

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

Complaint no.	1098 of 2020
Date of filing complaint	04.03.2020
First date of hearing	07.04.2020
Date of decision	14.09.2022

Gautam Sarpal R/O: 3311P, 3 rd Floor, Sector 57, Gurugram-122011	Complainant
Versus	
M/s. ILD Millenium Pvt. Ltd. Regd. office: B-418, F/F, New Friends Colony, New Delhi-110065	Respondent

CORAM:	
Dr K.K. Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Gaurav Bhardwaj (Advocate)	Complainant
Sh. Pankaj Chandola (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Grand Centra", Sector 37C, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	15.48 acres
4.	DTCP license no.	13 of 2008 dated 31.01.2008
5.	Name of licensee	Jubliant Malls Pvt. Ltd and 3 others
6.	RERA Registered/ not registered	62 of 2017 dated 17.08.2017 valid upto 17.02.2020
7.	Application for Booking	01.02.2015 (Page 15 of complaint)
7.	Unit no.	905, 9 th floor, tower/block GCA (Page 42 of complaint)
8.	Unit area admeasuring (super area)	1300 sq. ft. (Page 42 of complaint)

9.	Date of apartment buyer agreement	28.08.2015 (Page 28 of complaint)
10.	Possession clause	10.1 Possession of Apartment The Developer shall endeavor to complete the construction of the said Apartment within 48 (forty-eight) months from the date of execution of this Agreement and further extension/grace period of 6(six) months.
11.	Due date of possession	28.02.2020 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
12.	Total sale consideration	Rs. 71,08,100/- (As per BBA at page 46 of complaint)
13.	Amount paid by the complainants	Rs. 22,18,934/- including H-VAT amount of Rs. 62,586/- (As alleged by complainant in CAO on pg. 008 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

B. Facts of the complaint:

3. That the complainant is an allottee within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. That somewhere around 2014, the respondent advertised about its new project namely "Grand Centra" (**hereinafter called as 'the project'**) located at Sector-37C, District Gurugram. The respondent painted a rosy picture of the project in

their advertisement making tall claims and representing that the project is located in the heart of Gurugram and aims at providing luxury residences inspired by new age architecture.

4. That believing the false assurances and misleading representations of the respondent, the complainant booked an apartment in the said project of the respondent company by submitting an application for provisional allotment on 01.02.2015, followed by a payment of Rs. 4,00,000/- towards the booking of said apartment vide instrument no. 000022 towards booking on 10.02.2015. Subsequently, the respondent issued a welcome letter in favour of the complainant on 17.02.2015.
5. That thereafter, the complainant kept making payment as and when demanded by the respondent, despite the respondent refraining from executing an agreement with them. By 12.08.2015, the complainant had made a payment of Rs.21,56,348/- as against a total sales consideration of Rs. 71,08,100/-, making it to 30% of the total amount without executing the agreement. The said receipt of more than 10% of the total sale consideration without first entering into a written agreement is a clear violation of Section 13 of the Real Estate (Regulation and Development) Act, 2016.
6. That thereafter, the complainant started pursuing the respondent to execute the agreement. Pursuant to repetitive requests by the complainant, finally, on 28.08.2015, an apartment buyer agreement was executed between the parties wherein unit bearing no. 0905 on 9th floor, in tower no. 'GCA', admeasuring super area of 1300 sq. ft. was allotted to the complainant. As



per clause 10.1 of the said agreement dated 28.08.2015, the respondent undertook to complete construction and handover possession within 48 months from the date of execution of agreement + 6 months grace period, i.e., by 28.02.2020.

7. That thereafter, vide letter dated 11.03.2016, the complainant received an HVAT Demand Letter thereby demanding payment on account of HVAT for the unit in question for financial year 2011-2012. To this, the complainant sent an e-mail to the respondent asking as to why he should pay HVAT charges for FY 2011-2012 when the unit was booked in 2015. The complainant vehemently opposed levying of charges for time prior to the booking in question. To this, vide e-mail dated 26.03.2016, the respondent replied that HVAT constitutes 3% of the price of the unit and that has to be paid by the complainant. Having no other option, the complainant made a payment of Rs. 62,586/- towards HVAT on 18.04.2016.
8. That thereafter, in February, 2017, the complainant visited the unit site only to find out that despite lapse of almost 2 years from the date of booking and despite depositing a huge amount, no considerable progress had been made at the project site. Upon this, the complainant contacted the respondent and objected to payment demands when the project was still at its inception stage only, but to no avail as the respondent simply gave false assurance that the project will be delivered timely. To this, the complainant took a serious note and approached the representatives of the respondent and explained that the respondent is not making good efforts to develop the project and

there is every apprehension he will not be able to handover the physical possession of the plot by the scheduled date. On this, respondent replied that they will complete the project and will hand over the plot strictly according to schedule.

