

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

Complaint no. : 4096 of 2021  
First date of hearing: 25.11.2021  
Date of decision : 03.08.2022

Neelam Sharma  
**Address:** H.no. 1457, sector 4,  
Gurugram, Haryana-122001

**Complainant**

**Versus**

M/s ILD Millennium Pvt. Ltd.  
**Regd. Office at:** - B-148, F/F New Friends  
Colony, New Delhi, South Delhi-110065

**Respondent**

**CORAM:**

Shri KK Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Abhay Jain Advocate for the complainant  
Shri Venket Rao  
Shri Pankaj Chandola Advocate for the respondent

**ORDER**

1. The present complaint dated 26.10.2021 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 allottee 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	<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.	0609, 6th floor, tower 2 (page no. 36 of complaint)

8.	Unit measuring	2311 sq feet. (page no. 36 of complaint)
9.	Date of booking	26.04.2008 (page no. 35 of complaint)
10.	Date of apartment buyer agreement	02.02.2016 (page no. 34 of complaint)
11.	Due date of possession	02.02.2019 [as per possession clause] Note: Grace period is not allowed.
12.	Possession clause	<p><b>10.1 POSSESSION</b></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 <b>within three years from the date of execution of this agreement, with grace period of six month</b>, unless there shall 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</p>

		or any of the terms or conditions of this Agreement.
13.	Total consideration	Rs. 66,88,446/- [as per agreement on page no. 37 of complaint]
14.	Total amount paid by the complainant	Rs. 57,10,024/- [as per statement of account on page no. 73 of complaint]
15.	Occupation certificate	Not received
16.	Offer of possession	Not offered

**B. Facts of the complaint**

3. That the original allottee was approached by the sale representatives of respondent, who made tall claims about the project 'ILD Spire Greens' as the world class project. The original allottee was impressed by their oral statements and representations and ultimately lured to pay Rs.4,00,000/- as booking amount, to the respondent.
4. That apartment buyer's agreement was executed between the original allottee and the respondent on 2 February 2016 for purchase of unit no.0609, tower no.2, floor no.6 admeasuring super area of 2311 square feet with exclusive use of the reserved parking space at the total consideration of Rs.66,88,446/-.
5. That after the signing of the apartment buyer's agreement, the complainant, Neelam Sharma bought the unit from the original

allottee, which was approved and endorsed by the respondent, ILD Millennium Private Limited on 9 March 2016. On the same day, the complainant paid Rs.5,00,000/-.

6. The date of handing over the possession of the unit as per clause 10.1 of the apartment buyer's agreement comes out to be 2 February 2019, calculated three (3) years from the date of execution of the said agreement.
7. That the complainant, in total, paid a sum of Rs.57,82,615/-, way back till 22 May 2017, as and when demanded by the respondent. Out of this amount, the respondent developer had paid service tax of Rs.1,66,881/-.
8. That the respondent raised an illegal, unlawful and fraudulent demand in the reminder letter dated 22 January 2021, before the completion of internal plaster and flooring within the unit, amounting Rs.18,67,186/- from the complainant for the allotted unit. The demanded said amount is more than the actual amount which will become due on completion of internal plaster and flooring within the Unit, according to the payment schedule.
9. That the respondent failed to timely complete the construction works but demanded Rs.18,67,186/- illegally, unlawfully and fraudulently and failed to handover the possession of the unit to the complainant till date, even after a delay of two years and around nine months.

10. That the complainant approached the respondent and pleaded for delivery of possession of her unit as per the apartment buyer's agreement on various occasions. The respondent did not reply to her letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of her unit, thereby the respondent violated section 19 of the Act, 2016. Hence complainant is filing the present complaint.

**C. Relief sought by the complainant:**

11. The complainant has sought the following relief:

- Direct the respondent to complete the development of the unit along with all facilities and amenities like water, electricity, roads, parks, club etc, immediately.
- Direct the respondent to handover the legal and rightful possession of the unit to the complainant after receiving all the required permissions and approvals from the competent authorities.
- Direct the respondent to pay interest for every month of delay in handing over the possession of the unit since 2 February 2019 to the complainant, on the amount taken from the complainant towards sale consideration and other charges for the aforesaid unit, with interest as prescribed per the Act, 2016, till the hands over the legal and rightful possession of the unit to the complainant.

- Direct the respondent to revoke/cancel/withdraw the amount of Rs 18,67,186/- imposed by the respondent illegally being charged on the unit of the complainant.
  - To charge the payments from complainant as per payment schedule.
  - Direct the respondent not to charge anything beyond the charges stipulated in the apartment buyer agreement
  - Cost of litigation expenses amount to Rs 1,00,000.
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.**
13. That the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed without any cause of action.
14. That the erstwhile allottee had keen interest in the project constructed by the respondent so herein decided to invest and booked a unit in 2008 for a total sale consideration of Rs. 66,88,449/- and paid an amount of Rs. 4,34,138.20/-.
15. That on 02.12.2016, a plot buyer agreement was executed between the erstwhile allottee and the respondent wherein the plot bearing no. D/224/172 was allotted to them in the said project of the respondent.

