

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

Complaint no. : 1159 of 2019
First date of hearing : 27.08.2019
Date of decision : 27.08.2019

Mr. Amit Kaushik
R/o:- H. No. 1255, Sec-9A, Gurugram
Haryana, 122001

Complainant

Versus

M/s ILD Millennium Pvt. Ltd.
Corporate Office:- ILD Trade Centre, 901,
Sohna Road, Near Subhash Chowk,
Malibu Town, Sector-47, Gurugram,
Haryana (122018)
Registered Office:- 4H, Plaza-M6, NHCC
District Centre, Jasola, New Delhi (110025)
Also at:- B-418, F/F New Friends Colony,
South Delhi-110065

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Amit Kaushik
Sh. Krishan Kant

Complainant in person
Advocate for the respondent

ORDER

1. A complaint dated 11.04.2019 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 complainant Mr. Amit

Kaushik, against the promoter M/s ILD Millennium Pvt. Ltd., on account of violation of the clause 10.1 of apartment buyer's agreement executed on 11.01.2013 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 11.01.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under:

1.	Name and location of the project	"ILD Spire Greens", Sector 37-C, Gurugram.
2.	Nature of the project	Group housing complex
3.	Project area	15.4829 acres
4.	DTCP license no.	13 of 2008 dated 31.01.2008
5.	Registered/ not registered	Registered [Only tower 2,6 and 7 are registered]
6.	HRERA registration number	60 of 2017 dated 18.08.2017

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7.	HRERA registration certificate valid up to	16.08.2018 (already expired)
8.	Unit no.	1603, 15 th Floor, Tower 7, Block no.03.
9.	Unit measuring	1355 sq. ft.
10.	Date of execution of apartment buyer agreement	11.01.2013
11.	Total sale consideration as per clause 1.1 of the apartment buyer agreement	Rs.62,86,255/- [Page 59 of complaint]
12.	Total amount paid by the complainant	Rs.54,40,081/- (As per the reminder letter dated 03.12.2015 on pg. 139 of the complaint stating Rs. 51,12,540/- as amount received + receipt dated 29.06.2016 on pg. 143 of the complaint amounting to Rs. 1,56,527/- + cheque dated 13.03.2018 on pg. 156 of the complaint amounting to Rs. 1,71,014/-)
13.	Statement of account	Not annexed
14.	Due date of delivery of possession as per clause 10.1 of apartment buyer's agreement i.e. (3 years from the date of execution of this agreement i.e. 11.01.2013 + 6 months grace period.)	11.07.2016
15.	Delay in handing over possession till date of decision	3 years 1 month 16 days
16.	Penalty As per clause 11.4 of the apartment buyer's agreement	Rs.5/- per sq. ft. of the super area of the said unit per month for the period of delay beyond 3 years or such

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		extended periods as permitted under this agreement.
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4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 11.01.2013 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 11.07.2016. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor it has paid any compensation for the delay in handing over possession of the unit as per clause 11.4 of the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date
5. Taking cognizance of the complaint, the authority issued notice on 12.04.2019 to the respondent for filing reply and for appearance. The case came up for hearing on 27.08.2019, and the reply filed by the respondent on 06.05.2019 has been perused by the authority.

FACTS OF THE COMPLAINT

6. Briefly stating the facts, the complainant has submitted that he learnt about the said project of the respondent company from various sources of advertisements somewhere in the year 2012-2013. Since he was looking for a unit which had all

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licenses and compliances cleared with the authorities, he approached a reputed real estate agent to identify a project which is recently launched. Then the agent connected the complainant with an original allottee of the said unit/flat no. 1603 being developed by the mentioned respondent. The transfer of the unit happened with mutual consent of both parties i.e. the complainant and original allottee of the said flat. He believed that the representatives of the respondent company offered attractive pictures of the company that they are a company of repute and had unique distinction with 15.4829 acres for township/residential colony/group housing having all world class amenities and facilities in the project and they also assured him that the possession of the flat with all facilities will be delivered within 36 months plus 6 months (grace period) from the date of apartment buyer's agreement. Here the first agreement of the unit was b/w the complainant and the respondent which was executed after 20% of the flat cost payment.

