

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

Complaint no. : 4822 of 2020

Date of decision : 20.08.2021

ABHAY Y DESHMUKH
R/O: J-1201, Bestech
Park View SPA Next
Sector-67, Gurgaon

Complainant

Versus

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

Respondent


APPEARANCE:

For Complainant : Mr R K Hans, Adv

For Respondent: Mr. Ganesh Kamath, Adv

ORDER

1. The is a complaint filed by Sh. Abhay Y Deshmukh (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of


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The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/promoters.

2. According to complainant he booked 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 26,17,500 including BSP, EDC, IDC etc.
3. Subsequently buyer's agreement dated 03.02.2018 was executed between them, incorporating their respective obligations in respect of the said transaction.
4. As per Clause 11(a) of buyer's agreement, the possession of the said premisses 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 is delay or failure due to Government department or due to any circumstances beyond the power and control of the developer i.e. 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. 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 complainant visited the project site but to his 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 complainant vide 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 complainant regularly followed up with the respondent through various written and verbal reminders but to of no avail.
8. The complainant is therefore, constrained to file present complaint and is seeking refund of entire paid amount of Rs 10,32,731 alongwith interest at the prescribed rate.
9. Brief facts in tabular form are 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-0204, 2 nd floor (Pg. No. 22)
2.	Unit measuring	300 sq. ft.
3.	Date of Booking	25.07.2016
4.	Date of Allotment Letter	06.03.2017 (Pg. No. 14)
5.	Date of Buyer's Agreement	20.07.2017 (Pg. No. 19)
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	20.07.2021

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	or due to any circumstances beyond the power and control of the developer or force majeure conditions) (Page. No. 33)	
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 complaint by filing a written reply dated 03.02.2021. It is contended that the complaint is false and fabricated and complainant has no locus standi to file the present complaint. It is further contended that complainant 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 complainant has filed the present complaint to avoid the payment of due instalment as per the agreed payment plan.
11. It is contended by the respondent that complainant has made payment of merely Rs 9,93,750 (plus service tax of Rs 38,981)

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out of total consideration of Rs 26,47,500 and huge amount is due towards him. The project is complete and complainant has filed the present compliant on frivolous grounds.

12. There is no denial that the complainant booked a commercial unit with the respondent measuring 300 sq ft. The complainant has already paid a sum of Rs.10,32,731/- till now. According to complainant, unit was sold to him stated to be a unit in Food Court. It is not denied on behalf of complainant 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 complainant when same visited the spot and found the carpet area of nearly 42 sq yds having loading i.e. about 86 % of super area. In his opinion, general carpet area of such commercial unit is given between 45-50%. All this was not made clear to him 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 informations, namely,

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

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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 along with 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 complainant that actual carpet area of the unit being sold to him i.e. complainant 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 complainant 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. Even otherwise, as per BBA executed between the parties, the respondent was duty bound to hand over possession of unit in question to the complainant 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 certificate till that date or even till today or the unit is worth occupying. The builder was entitled for grace period of 12 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 complainant is 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 complainant 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 complainant.

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