

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 4851 of 2020
Date of decision : 20.08.2021

MADHU SHARMA AND VANDANA MEHROTRA
R/O: C-1586, Sushant Lok-1, Gurgaon
Haryana-12202

Complainants

Versus

ELAN BUILDCON PRIVATE LIMITED.
ADDRESS: L-1/1100, First Floor, Street
No. 25, Sangam Vihar, New Delhi-110062

Respondents

APPEARANCE:

For Complainant : R. K. Hans (Adv)

For Respondent: Ganesh Kamath (Adv)

ORDER

1. This is a complaint filed by the Madhu Sharma and Vandana Mehrotra (also called as buyers) under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/promoters.

2. According to complainants, they jointly booked a commercial unit in respondent's project **Elan Town Centre**, situated at sector-67, Gurugram on 25.07.2016 and made payment of Rs 2,47,500 as booking amount. The respondent issued an allotment letter dated 06.03.2017 and allotted a unit admeasuring 300 sq. ft. for a total consideration of Rs 26,47,500 including BSP, EDC, IDC etc.
3. Subsequently buyer's agreement dated 20.07.2017 was executed between them, incorporating their respective obligations in respect of the said transactions.
4. As per the Clause 11(a) of buyer's agreement, the possession of the said premises was proposed to be delivered by the developer to the allottee within 36 months from the date execution of buyer's agreement with an extension of 12 months unless there shall be delay or failure due to Government department or due to any circumstances beyond the power and control of the developer or force majeure conditions.
5. In buyer's agreement, the super area of food court unit was shown to be approximately 300 sq. ft but with the said agreement no document was annexed with respect to exact dimensions of the unit. The respondent sent an offer of possession letter for fit-outs, dated 18.09.2020 and raised a demand of Rs 19,11,263. The complainants visited the project site but to their utter dismay the actual carpet area of unit was just 42 sq. ft i.e. the ratio of carpet area to super area was just 14 % and the loading was 86 % of the size against the usual 45-50 % in the commercial units. The respondent changed the



layout plan of the units and no service corridor is being provided in the units, which is an essential aspect of opening the kitchen in the premises.

6. The complainants vide their letter dated 06.10.2020 requested for refund of the amount paid towards the allotted unit on account of discrepancies and high loading, absence of service corridors and change in the layout plan without consent.
7. The complainants regularly followed up with the respondent through various written and verbal reminders but of no avail.
8. The complainants are therefore, constrained to file the present complaint and are seeking refund of entire paid amount of Rs 10,32,731 alongwith interest at the prescribed rate.

9. Brief facts in tabular form as under :

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	"Elan Town Centre", Sector 67, Gurugram, Haryana
2.	Project area	2.00 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	84 of 2012 dated 28.08.2012 valid up to 27.08.2021
5.	Name of licensee	M/s Elan Buildcon Pvt. Ltd
6.	RERA Registered/ not registered	Registered dated 02.02.2018
7.	RERA Registration Valid upto	01.02.2022

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UNIT DETAILS

1.	Unit no.	KIOSK-0209, 2 nd floor (Pg. No. 17)
2.	Unit measuring	300 sq. ft.
3.	Date of Booking	25.07.2016
4.	Date of Allotment Letter	06.03.2017 (Pg. No. 11)
5.	Date of Buyer's Agreement	20.07.2017 (Pg. No. 14)
6.	Due date of delivery of Possession (As per clause : 11(a) The Possession of the said premises is proposed to be delivered by the developer to the allottee within 36 months from the date execution of buyer's agreement within an extension of further period of 12 months unless there shall be delay or failure due to Government department delay or due to any circumstances beyond the power and control of the developer or force majeure conditions) (Page. No. 28)	21.07.2021
7.	Offer of possession	18.09.2020