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7. The complainant has submitted that the original allottees named as Mrs. Swati Consul and Mr. Deepak Consul had applied for allotment of a unit in group housing complex known as "ILD Spire Greens" by an initial payment of sum of Rs. 2,00,000/- (rupees two lakh only). After the initial



payment, the original allottees paid Rs. 3,42,000/- (rupees three lakh forty two thousand only) and Rs. 5,75,496/- (rupees five lakh seventy five thousand four hundred ninety six only) in next 3 subsequent months.

8. The complainant has submitted that he entered into an agreement for earnest money receipt to buy the flat in question with the original allottees Mrs. Swati Consul and Mr. Deepak Consul. The respondent also confirmed the transfer of said unit/flat bearing No. 1603, tower No.07 to him which was originally in the name of original allottees Mrs. Swati Consul and Mr. Deepak Consul and stand transferred the amount of Rs. 11,17,496/- into the account of complainant.
9. The complainant has submitted that the respondent issued a demand letter Rs. 7,83,000/- with reference to the letter issued as on dated 24.12.2012. In this regard, he paid the same amount of Rs. 7,83,000/- on 08.04.2013 vide receipt no. A-1418 through a cheque no. 354133 of HDFC Bank Ltd. and through a DD no. 273740 of ICICI Bank Ltd. dated 08.04.2013 for both the said instruments.
10. The complainant has submitted that he entered into a tripartite agreement somewhere in March 2013 with respondent and with HDFC Bank Ltd. having its branch office at HDFC Limited, The Capital Court, of Palme Marg, Munirka,

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New Delhi-110067 for the purpose of home loan. It is pertinent to mention here that under the tripartite agreement he got sanction of the loan amount of Rs. 30,00,000/- from HDFC Bank Ltd. for purchasing the aforesaid unit in the said project of the respondent. That, HDFC Bank Ltd. and he entered into a loan agreement subject to the tripartite agreement in which terms of the loans are separate and subject to debit the borrower's loan account no. 607264417 with HDFC itself.

11. The complainant has submitted that he has booked the said flat under construction link plan and as per the condition of the CLP the respondent is entitled to raise further demand of instalments/ premiums on duly completion of certain stages. He initially trusted the words of the respondent and always paid each and every instalment on time as and when demanded by the respondent. The respondent stopped the construction work after superstructure readiness & taking almost 88% of the total payment. This was deliberate on the respondent's part as they know the finishing work needs more funds to complete the flat.

12. The complainant has submitted that the respondent was supposed to handover the flat to him till 11.07.2016 (including grace period of 6 months) but shockingly respondent failed to handover the flat even after the huge delay of 33 months,

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having the fact in their mind that they have received more than Rs. 56,99,583/- from him, which is about 88% of the total sale amount.

13. The complainant has submitted that he recently visited the site and shocked to see that the construction on the site not completed yet and only a bare basic structure is laying there on the site. This status is even after the respondent getting enrolled on RERA registration & not meeting the timelines given to RERA for project completion. Also it is pertinent to mention over here that the land on which the said project is supposed to propose for construction is in the name of M/s Jubilant Malls Pvt. Ltd. and M/s Goldman Malls Pvt. Ltd. The respondent is a developer who has reached to an understanding for the purpose of developing the said land into a residential colony/group housing of high standard. He is submitting recent photographs of project which describe the actual situation of the project.

14. The complainant has submitted that he availed home loan from HDFC Bank Ltd. but because of the huge delay in the possession, he had no option but to clear the loan amount to the bank as the bank instalments were started because of the delay on the part of the respondent and it caused extra burden

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upon him. While arranging the funds, he had to take loan from the relatives/parents.

15. The complainant has submitted that as per the apartment buyer's agreement the respondent was bound to hand over the possession of the said unit to him in 36 months plus 6 months (grace period) from the date of execution of the said apartment buyer's agreement i.e. 11.01.2013, whereas the respondent has failed to provide the same to him on time and made rosy pictures to stand and stay with the respondent. That, the project of the respondent is delayed for a period of almost 33 months which caused huge loss to him. Also because of the huge delays in possession, he had cleared all his debts of HDFC Bank Ltd. till dated 11.07.2016 before the specified period of home loan tenure.
16. The complainant has submitted that since the construction work was not carried out as per developer's commitment, he had no option but to clear the bank loan after commitment date mentioned in the agreement. Since the project was almost in raw condition till January 2016 and the representatives of developer were also not in the position to advise us the tentative time frame for delivery of the flat, therefore he had no option but to close the home loan account prematurely by arranging the funds. He paid out the home loan taken from

HDFC Bank Ltd. Gurugram due to the unnecessary delays in possession.

