

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

Complaint no. : 1656 of 2021
First date of hearing: 22.04.2021
Date of decision : 03.08.2022

1. Anurag Datta
2. Priyanka Datta

Address: C-19/8, 2nd Floor, Ardee City, Sector-52,
Gurugram, Haryana-122011 **Complainants**

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 complainants

Advocate for the respondent no. 1

ORDER

1. The present complaint dated 26.03.2021 has been filed by the complainants/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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
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 licensee	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.	717, 7 th floor, tower 02, block 17 (page no. 19 of complaint)
8.	Unit area admeasuring	1600 sq. ft. of super area (page no. 19 of complaint)

9.	Date of application	02.07.2008 (page no. 19 of complaint)
10.	Date of builder buyer agreement	08.08.2010 (page no. 17 of complaint)
11.	Tripartite agreement	30.08.2010 (page no. 47 of complaint)
12.	Possession clause	<p>10.1 Schedule for possession of the said unit</p> <p>"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)</p>
13.	Due date of possession	31.12.2012 [as per possession clause 10.1 of the agreement] Note: - Grace period is not allowed.
14.	Total sale consideration	Rs. 49,34,000/-

		[as per the agreement on page no. 20 of complaint]
15.	Amount paid by the complainants	Rs. 39,48,342/- [as per the statement of account on page no. 70 of complaint]
16.	Occupation certificate	Not received
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants after seeing advertisements of the respondent no. 1/builder herein, soliciting sale of their commercial units in project namely "M/s ILD Millennium Pvt. Ltd.", came into contact with the executives of the builder and booked a unit in the project.
4. That the complainant paid a sum of Rs. 5,60,934/- as demanded by the respondent builder on 02.07.2008 & 02.09.2008 respectively and booked a unit no. 0717, tower 02, in the name of the complainants. That for the balance payment to be paid to the builder the complainants had applied to M/s. DHFL for a housing loan for making the payment to the respondent/builder.
5. Subsequently, a buyer's agreement was also signed between the parties on 08.08.2010. As per clause 10(1) of the agreement, the respondent/builder agreed to complete the said project and handover possession of unit by 31.12.2012.
6. Thereafter, from time-to-time payments were made to the builder by DHFL. A tripartite agreement was also executed between the complainants, builder and DHFL for facilitating an arrangement of Pre-EMI scheme wherein the buyer was not required to pay any

EMI/interest till the date of possession. The duty to be 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 same

7. That till date the respondent/builder has not obtained the OC from the concerned authorities, and it is pertinent to mention here that the respondent/builder has taken an amount of Rs. 40,00,000/- from the complainants. That the complainants have time and again requested the respondent no. 1 to provide the account statement of the said unit but the respondent/builder did not pay any heed to the said request.
8. That since the date of booking, the complainants have been visiting the so-called proposed site, where they found that no construction is going on and there is no possibility of completion of project in the near future.
9. That the complainants, on several occasions, requested the respondent/ builder telephonically as well as personal visits at the office for the delivering the possession and regularization of the DHFL loan account and met with the officials of builder in this regard and completed all the requisite formalities as required by the respondent/builder but the officials of respondent company did not give any satisfactory reply to the complainants .
10. That the complainants are also concerned about the construction quality as when they had checked the internal walls plaster of said allotted unit and the same was not of good quality.

11. That the inability of the respondent/builder to deliver possession in accordance with provisions of the agreement is hampering the interests of the complainants and thus the present complaint was filed.

C. Relief sought by the complainants:

12. The complainants have 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 complainants 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 complainants till date of actual possession.
- Direct the builder to provide a date of 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 complainants are not entitled for refund as the project is in advance stage and allowing refund would harm the development work of the project and the interest of other allottees.
19. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of authority

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

E.1 Territorial jurisdiction

21. 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.

E. II Subject matter jurisdiction

22. 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.

23. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent no. 1:

F.I Objection regarding force majeure conditions:

3. 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. The authority is of the view that the events taking place do not have any impact on the project being developed by the promoter/builder. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainants.

- **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 08.08.2010 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 is also 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 complainants are 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 the complainants 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 respondent under the tripartite agreement as a breach of terms and indemnify the complainants in lieu of the same.**

28. A tripartite agreement ("TPA") dated 30.08.2010 was executed between the allottees, builder and financial institution. The allottees had alleged that as per clause 3 of the tripartite agreement the builder was liable to pay the pre-EMI to the financial institution till offer of

possession and the builder has failed to offer the possession to the allottees 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 the offer of possession of the property is made to the buyer.

30. The clause 3 of the tripartite agreement is reproduced below for ready reference:

The housing loan granted to the borrower by DHFL shall be repayable by the borrower by way of equated monthly instalments (EMI). The EMI will start only on the possession is offered by the builder. Till the offer of possession, the builder, on behalf of the borrower, has specifically agreed to pay pre-EMI interest on the loan amount disbursed calculated at the rate in interest as mentioned in the loan agreement. It has also been mutually agreed between the parties that it will be sole responsibility of the builder to pay pre-EMI interest till the date of offer of possession of the property is made to the borrower. It is specifically agreed by and between the parties that once the possession has been offered to the borrower, the liability of the builder to pay the pre-EMI interest shall come to an end irrespective of the delay in offer of possession of the property by the builder and thereafter any liability to pay the EMI/Pre EMI to DHFL shall be solely of the borrower alone.

31. In the view of the authority, after the perusal of the clause 3 of the Tripartite agreement it is evident that it is the sole responsibility of

the builder to pay the pre-EMI on behalf of the borrower. Therefore, the allottees are not entitled to pay pre-EMI.

- **Direct the builder to provide a date of possession.**

32. As per the contention of the builder/respondent, he has already applied for the occupation certificate. However, no document to such effect has been placed on record. Consequently, it has failed to obtain OC and offer the possession of the allotted unit to the complainants. Therefore, the respondent/ builder is directed to offer possession to the complainants after the receipt of valid occupation certificate as per section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act of 2016.

- **Cost of litigation.**

33. The complainants in the aforesaid relief are 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 allottees are 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 complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

34. 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 complainants are also directed to pay the outstanding dues, if any.
- iv. The rate of interest chargeable from the allottees, 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 allottees, 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 complainants which is not part of the builder buyer agreement.

35. Complaint stands disposed of.

36. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.08.2022

HARERA
GURUGRAM