

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

Complaint no. : 1287 of 2021
First date of hearing: 22.04.2021
Date of decision : 03.08.2022

KP Singh
Address: B-4, 1st floor,
DDA staff Quarters, Rajender Nagar,
Central Delhi-110060

Complainant

Versus

1. M/s ILD Millennium Pvt. Ltd.
Regd. Office at: - B-148, F/F New Friends Colony,
New Delhi, South Delhi-110065
2. Dewan Housing Finance Corporation Limited
Address: 2nd Floor, Warden House, PM Road,
Fort, Mumbai

Respondents

CORAM:
Shri KK Khandelwal
Shri Vijay Kumar Goyal

Chairman
Member

APPEARANCE:
Shri Karan Govel
Shri Venket Rao
Pankaj Chandola

Advocate for the complainant

Advocate for the respondent

ORDER

1. The present complaint dated 21.09.2021 has been filed by the complainant/allottee under section 31 of the Real Estate

(Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"ILD Spire Greens" at sector-37 C, Gurugram
2.	Nature of the project	Residential group housing project
3.	Project area	15.4829 acres
4.	DTCP license no.	13 of 2008 dated 31.01.2008
5.	Name of license holder	M/s Jubilant Malls Pvt. Ltd. and 3 others
6.	RERA Registered/ not registered	Registered For 64621.108 sq mtrs for towers 2,6 and 7 vide no. 60 of 2017 issued on 17.08.2017 up to 16.08.2018



7.	Unit no.	1317, 13th floor, tower 02, Block no. 17 (annexure A on page no. 23 of complaint)
8.	Unit measuring	1603 sq. ft. of super area (annexure A on page no. 23 of complaint)
9.	Date of booking application	05.06.2008 (annexure- A on page no. 23 of the complaint)
10.	Date of builder buyer agreement	27.08.2010 (annexure A on page no. 21 of complaint)
11.	Date of tripartite agreement	20.09.2010 (page no. 59 of complaint)
12.	Due date of possession	31.12.2012 [as per possession clause 10.1 of the agreement] Note: - Grace period is not allowed.
13.	Possession clause	10.1 Schedule for possession of the said unit "The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said Building/said Unit by 31st December 2012 with grace period of Six month, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Allottee(s) to pay in



		time the price of the said Unit along with other charges and dues in accordance with the schedule of payments given in Annexure-C or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by all or any of the terms or conditions of this Agreement. (emphasis supplied)
14.	Total consideration	Rs 46,19,778/- [as per the agreement on page no. 24 of complaint]
15.	Total amount paid by the complainant	Rs. 38,38,083/- [as per statement of account on page no. 20 of reply]
16.	Occupation certificate	Not received
17.	Offer of possession	Not offered

B. Facts of the complaint

3. That the complainant after seeing advertisements of the respondent/builder paid a sum of Rs. 4,00,000/- as demanded on 06.06.2008 and booked a unit no. 1317 on the 13th floor, tower 02. For the balance payment the complainant applied to M/s DHFL for a housing loan.
4. That the buyer's agreement was executed between the parties on 27.08.2010. As per clause 10.1 of the agreement, the respondent/builder agreed to complete the said project and handover possession of unit by 31st December 2012. Thus, it was

- under an obligation to complete the project in question and handover possession of the unit after obtaining occupancy certificate (OC) from competent authority on or before 31st December 2012 to them.
5. That till date the respondent/builder has not received the OC from the concerned authorities. It is pertinent to mention here that the respondent/builder has taken an amount of Rs. 12,70,000/- from them. The complainant requested the respondent/builder to provide the account statement of the said unit but did not pay any heed to the said request.
 6. That the respondent/builder failed to develop the so-called project within the period of thirty-six months with grace period of 6 months.
 7. That, in addition to the default, the builder further entered into a tripartite agreement with the buyer and DHFL (an NBFC) for facilitating an arrangement of pre-emi scheme wherein the buyer was not required to pay any Emi/ interest till the date of possession. A duty is vested upon the builder to honour the same till the date of possession. However, the builder has admittedly defaulted in the same and DHFL has been pursuing the buyers to pay the amount.
 8. That the complainant tried their best to resolve the issue of the delayed possession, but the builder did not pay any heed to their requests. On the contrary it kept on asking illegal payments from them by adding delayed payment interest and other charges like maintenance etc.

9. That the complainant several times requested the respondent/builder telephonically as well as by personal visits at the office for the delivering the possession and regularization of the DHFL loan account and met its officials in this regard and completed all the requisite formalities as required. But despite that the officials of builder did not give any satisfactory reply to the complainant, and they lingered on one pretext or the other and refused to deliver the possession of the above said flat.
10. That since the respondent/builder has not delivered possession of the apartment, the complainant is suffering mental agony, pain and harassment by its act and conduct. Thus, the complainant is entitled to compensation. Furthermore, they have been constrained by the respondent builder to live in a rented accommodation and pay extra interest on their home loan due to delay.
11. That the complainant, thereafter, tried his best to reach the representatives of respondent/ builder to seek a satisfactory reply in respect of the said dwelling unit but all in vain. Hence this complaint.

C. Relief sought by the complainant:

12. The complainant has sought the following relief:
 - Direct the respondent/builder to pay the delayed possession charges.
 - Declare the default of non-payment by the respondent no. 1 under the tripartite agreement as a breach of terms and indemnify the complainant in lieu of the same.

