

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

Complaint no. : 4954 of 2020

Date of decision : 20.08.2021

SUMIT DOGRA AND SHIVALI SHARMA
R/O: Flat No. 120, Sector 17,
Pocket -D, Keshav Kunj Apartment,
Dwarka, New Delhi-110078

Complainants

Versus

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

Respondents

APPEARANCE:

For Complainant: Rajan Kumar Hans (Adv)

For Respondent: M.G. Kamath (Adv)

ORDER

1. This is a complaint filed by Sumit Dogra and Shivali Sharma (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 respondent/promoter.

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 (KIOSK-0208) 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 said transaction.
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 within 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 the 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 showing exact dimensions of the unit. In September 2020, complainant came to know that respondent had sent offer of possession letters to all the units holders of the food court, but no such offer was given to them. They 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. Moreover, respondent changed the layout plan of the units and the allotted unit No. 212-B does not even exist, in the new layout plan. The respondent has changed the layout plan 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 11.12.2020 requested for refund of the amount paid towards the allotted unit on account of discrepancies and high loading, absence of service corridors change in the layout plan without consent and non-receipt of offer of possession letter.
7. The complainants regularly followed up with the respondent through various written and verbal reminders but of no avail. The complainants are therefore, constrained to file the present complaint and is seeking refund of entire paid amount of Rs 10,32,732 alongwith interest at the prescribed rate.
8. Brief facts of complaint 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

UNIT DETAILS

1.	Unit no.	KIOSK-0212-B, 2 nd floor (Pg. No. 19)
2.	Unit measuring	300 sq. ft.
3.	Date of Booking	27.07.2016
4.	Date of Allotment Letter	06.03.2017 (Pg. No. 12)
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 premisses 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	20.07.2021

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	the developer or force majeure conditions) (Page. No. 32)	
7.	Delay in handing over possession till date	1 month
PAYMENT DETAILS		
8.	Total sale consideration	Rs 26,47,500/-
9.	Amount paid by the complainants	Rs 10,32,732 /-
10.	Payment Plan	Special Possession linked payment plan

9. The respondent contested 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 present complaint, to avoid the payment of due instalment as per the agreed payment plan.

10. The respondent denied that there is any change in layout plan and contended that Kiosk 212 and 212-B are one and the same and there is no change in the location of the unit. It is further contended that offer of possession letter dated 15.06.2020 was sent to the complainants and they were duly

informed about project being completed and submission of application of occupancy certificate.

11. It is again contended by respondent that complainants have made payment of merely Rs 9,93,750 (plus service tax of Rs 38,981) out of total consideration of Rs 26,47,500 and huge amount is due towards the them. 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.. According to complainants, unit was sold to them stated to be a unit in Food Court, and when same visited the spot they found the carpet area of nearly 42 sq ft. having loading i.e. about 86 % of super area. In their opinion, generally 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 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



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bound to make available to the allottee, following informations, 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 allottee 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 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 will be 42 sq ft. only. 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 complainant. All this amounts to failing of respondent/promoter in discharging its obligations imposed upon it under this Act.
17. As per plea of respondent even if it is presumed that the unit 212 and 212 B are same, no explanation is given as why consent of allottee was not taken when site plan was changed in that respect. It is not case of respondent that unit is worth occupying even now or same has got completion certificate.

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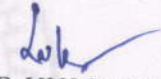
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18. On the basis of above discussion, in my view, the promoter/respondent has failed to discharge its obligation as per Act/Rules and hence the complainants are entitled to claim refund of their amount along with interest and compensation.
19. Accordingly, 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