

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

Complaint no. : 710 of 2021  
First date of hearing: 22.04.2021  
Date of decision : 03.08.2022

1. Anup Rana  
2. Meeta Rana  
**Address:** B-3A/323, Janakpuri,  
New Delhi-58

**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 and Pankaj  
Chandola  
Dr Sham Taneja

Advocate for the complainants  
Advocate for the respondent  
no. 1  
Advocate for the respondent  
no. 2

**ORDER**

1. The present complaint dated 03.02.2021 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. 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	<b>Registered</b> 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.	1217, 12th floor, tower 02 (page no. 25 of complaint)
8.	Unit measuring	1603 sq. ft. of super area (page no. 25 of complaint)
9.	Date of allotment	10.02.2009 (page no. 26 of reply)
10.	Date of builder buyer agreement	28.06.2011 (page no. 23 of complaint)
11.	Due date of possession	30.06.2013 [as per possession clause 10.1 of the agreement] Note: - Grace period is not allowed.
12.	Possession clause	<b>10.1 SCHEDULE FOR POSSESSION OF THE SAID UNIT</b> 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 <b>30th June 2013</b> 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)
13.	Total consideration	Rs 48,85,876/- [as per the agreement on page no. 26 of complaint]
14.	Total amount paid by the complainants	Rs. 44,79,188/- [as per statement of account on page no. 28 of reply]
15.	Occupation certificate	Not received
16.	Offer of possession	Not offered

### B. Facts of the complaint

- That the complainants after seeing advertisements of the respondent/builder paid a sum of Rs. 13,06,506/- as demanded on 28.06.2011 and booked a unit no. 1217 on the 12th floor. For the balance payment the complainants applied to M/s DHFL for a housing loan.
- That the buyer's agreement was executed between the parties on 28.06.2011. As per clause 10.1 of the agreement, the respondent/builder agreed to complete the said project and

handover possession of unit by 30th June 2013. 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 30th June 2013 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 a large amount from them. The complainants 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, 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.
7. That the complainants 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.

8. That the complainants 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 complainants and they lingered on one pretext or the other and refused to deliver the possession of the above said flat.
9. That since the respondent/builder has not delivered possession of the apartment, the complainants are suffering mental agony, pain and harassment by its act and conduct. Thus, the complainants are 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.
10. That the complainants, thereafter, tried their 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 complainants:**

11. 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.
12. 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.**
13. The complainants have not approached this hon'ble authority with clean hands and are trying to suppress material facts relevant to the matter.
14. That the complainants have made several visit to the office of the respondent builder to know about the whereabouts of the project titled as "ILD Spire Greens" located at Village Basai, sector 37 C, Gurugram, Haryana. That the complainants have enquired about the veracity of the subject project of respondent builder and had immense deep interest to invest in the subject project.

15. That the respondent builder being a responsible developer has issued the allotment letter in favour of complainants in regard to the unit bearing no. 1217, block-17th, floor-12th, tower-2 having admeasured super area 1603 sq. ft. thereafter apartment buyer agreement was executed between the parties on 28.06.2011.
16. That the complainants did not adhere to the payment plan which was issued during execution of the agreement. That it is submitted that they failed to make the full payment as agreed with the total sale consideration i.e., Rs. 48,85,876/-. That it is contended to note that the complainants being the habitual defaulter in terms of payment which has caused several obstructions in the schedule development of the subject project of builder.
17. That the developer has executed a tri-partite agreement among the allottees, builder, and financial institution. That the TPA was executed upon the repetitive request on the part of complainants that they are unable to bear the price of expensive allotted unit and hence engaged in request to provide loan and also to execute the TPA. That it is pertinent to note that the allegations raised by complainants in regard to the subvention scheme is not maintainable as the subvention scheme has no foundation in the agreement which was executed in between the complainants and builder on 28.06.2011.s



18. That the project of the builder 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.
19. 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.
20. 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.
- E. Reply by the respondent no. 2.**
21. That the respondent no. 2 Dewan Housing Finance Limited is a company incorporated under the Companies Act, 1956 and

- registered with the national housing bank as a housing finance company.
22. The respondent no. 2 i.e., DHFL is no way concerned with the present complaint except that it has disbursed a home loan in terms and conditions of the tripartite agreement.
23. That the respondent no. 2 has been arrayed as a party by the complainants only with a view to harass the answering respondent. The entire grouse of the complainants is against the respondent builder.
24. 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.

#### **F. Jurisdiction of authority**

25. 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**

26. 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**

27. 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.*

28. 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.

### **G. Findings on the objections raised by the respondent no. 1:**

#### **G.I Objection regarding force majeure conditions:**

29. 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 30<sup>th</sup> June 2013. 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.

#### **H. Findings on the relief sought by the complainants.**

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

30. 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.
31. Considering the above-mentioned facts, as per the possession clause 10.1, of the agreement, the respondent was liable to offer possession by 30.06.2013. Further, 6 months' grace period is also sought by the respondent 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 30.06.2013.

32. 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., 30.06.2013 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.**
- **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.**

33. The complainants have alleged that the parties entered into a tripartite agreement, wherein it was agreed that it was the

liability of the respondent no. 1/builder to pay the pre-EMI to the respondent no. 2. However, the complainants have not placed on record the alleged TPA to support his contention therefore, for the foregoing reasons, the relief claimed by the complainants is non-maintainable.

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

34. 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.**

35. 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 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 complainants are 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., 30.06.2013 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 10<sup>th</sup> 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 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 complainants which is not part of the builder buyer agreement.
37. Complaint stands disposed of.
38. File be consigned to registry.

v.1 - 5  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 03.08.2022