- Declare the respondent no.1 to pay the EMI till offer of possession and restrain the respondent no. 2 from taking any coercive action against the complainant till date of actual possession.
 - Cost of litigation.
13. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent no. 1.**
14. That the project of the respondent no. 1 got delayed due to reasons beyond its control. It is submitted that major reason for delay in the construction and possession of project is lack of infrastructure in the said area. The twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, the respondent/builder faced many hurdles to complete the project. For completion of road, the respondent/builder totally dependent upon the Govt. Department/machinery and the problem was beyond its control. The aforementioned road has been recently constructed.
15. 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 submitted



- that the building plan has been changed for the benefit of the purchaser/allottees and due to this reason, the project got delayed.
16. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent/builder, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affecting the progress of the project.
 17. The demonetization and new tax law i.e., GST affected the development work of the project. In the view of the facts stated above it is submitted that the respondent no. 1 has intention to complete the project soon for which it is making every possible effort in the interest of allottees of the project.
 18. The occupation certificate has been applied for the concerned tower of the complainant and that the possession of the said unit would be offered very soon. The complainant is very much aware about the said facts and still filed the present complaint on false and vexatious grounds.

F. Jurisdiction of authority

19. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

20. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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 deal with the present complaint.

F. II Subject matter jurisdiction

21. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

22. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the objections raised by the respondent no. 1:**G.I Objection regarding force majeure conditions:**

23. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as national lockdown, shortage of labour due to covid 19 pandemic, stoppage of construction due to various orders and directions passed by hon'ble NGT, New Delhi, Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time but all the pleas advanced in this regard are devoid of merit. As per the possession clause 10.1 of the builder buyer agreement, the possession of the said unit was to be delivered by 31st December 2012.

H. Findings on the relief sought by the complainant.

- **Direct the respondent/builder to pay the delayed possession charges.**

24. There is nothing on the record to show that the respondent/builder has applied for OC or what is the status of the construction of the above-mentioned project
25. The apartment buyer's agreement was executed between the parties on 27.08.2010 and as per clause 10.1 of the agreement, the respondent/builder was liable to offer possession by 31.12.2012. Further, 6 months' grace period has also been sought by the respondent/builder for force majeure and other reasons as mentioned in clause 11.1, 11.2, 11.3 and clause 41 of the agreement

which is not allowed in the present matter. Therefore, the due date of possession comes out to be 31.12.2012.

26. A perusal of case file shows that though as per the version of the respondent builder he has applied for obtaining occupation certificate but there is no document in this regard on file. The due date for completion of project and offer of possession of the allotted unit has already expired.
27. Accordingly, the complainant is entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 9.80% p.a. for every month of delay on the amount paid by them to the respondent from due date of possession i.e., 31.12.2012 till the handing over of the possession after obtaining occupation certificate, from the competent authority or offer of possession plus 2 months, whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.
- **Declare the default of non-payment by the builder under the tripartite agreement as a breach of terms and indemnify the complainant in lieu of the same.**
28. A tripartite agreement ("TPA") dated 20.09.2010 was executed between the allottee, builder and financial institution. The complainant has alleged that as per clause 3 the builder was liable to pay the pre-EMI to the financial institution till offer of possession or 31.12.2012 whichever is earlier, and the builder has failed to offer the possession to the complainant therefore, it is obligation of

the builder to pay the pre-EMIs to the financial institution till offer of possession.

29. As per the clause 3 the builder is liable to pay the pre-EMI interest till offer of possession of the property is made to the buyer or 31st December 2012 whichever is earlier.
30. The clause 3 of the tripartite agreement is reproduced below for ready reference:

On behalf of the borrower, the builder has specifically agreed to borrower shall pay pre EMI interest on the loan amount disbursed calculated at the rate in interest as mentioned in the loan agreement .It has been mutually agreed between the parties that it will be sole responsibility of the builder to pay the pre EMI interest till the date time of offer of a peaceful possession is offered of the property is made to the buyer or 31st December 2012 whichever is earlier.

31. In the view of the authority, after the perusal of the clause 3 of the tripartite agreement it is evident that the builder was only liable to pay the pre-EMI till 31.12.2012 as it is earlier than the offer of possession. After that the liability of the builder comes to an end. In view of the same, the respondent/builder has no liability to pay pre-EMI.

- **Declare the builder to pay the EMI only in case the possession is offered and DHFL be abstained from taking any coercive action against the home buyer till the date of actual possession.**

32. In the present case, the complainant has alleged that the respondent is liable to pay the EMI till offer of possession. Clause 3 of the tripartite agreement is relevant clause.

33. The Clause 3 of the tripartite agreement is reproduced as under:



"The housing loan granted to the borrower by DHFL shall be repayable by the borrower by way of equated monthly installments (EMI) will start only on the possession is offered by the builder or 31st December, 2012 whichever is earlier."

34. However, a bare perusal of clause 3 of the TPA makes is apparent that the sole liability of the buyer for paying the EMI starts when the possession is offered by the builder or from 31st December 2012 whichever is earlier. In the view of the authority the buyer is liable to pay EMI from 31st December 2012 as it is earlier. The authority cannot go beyond the terms and conditions of the tripartite agreement.

- **Cost of litigation.**

35. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

I. Directions of the authority

36. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure

compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent builder is directed to pay interest at the prescribed rate of 9.80% p.a. for every month of delay from the due date of possession i.e., 31.12.2012 till the handing over of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
- ii. The respondent builder is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter, monthly payment of interest till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii. The complainant is also directed to pay the outstanding dues, if any.
- iv. The rate of interest chargeable from the allottee, in case of default shall be charged at the prescribed rate i.e., 9.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent builder shall not charge anything from the complainant which is not part of the builder buyer agreement.

37. Complaint stands disposed of.

38. File be consigned to registry.

V.K. - 3
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 03.08.2022



HARERA
GURUGRAM