9. That subsequently, receiving no update upon the construction status from the respondent, the complainant telephonically contacted the respondent's representatives in order to inquire about the construction status, to which they replied by asserting that construction has started and project has now been registered under RERA. Later, vide e-mail dated 07.01.2018, the Complainant inquired from the respondent about construction status and RERA registration status, to which the respondent vide e-mail dated 11.01.2018 replied that RERA registration has been done and falsely assured that basement casting work is going on and the complainant will be given construction update soon.
10. That thereafter, the complainant vide e-mails dated 05.05.2018, 08.05.2018, 09.05.2018, 03.10.2018, 15.10.2018, 24.11.2018, 09.03.2019, 30.03.2019 kept inquiring about the construction status and as to why the construction work has not been resumed, but to no avail.
11. That it is pertinent to mention here that throughout the period from booking till execution of agreement and even after that, the complainant showed utmost faith in the respondent company and despite few lapses on the latter's part, he kept making payment as and when demanded. However, to the utter shock of the complainant, on 01.04.2019, when he visited the

project site, he was stunned to see that there is not even an iota of progress in terms of construction from 2016 till said date. This left complainant completely aghast and shocked. The complainant immediately rushed to the respondent's office in order to inquire about the pitiable condition at the project site, but again to no avail as the representatives of the respondent company refrained from giving a concrete answer to complainant's queries.

12. That following his visit on 01.04.2019, vide e-mail dated 03.04.2019, the complainant shared site pictures with the respondent and confronted them over no construction progress at the project site, but no reply was given by the respondent. This was followed by a series of visits and e-mails dated 11.06.2019, 29.05.2019, 19.06.2019, 11.07.2019, 10.08.2019, 20.10.2019, 22.12.2019, but all in vain as the respondent did not reply to a single e-mail. This conduct of the respondent has left the complainant devastated.
13. That the complainant has been severely exploited at the hands of the builder/respondent. The aforesaid e-mails/letters written and sent by the complainant clearly portray the amount of harassment and mental agony the complainant has gone through from the date of booking till date.
14. That the pictures of the site showing absolutely no construction work itself shows that the respondent played fraud upon the complainant from day one and befooled him. It is pertinent to mention here that the validity of RERA registration for the project in question has also expired on 17.02.2020.

15. That it is pertinent to mention here that while under clause 6.54 of the apartment buyer agreement dated 28.08.2015, upon delayed payment, the allottee is liable to pay charges to the tune of 18%, upon delay in handing over possession, the respondent builder is liable to pay merely Rs. 5/- per sq. ft of the tentative super area of the apartment. This clearly shows that the agreement is totally unfair, arbitrary and one-sided.
16. That the present complaint has been filed under **Section 31** read with **Section 18(1)** in order to seek refund of the principal amount of Rs. 21,56,348/- paid by the complainant along with interest at the rate prescribed as per RERA, 2016 and HRERA Rules, 2017 from the date of receipt of payment till the date of refund, along with compensation for the mental stress and torture as well as financial and physical loss suffered by the complainants due to the fraudulent acts of the respondent company. The complainant has not only been left empty handed but has also been deprived of the benefit of escalation of price of the said unit had they been handed over possession.

C. Relief sought by the complainant:

17. The complainant has sought following relief(s):
- i) Direct the respondent company to refund an amount of Rs. 21,56,348/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund.

- ii) Direct the respondent to refund of amount of Rs. 62,586/- paid on account of H-VAT charges for the unit in question.

D. Reply by respondent:

The respondent by way of written reply made following submissions

18. That at the outset each and every averments, statement, allegation, contention of the complainant which is contrary and inconsistent with the reply submitted by the respondent no. 1 is hereby denied and no averment, statement, allegation, contention of the complainant shall deem to be admitted save those specifically admitted to be true and correct. It was respectfully submitted that the same be treated as a specific denial of the complaint.
19. That the complainant had entered into an apartment buyer agreement (herein after referred to as the "Agreement") with the respondent, for booking of the flat no. 905, tower no. GCA, in group housing project "Grand Centra" (hereinafter referred to as the Project'), Sector- 37 (C), Gurgaon, Haryana on 28th August, 2015.
20. It was submitted that the project of the respondent got delayed due to reasons beyond control of the respondent. The major reason for delay for the construction and possession of project was lack of infrastructure in these areas. The twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, the respondent faces many hurdles to complete the project. For completion of road, the respondent is totally dependent upon the Govt. Department/machinery and the problem is beyond the control of the respondent. It was further submitted 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, 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 affected the progress of the project. The demonetization and new tax law i.e., GST, affected the development work of the project.

