

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

Complaint no. : 4181 of 2021
First date of hearing: 25.11.2021
Date of decision : 03.08.2022

1. Induvant Singh Tomar
2. Deepti Chauhan

Address: Flat no. 1203, Building no. 48,
Phase 2, NRI Complex, Sector-54,56,58,
Seawoods Nerul Navi Mumbai-400706,
Maharashtra

Complainants
Versus

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

Respondents**CORAM:**

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member****APPEARANCE:**

Shri Abhay Jain
Shri Venket Rao
Shri Pankaj Chandola

Advocate for the complainants

Advocate for the respondent

ORDER

1. The present complaint dated 02.11.2021 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	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.	0404, 4 th floor, tower 7 (page no. 46 of complaint)
8.	Unit measuring	1365 sq. ft. (page no. 46 of complaint)
9.	Date of booking	15.06.2015 (page no. 45 of complaint)
10.	Date of welcome letter	25.06.2015 (page no. 39 of complaint)
11.	Date of apartment buyer agreement	29.01.2016 (page no. 44 of complaint)
12.	Due date of possession	29.01.2018 [as per possession clause] Note: Grace period is not allowed.
13.	Possession clause	<p>10.1 POSSESSION</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 within two years from the date of execution of this agreement, with grace period of six month, 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</p>

		the part of the Allottee(s) to abide by all or any of the terms or conditions of this Agreement.
14.	Total consideration	Rs. 65,25,200/- [as per agreement on page no. 47 of complaint]
15.	Total amount paid by the complainants	Rs. 39,71,426/- [as per statement of account on page no. 88 of complaint]
16.	Occupation certificate	02.07.2021 [page no. 21 of reply]
17.	Offer of possession	03.08.2021 (page no. 85 of complaint)

B. Facts of the complaint

- That the complainants booked a unit in the project of the respondent promoter and paid an amount of Rs. 2,00,000/- as booking amount. Thereafter the respondent issued welcome letter on 25.06.2015.
- That on 29.01.2016 the apartment buyer's agreement was executed between the parties. As per the clause 10.1 of the apartment buyer's agreement the due date comes out to be 29.01.2018.
- That the respondent issued a fraudulent demand cum reminder letter dated 11 September 2019 raising an illegal and unlawful demand of outstanding payment from the

complainants. The complainants sent an email dated 16 September 2019 to the respondent stating that the demand raised by the respondent is fake and fraudulent as the payments of all previous demands have been made timely in full amount and no amount is pending for payment.

6. That the respondent issued a letter of offer of possession dated 3 August 2021 to the complainants for handing over of physical possession of the allotted unit and raised additional demand of Rs.6,77,725/- which is unjustified, illegitimate, illegal and unlawful.
7. That offer of possession dated 3 august, 2021 issued to the complainants is unjustified and illegitimate as the unit is still not habitable, reason being the basic infrastructural facilities and amenities including water supply, electricity supply, sewerage system, storm water drainage, roads, street lighting, etc., being part of internal development works which are necessary for making the unit habitable and ready for possession by the complainants, have not been developed by the respondent for the unit of the complainants till date.
8. That additional demand of Rs. 6,77,725/- raised by the respondent unethically and unlawfully includes external electrification charged, firefighting charges, GST on EEC and FFC, previous outstanding dues, interest charges due, 3 months advance cam charges, tile up-gradation charges, meter charges, H-VAT and GST.

9. That the complainants sent an email on 14.08.2021 to the respondent mentioning in detail, all wrongful, illegal, unreasonable, unjustified and fraudulent demand raised at the time of offer of possession.
10. That the complainants in total have made a payment of Rs. 40,10,279/- still the respondent failed to timely complete the basic infrastructural facilities including water supply, electricity supply, etc. Hence filing this complaint.

C. Relief sought by the complainants:

11. The complainants have 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 complainants 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 29 January 2018 to the complainants, on the amount taken from the complainants 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 complainants.

- Direct the respondent to revoke/cancel/withdraw the letter of offer of possession dated 03.08.2021 issued to complainants as unit is still not habitable, reason being the infrastructural activities including water supply, electricity supply, sewerage system, storm water drainage, roads, street lighting etc. have not been developed for the unit of the complainants. amount of Rs 18,67,186/- imposed by the respondent illegally being charged on the unit of the complainants.
 - Direct the respondent to withdraw/cancel/revoke the demand raised by the respondent on account of offer of possession dated 03.08.2021 of Rs. 34,19,053/-.
 - Direct the respondent not to charge anything beyond the charges stipulated in the apartment buyer agreement.
 - Direct the respondent to pay litigation cost of Rs. 1,00,000/- incurred by complainants.
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 complainants had interest in the project of the respondent and decided to book a unit in June 2015 for a total sale consideration of Rs. 62,52,000/-.

14. That on 29.01.2016 the apartment buyer agreement was executed between the parties.
15. That time was essence in respect to the allottees 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.
16. That since starting the respondent was committed to complete the construction of the project and has invested each and every amount so received towards the construction of the same. However, the complainants have failed to comply with the payment schedule as agreed at the time of making payment.
17. That despite of unprecedented hindrances in the project, the respondent completed the tower 7 wherein the unit of the complainants is situated and the occupation certificate for the same has been obtained on 02.07.2021.
18. 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.
19. 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.

20. 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.
21. 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.
22. 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

23. 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

24. 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

25. 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.

26. 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 Timely payments:

27. The respondent has alleged that the complainants 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, 05 day. Therefore, the respondent itself failed to complete its contractual and statutory obligations.

G.I Objection regarding force majeure conditions:

28. 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 29.01.2016 as per the possession clause of the agreement the possession of the said unit was to be delivered within two 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 complainants.

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

29. The authority is of the view that the respondent/ promoter has already obtained occupation certificate on 02.07.2021 from the competent authority after laying down all the required services prerequisites for obtaining OC. Therefore, this particular relief stands redundant. For any issues regarding the services or challenging OC shall be addressed to DTCP Haryana.

- **Direct the respondent to handover the legal and rightful possession of the unit to the complainants 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 29 January 2018 to the complainants, on the amount taken from the complainants 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 complainants.**

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

apartment buyer agreement i.e., 2 years from the date of execution of agreement, which comes out to be 29.01.2018.

31. 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 the due date of possession i.e., 29.01.2018 till the obtaining of occupation certificate plus two months as per section 19(10) of the Act.
32. 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 letter of offer of possession dated 03.08.2021 issued to complainants as unit is still not habitable, reason being the infrastructural activities including water supply, electricity supply, sewerage system,**

storm water drainage, roads, street lighting etc. have not been developed for the unit of the complainants. amount of Rs 18,67,186/- imposed by the respondent illegally being charged on the unit of the complainants.

- Direct the respondent to withdraw/cancel/revoke the demand raised by the respondent on account of offer of possession dated 03.08.2021 of Rs. 34,19,053/-.
- Direct the respondent not to charge anything beyond the charges stipulated in the apartment buyer agreement.

33. The respondent promoter has charged such charges as interest charges, 3 months advance CAM charges, tile upgradation charges, meter charges, HVAT, GST. The authority is of the view that the respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.

- Direct the respondent to pay litigation cost of Rs. 1,00,000/- incurred by complainants.

34. 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

35. 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., 29.01.2018 till the obtaining of occupation certificate plus two months 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 is directed to pay arrears of interest accrued within 90 days from the date of order.
- 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.

36. Complaint stands disposed of.

37. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 03.08.2022