16. That time was essence in respect to the allottee obligation for making the respective payment and, as per the agreement so signed and acknowledged the allottee was bound to make the payment of instalment as and when demanded by the respondent.
17. That the erstwhile allottee has failed to comply with the payment schedule and considering the same respondent issued a payment reminder for an amount of Rs. 3,82,126/-.
18. That provisional allotment was issued on 02.11.2015 allotting the apartment bearing no. 0609, 6th floor, tower-2 admeasuring 2311 sq. ft. situated at sector-37C, Gurgaon.
19. That the respondent had been running behind the erstwhile allottee and then the complainant for the payment of instalment due towards the respective unit in question. That in spite being aware of the payment schedule the complainant has failed to pay the instalment on time.
20. That the project was not completed within time due to the reasons mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent.
21. That due to the impact of the Goods and Services Act, 2017 (herein referred to as 'GST') which came into force after the effect of demonetisation in the last quarter of 2016, which left long lasting effect on various real estate and development sector even in 2019.



22. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region.
23. That the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification banned construction activity in NCR during night hours from which was later on converted to complete ban.
24. That the Covid-19 pandemic has also resulted in serious challenges for the project with no available labourers, contractors etc. for the construction of the project.

#### **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 complainant at a later stage.

**G. Findings on the objections raised by the respondent:**

**G. I. Objection regarding Timely payments:**

29. The respondent has alleged that the complainant having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. The authority is of view that the respondent cannot take advantage of this objection of timely payments being himself at wrong

firstly by still not obtaining the occupation certificate and offering the possession of the unit despite being delay of 3 years, 06 months, 01 day. Therefore, the respondent itself failed to complete its contractual and statutory obligations.

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

30. The respondent-promoter raised the contention that the construction of the project was delayed due to demonetization, interim order dated 04.11.2019 passed by Hon'ble Apex Court to stop construction, notification passed by Ministry of Home Affairs on 24.03.2020 for a complete lockdown in entire country but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 02.02.2016 as per the possession clause of the agreement the possession of the said unit was to be delivered within three years from the date of execution of this agreement with grace period of 6 months. 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 complainant.**

- **Direct the respondent to complete the development of the unit along with all facilities and amenities like water, electricity, roads, parks, club etc, immediately.**

31. There is nothing on the record to show that the respondent has applied for OC or what is the status of the development of the above-mentioned project. So, in such a situation no direction can be given to the respondent to handover the possession of the subject unit, as the possession cannot be offered till the OC for the subject unit has been obtained. However, delay possession charges as ascertained by the authority shall be payable to the complainant as per provisions of the Act.

- **Direct the respondent to handover the legal and rightful possession of the unit to the complainant after receiving all the required permissions and approvals from the competent authorities.**
- **Direct the respondent to pay interest for every month of delay in handing over the possession of the unit since 2 February 2019 to the complainant, on the amount taken from the complainant towards sale consideration and other charges for the aforesaid unit, with interest as prescribed per the Act, 2016, till the hands over the legal and rightful possession of the unit to the complainant.**

32. Considering the above-mentioned facts, the authority calculated due date of possession as per clause 10.1 of

apartment buyer agreement i.e., 3 years from the date of execution of agreement, which comes out to be 02.02.2019.

33. 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 the complainant to the respondent from the due date of possession i.e., 02.02.2019 till the offer 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 the provisions of section 18(1) of the Act read with rule 15 of the rules.
34. The rate of interest chargeable from the allottee by the promoter, in default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. Therefore, interest on the delay payments from the allottee shall be charged at the prescribed rate i.e., 9.80% by promoter. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.08.2022 is 7.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.80%.

- **Direct the respondent to revoke/cancel/withdraw the amount of Rs 18,67,186/- imposed by the**

**respondent illegally being charged on the unit of the complainant.**

- **To charge the payments from complainant as per payment schedule.**

35. Both the reliefs are not pressed by the counsel for the complainant during proceedings.

- **Direct the respondent not to charge anything beyond the charges stipulated in the apartment buyer agreement.**

36. The respondent promoter is directed not to charge anything from the complainant which is not part of the builder buyer agreement.

- **Cost of litigation expenses amount to Rs 1,00,000.**

37. 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)**, has 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**

38. 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., 02.02.2019 till the offer 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 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.

39. Complaint stands disposed of.

40. 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**