21. That the complainant has intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement. That the complainant had agreed while signing of the agreement that the respondent will not be responsible or liable for not performing any of its obligations under the agreement, upon occurrence of any force majeure event. It is further submitted that the complainant agreed in clause 18 of the agreement that, if the period of force majeure conditions continue upto 6 (six) months, the respondent shall be entitled at its sole discretion to suspend and/or alter, amend or vary the terms and condition of the agreement including delay and or/extent the time for the delivery/handing over the possession of the apartment.
22. With respect to H-VAT, it was specifically denied that the respondent had demanded payment on account of the same for the unit for financial year 2011-2012. It was submitted that the respondent had raised HVAT demand for the financial year 2015-2016. The amount demanded was 3% of the amount, which was already paid by the respondent with respect to the space booked by him. It was submitted that the H VAT was applicable and payable in terms of Haryana Value Added Tax Act, 2003 and Haryana Value added Tax Rules, 2003 as amended as on date vide Haryana Value Added Tax (Amendment) Rules, 2015 notified vide Notification No.19/ST

1/H.A.6/2003/S.60/2015 dated 23rd July, 2015 and made applicable with effect from 17h May, 2010. The respondent did not raise any arbitrary demand. The H-VAT demanded was as per rules and regulation of the Government. It was further submitted that the respondent vide letter dated 24.07.2015 informed the complainant that H-VAT will be applicable on the sale purchase of the apartment allotted to the complainant, in accordance with the Act and Rules of the Government.

23. That the complainant has alleged some baseless allegations without stating as to how they are being aggrieved by the respondent. That the complainant be put to the strict proof of the same. It is humbly submitted that the complainant has not come this court with clean hands and has withheld crucial information and the said complaint is liable to be dismissed on this ground alone.
24. All other averments were denied in toto.
25. Copies of all relevant documents have been filed and placed on record. Their authenticity id not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

26. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

27. 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

28. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.

29. 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 respondents:

F.I Objections regarding delay due to force majeure:

30. The respondent-promoter raised the contention that the construction of the project was delayed due to conditions beyond the control of the respondent such as non-construction of sector road by Government, 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 along with demonetization and new tax law i.e., GST, affected the development work of the project. First of all, the orders of High Court in the year 2012 does not have any impact on the project as the same was passed even before the Apartment Buyer's Agreement was executed between the parties. Further, the orders banning construction and extraction of ground water were imposed for a very short duration and thus, a delay of such a long duration cannot be justified by the same. The plea regarding delay due to GST and demonetisation is also devoid of merit and thus, all the pleas stand rejected. 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 wrong.

G. Entitlement of complainant for refund:

G.I Direct the respondent company to refund an amount of Rs. 21,56,348/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund

31. That the complainants booked a unit in the project of the respondent named as "Grand Centra" situated at sector 37C, Gurgaon, Haryana for a total sale consideration of Rs. 71,08,100/-. The complainants paid an amount of Rs.

22,18,934/- including H-VAT. The BBA was executed between the parties on 28.08.2015 and the due date of possession comes out to be 28.02.2020. However, neither OC has been obtained nor possession has been offered to the complainant as of now.

32. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
33. The due date of possession as per agreement for sale as mentioned in the table above is 28.02.2020 and the date of filing of complaint is 04.03.2020 and there is delay of 04 days on the date of filing of the complaint.
34. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

“... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

35. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P.***

and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 and observed that:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

36. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

37. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for

adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

38. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 21,56,384/- with interest at the rate of 10.00% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).

F.II. Direct the respondent to refund of amount of Rs. 62,586/- paid on account of H-VAT charges for the unit in question

39. The promoter is also directed to refund the H-VAT amount if the same is not adjusted by the tax authority or returnable from the tax authority

G. Directions of the Authority:

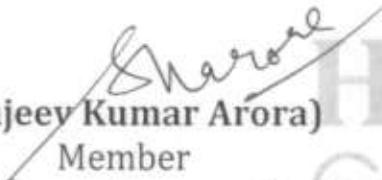
40. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to refund the amount i.e., Rs. 21,56,384/- received by him from the respondent/allottee along with interest at the rate of 10.00% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.

- ii) The respondent-promoter is directed to to refund the H-VAT amount if the same is not adjusted by the tax authority or returnable from the tax authority.
- iii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iv) The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

41. Complaint stands disposed of.

42. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022