8.	Delay in handing over possession till date	1 month
PAYMENT DETAILS		
9.	Total sale consideration	Rs 26,47,500/-
10.	Amount paid by the complainants	Rs 10,32,731 /-
11.	Payment Plan	Special Possession linked payment plan

10. The respondent contested the present complaint by filing a written reply dated 04.02.2021. It is contended that the complaint is false and fabricated and complainants have no locus standi to file the present complaint. It is further contended that complainants had booked a KIOSK and not a food court, which is evident from the allotment letter and buyer's agreement. There is no question of providing kitchen or service corridor. The complainants have filed the present complaint to avoid the payment of due instalment as per the agreed payment plan.
11. The respondent has contended that complainants have made payment of merely Rs 9,93,750 out of total consideration of Rs 26,47,500 and huge amount is due towards the complainants. The project is complete, and complainants have filed the present complaint on frivolous grounds.
12. There is no denial that the complainants booked a commercial unit with the respondent measuring 300 sq ft. The complainants have already paid a sum of Rs.10,32,731/-



till now. According to complainants, unit was sold to them stated to be a unit in Food Court. It is not denied on behalf of complainants, that respondent sent a letter offering possession for fit outs dated 18.09.2020. It is not plea of the respondent that said unit was worth occupying at that time. According to complainants when same visited the spot and found the carpet area of nearly 42 sq ft. having loading i.e. about 86 % of super area. In their opinion, general carpet area of such commercial unit is given between 45-50%. All this was not made clear to them at any time by the respondent.

13. As described earlier BBA between the parties was entered into on 20.07.2017. The Act had already come into force till then. Section 11 of the Act enumerates the functions and duties of promoter including that promoter shall mention in advertisements/prospectus prominently the details of registered project. According to sub-section 3, the promoter at the time of booking and issue of allotment letter, is duty bound to make available to the allottee, following information, namely :

- (a) Sanctioned plans, lay out plans alongwith specifications approved by the competent authority.....
- (b)

14. Section 19 of the Act provides for corresponding rights of allottees including that the same is entitled to obtain information(from the builder) relating to sanctioned plans, lay out plans alongwith specifications approved by the competent

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authority and such other information as provided in this Act or rules and regulations made thereunder.

15. It is not plea of the respondent even that the same had clarified to the complainants that actual carpet area of the unit being sold to them i.e. complainants will be 42 sq. ft. Needless to say that it is not denied by the respondent that actual carpet area of unit allotted to the complainants came out 42 sq. ft, as alleged by the latter.
16. Rule 4(2) of the Rules, 2017 obliges the promoter to disclose the size of apartment based on carpet area even if sold on any other basis, such as super area or super built -up area etc. No such information was given by the respondent/promoter to the complainants. All this amounts to failing of respondent/promoter in discharging its obligations, imposed upon it under this Act.
17. Even otherwise, as per BBA executed between the parties, the respondent was duty bound to hand over possession of unit in question to the complainants within 36 months from the date of execution of BBA with extension of 12 months. As described earlier, BBA was executed between the parties on 20.07.2017. Even counting from that date, due date has already expired. No cogent reason is given except that the same failed to complete the project in time. Although, according to respondent, the same sent a letter of possession for fit outs on 18.09.2020. It is not its plea that same has already received the completion certificate or occupation till that date or even till today or the unit is worth occupying. The builder was entitled for grace period of 12

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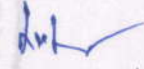
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months only when construction was stopped due to force majeure but there was no such circumstances in this case.

18. On the basis of above discussion, in my view, the promoter/respondent has failed to discharge its obligation as per Act/Rules and hence the complainants are entitled to claim refund of his amount along with interest and compensation.
19. Accordingly, the respondent is directed to refund the amount paid by the complainants alongwith interest @ 9.30% p.a. within 90 days from the date of this order. The same is also burdened with a cost of Rs.1,00,000/- to be paid to the complainants.

File be consigned to the Registry.

20.08.2021.


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 03.09.2021