ISSUES TO BE DECIDED

17. The complainant has raised the following issues:-

- i. Whether the respondent has breached the apartment buyer's agreement by not delivering the possession of the apartment and there is no reasonable justification for the delay?
- ii. Whether the respondent has caused delay in providing the possession of the property?

RELIEFS SOUGHT

18. The complainant is seeking the following reliefs:

- i. Direct the respondent to hand over the possession of the unit with the immediate effect along with interest calculated as per the RERA applicable rate of interest per annum on the amount paid by complainant with respect to said unit.
- ii. Direct the respondent to withdraw the demand for any increased amount if any from the date of apartment buyer's agreement to till present day.

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REPLY BY THE RESPONDENT

19. At the outset, the respondent most respectfully submitted that its project got delayed due to reasons beyond the control of the developer. It is submitted that major reason for delay for the construction and possession of project is lack of infrastructure in these areas. The twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, the developer faced many hurdles to complete the project. For completion of road, the promoter was totally dependent upon the Govt. department/machinery and the problem was beyond the control of him. The aforementioned road has been recently constructed. It is submitted that the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21/09/2015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to this reason, the project got delayed.

20. The respondent submitted that the complainant has alleged some baseless allegations without stating as to how they are being aggrieved by the developer. That the complainant be put to the strict proof of the same. It is humbly submitted that the

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complainant has not come to this court with clean hands and has withheld crucial information and the said complaint is liable to be dismissed on this ground alone.

21. It is humbly submitted that the project got delayed due to the reasons beyond the control of the developer, thus clause 11.1 enforced. However, it is submitted that the project is 70% completed and the remaining work will be completed soon

DETERMINATION OF ISSUES

After considering the facts submitted by the complainant, and perusal of record on file, the issue wise findings of the authority are as under:

22. With respect to the **all issues** raised by the complainant, the authority is of the view that as per clause 10.1 of the apartment buyer's agreement dated 11.01.2013 for unit No. 1603, 15th floor, tower-7, block No. 03 in project "ILD Spire Greens", Sector-37C, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of the agreement i.e. 11.01.2013 + 6 months grace period which comes out to be 11.07.2016. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 54,40,081/- to the respondent against a total sale consideration of Rs. 62,86,255/-. As such, the complainant is entitled for delayed possession charges at the prescribed



rate of interest i.e. 10.45% per annum w.e.f. 11.07.2016 as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 to be read with rule 15 of the Rules ibid. till offer of possession.

FINDINGS OF THE AUTHORITY

23. 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 complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town & Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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 entertain the present complaint.

24. An amendment to the complaint was filed by the complainant along with the complaint wherein he has stated that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserve his right to seek compensation from

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the promoter for which he shall make separate application to the adjudicating officer, if required.

25. As per clause 10.1 of the apartment buyer's agreement dated 11.01.2013 for unit No. 1603, 15th floor, tower-7, block No. 03 in project "ILD Spire Greens", Sector-37C, Gurugram, possession was to be hand over to the complainant within a period of 3 years from the date of execution of the agreement i.e. 11.01.2013 + 6 months grace period which comes out to be 11.07.2016. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 54,40,081/- to the respondent against a total sale consideration of Rs. 62,86,255/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 11.07.2016 as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 to be read with rule 15 of the Rules ibid. till offer of possession.

DECISION AND DIRECTIONS OF THE AUTHORITY

26. 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 direct the respondent: -

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- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.45% per annum for every month of delay on the amount paid by the complainant.
 - 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period.
 - iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
 - v. The promoter shall not charge anything from the complainant which is not a part of the BBA.
27. Complaint stands disposed of.
28. The order is pronounced.
29. Case file be consigned to the registry

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -27.08.2019

Judgement uploaded on 10.10.2019

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