter/developer has by exercising its dominant position arbitrarily stated a very minimal rate of interest receivable in case of delay in handing over possession of the said flat in the agreement which should ideally have been in parity with the rate of interest in case of delay in making payments for demands raised by promoter/developer against the purchase of the said flat. The said part of the agreement is against the public policy.

20. The complainants submitted that by not refunding the amount of the complainants, the promoter/developer has indulged in “unfair trade practise”. Non-refund of the money, amounts to “unfair trade practice” on part the promoter/developer. It is



further submitted that the great delay in commencement of the project has caused mental agony to the complainants and the same also amounts to “deficiency in service”.

21. The complainants submitted that the hon’ble authority has the jurisdiction to decide the present complaint as the project is situated within the territorial limits of Gurugram. The RERA registration number of the project is 60 of 2017 dated 18.08.2017. The complainants declare that the subject matter of the claim falls within the jurisdiction of the authority.
22. The complainants submitted that the complainants have not filed any other complaint with respect to the same subject matter in any other court of law.
23. That the necessary fee of Rs. 1,000/- has been affixed vide demand draft bearing no. 718182, dated 24.07.2018, drawn at UCO Bank, Delhi High Court. The complainants further undertake to make good the deficiency of court fees, if found inadequate by the hon’ble authority.



Issues to be decided:

- i. Whether the respondent has caused justifiable in completion of the project?
- ii. Whether the complainants are entitled to the refund of the paid amount along with interest @ 18% per annum?

Reliefs sought-

The complainants are seeking the following reliefs:

- i. Direct the respondent to refund the entire paid amount of Rs.56,79,810/- along with interest @18%p.a. from the date of receipt of payments.

Determination of issues: -

24. With respect to the first and second **issue** raised by the complainants, as per clause 10.1 of the apartment buyer's agreement dated 05.04.2014, the possession of the unit was to be handed by 05.10.2017. However, the possession has been delayed by 1 year 7 months (approx.) till the date of decision.

As the possession of the unit was to be delivered by 05.10.2017 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation



under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Moreover, revised date of delivery of possession has already been expired and the respondent have applied for extension which can only be granted for another one year. If the respondent does not deliver the possession of the booked unit to the complainant within the extended period of one year, in that case, the complainant shall be entitled to get refund of the deposited amount along with prescribed rate of interest i.e. 10.75%.

Findings of the authority

25. 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 complainants 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 purpose with offices 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.

26. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs.5,000/-. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs.10,000/-
27. Such notices were issued to the respondent on 04.10.2018 and on 29.10.2018 and on 29.11.2018.
28. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority hereby proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainants in their pleadings.
29. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observe that complaint was filed on 20.09.2018. Notices w.r.t. reply to the complaint were issued



to the respondent on 04.10.2018, 29.10.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 29.10.2018 and on 29.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into account legal/factual propositions, as raised, by the complainant in his complaint. A final notice dated 31.01.2019 by way of email was sent to both the parties to appear before the authority on 08.02.2019.



30. As per clause 10.1 of the builder buyer agreement dated 05.04.2014 for unit No.1704, Tower 07, 16th Floor in project ILD Spire Green Sector 37-D, Gurugram, possession was to be handed over to the complainant within a period of 36 months

from the date of execution of BBA + six months grace period which comes out to be 05.10.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.56,79,810/- to the respondent against a total sale consideration of Rs. 66,92,755/-. Revised date of delivery of possession has already been expired and the respondent have applied for extension which can only be granted for another one year. If the respondent does not deliver the possession of the booked unit to the complainant within the extended period of one year, in that case, the complainant shall be entitled to get refund of the deposited amount along with prescribed rate of interest i.e. 10.75% .

Decision and directions of the authority: -

31. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions: -

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 05.10.2017 as per the provisions of section



18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

- 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 shall be paid before 10th of subsequent month.
- iii. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

32. The order is pronounced.

33. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Dated: 08.02.2019

Judgement Uploaded on 12.02.2019