

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

**Complaint no. : 1170 of 2018**  
**First date of hearing : 28.02.2019**  
**Date of decision : 28.02.2019**

Mr Amit Dogra

**R/o** : 333, Kamal Vihar Apartment, Plot no  
5, Sector 7, Dwarka, Delhi-110075

**Complainant**

Versus

Mr Alimuddin Rafi Ahmed  
(MD, M/s. ILD Millennium Pvt. Ltd)  
**Address** : International Land Developers P.  
Ltd., 9<sup>th</sup> floor, ILD Trade Center, Sector – 47,  
Sohna Road, Gurgaon, Haryana – 122018

Bank Manager  
DHFL

**Office** : Plot no 35, Block A, First Floor,  
Sector 2, Noida, Uttar Pradesh-201301

**Respondents**

**CORAM**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**



**APPEARANCE**

Complainant in person

Advocate for the complainant

None for the respondent

Proceeded ex-parte

### EX PARTE ORDER

1. A complaint dated 17.10.2018 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 complainant Mr Amit Dogra, against the promoter, Mr Alimuddin Rafi Ahmed Managing Director of M/s ILD millennium Pvt Ltd and Bank Manager, DHFL on account of violation of clause 10.1 of the apartment buyer's agreement executed on 09.06.2010 for unit described below for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act ibid.
2. Notices w. r. t. hearing of the case were issued to the respondent 17.10.2018, 05.11.2018 and 29.11.2018 for making his appearance. Besides this, a penalty of Rs. 5000/- and 10,000 was imposed on 05.11.2018 and 29.11.2018 for non-filing of reply even after service of notice. However despite due and proper service of notices, the respondents did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the



matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint.

3. Since, the apartment buyer's agreement was executed on 09.06.2010 i.e prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

4. The particulars of the complaint are as under: -

1.	Name and location of the project	"ILD spire greens", sector 37C, Gurugram, Haryana.
2.	Nature of real estate project	Residential colony
3.	Current status of project	Occupation certificate received on 19.12.2017 and Possession offered vide letter dated 20.12.2017.
4.	Project area	15.4829 acres



5.	Unit no	0403, 4 <sup>th</sup> floor, tower 4
6.	Unit area	1209 sq. ft super area
7.	DTCP license	13 of 2008
8.	RERA registered/not Registered	Not Registered
9.	RERA registration no	Not applicable
10.	Date of delivery of possession as per RERA certificate	Not applicable
11.	Due date of delivery of possession (As per clause 10.1: 31.12.2012 + 6 months grace period)	<b>31.06.2013</b>
12.	Date of apartment buyer agreement	09.06.2010
13.	Total consideration	Rs 37,99,624/- (as per apartment buyer agreement)
14.	Total amount paid by the complainant	Rs
15.	Payment plan	Construction linked payment plan
16.	Delay of number of months/ years	4 years 8 months
17.	Compensation payable (As per clause 10.3 of the agreement)	Rs. 5/- per sq. ft. per month of the super Area for the entire period of such delay.



5. The details provided above have been checked as per record of the case file provided by the complainant and respondents. An apartment buyer's agreement dated 09.06.2010 is available on record according to which the possession of the

aforesaid unit/apartment was to be delivered by the respondent no 1 on 31.06.2013. However the respondent no 1 has failed to deliver the possession of the booked unit till date.

6. Taking cognizance of the complaint, the authority issued notices to the respondents for filing reply and for appearance. However the respondents failed to appear and file reply.

### **Facts of the case**



7. The complainant submitted that the respondent company offered possession of the booked unit by email.
8. The complainant submitted that he raised following points of the complaint in reply to the email regarding offer of possession sent by the respondent company.
9. The complainant submitted that he asked respondent to provide calculations of increase in super area from 1209 sq. ft to 1360 sq. ft as the structure was ready at the time of booking and the reasons of increase and of not obtaining acceptance from the buyer. However the respondent company never provided the justification for increased amount.



10. The complainant submitted that he visited the site, where no amenities like club, swimming pool, security gate, security wall were ready and charges for those amenities are included in the final statement.
11. The complainant submitted that other allottees of the project in question who accepted possession are till date fighting with the builder for higher maintenance charges, no refund of HVAT, security issues, no amenities and poor construction quality.
12. The complainant also submitted that he met DHFL Bank on 23.06.2018 and cleared my stand that possession of the booked unit in current condition is not acceptable. The bank shall collect EMI till date from the developer.



### Issues to be decided

13. The issues raised by the complainant are as follows :
- Whether the respondents can increase the area of the booked unit without any justification?
  - Whether the respondents has delivered the amenities provided in the layout plan?

- iii. Whether the maintenance charges are excessive in nature?
- iv. Whether the bank DHFL is liable to collect all the EMI from the builder?

### Reliefs sought

14. The reliefs sought by the complainant are as follows :

- i. To direct the respondents to charge payments as agreed at the time of booking.
- ii. To direct the respondents to deduct amount charged for the amenities.
- iii. To direct the respondents to waive off late payment, holding charges and interest as the builder is at fault.
- iv. To direct the respondents to pay bank EMI till date.

### Determination of issues

15. Regarding **first issue** raised by the complainant, it is noted from the perusal of records that no prior intimation was given by the respondent to the complainant as regards increase in super area. Moreover, no consent has ever been taken by the respondent from the complainant for such increase in super area from 1090 sq. ft to 1230 sq. ft which is in violation of



section 14 (4) of the act *ibid*. So, the demands raised by the respondent are arbitrary to the extent of increase in super area. However, the respondent is entitled to charge the amount as per the payment schedule which is due and payable by the complainant at the time of delivery of possession for the agreed super area.

16. Regarding **second and third issue**, the authority is of the view that these issues cannot be determined as the complainant has failed to provide any evidence in support of his claim.

#### **FINDINGS OF THE AUTHORITY**

17. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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.





18. A final notice dated 18.02.2019 by way of email was sent to both the parties to appear before the authority on 28.02.2019 by way of making personal appearance by adducing and producing any material particulars in the matter.
19. Despite due service of notices, none is present on the behalf of the respondent despite calling the matter twice nor any communication has been received. Therefore the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into count legal propositions as raised by the complainant in complaint.
20. In the present case, the authority has observed that the case of the complainant is that he had booked a unit 0403, 4<sup>th</sup> floor, tower-4 in project "ILD Spire Greens, Sector 37-C, Gurugram and agreement to this effect was executed inter-se both the parties on 09.06.2010. By virtue of clause 10.1, the respondent was duty bound to deliver the unit to the complainant by 31.06.2013 but the respondent has offered the possession of the unit to the complainant on 20.12.2017 on receiving occupation certificate on 19.12.2017. Complainant till date has



made a payment of Rs.26,19,000/- against total sale consideration of Rs.37,99,624/-.

### Decision and directions of the authority

21. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play :

- i. The complainant is directed to pay the balance amount to the respondent along with prescribed rate of interest @ 10.75% p.a. and to take over the possession.
- ii. The respondent is also liable to pay delayed possession charges to the complainant at the prescribed rate of interest i.e. @ 10.75% p.a. w.e.f. 31.06.2013 till actual offer of possession.
- iii. Both the parties are at liberty to adjust the due amounts payable with mutual consent.



22. The order is pronounced.

23. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 28.02.2019

Judgement Uploaded on 19.03.2019



**HARERA**  
GURUGRAM

