

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

**Complaint no. : 812 of 2018**  
**First date of hearing: 15.02.2019**  
**Date of decision : 17.05.2019**

1. Mr. Shobhit Mehrotra  
2. Mrs. Shweta Mehrotra  
Both R/o. House no. 1150, 1<sup>st</sup> floor, Sector 15  
part-2, Gurugram, Haryana

**Complainants**

Versus

M/s ILD Millennium Pvt. Ltd.,  
ILD Trade Centre, 9<sup>th</sup> floor, Sector 47,  
Sohna Road, Gurugram, Haryana

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Abhay Jain Advocate for complainants  
None for the respondent Advocate for respondent

**ORDER**

1. A complaint dated 13.09.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Shobhit Mehrotra and Mrs. Shweta Mehrotra, against the promoter M/s. ILD Millennium Pvt. Ltd. on account of violation of clause

10.1 of the apartment buyer's agreement executed dated 16.12.2010 for unit described below for not giving possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 16.12.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the present case are as under: -

1.	Name and location of the project	ILD Spire Green, Sector 37-C, Gurugram.
2.	Project area	15.4829 acres
3.	Nature of the real estate project	Group housing colony
4.	DTCP license no.	13 of 2008
5.	RERA registered/ not registered.	<b>Not registered [Only tower 2,6 and 7 are registered vide registration no. 60 of 2017]</b>
6.	<b>Occupation certificate granted on</b>	<b>19.12.2017</b>

7.	<b>Date of offer of possession letter</b>	20.12.2017
8.	Apartment/unit no.	1002, 10 <sup>th</sup> floor in tower 5, block 2.
9.	Unit admeasuring (super area) as per the agreement dated 16.12.2010	1,090 sq. ft.  [later super area was increased to 1230 sq. ft. vide letter of offer of possession dated 20.12.2017 without informing or consent of the allottee]
10.	Date of execution of apartment buyer's agreement	16.12.2010
11.	Total sale consideration of unit measuring 1,090 sq. ft. as per financial statement of account dated 19.12.2017 सत्यमेव जयते	Rs. 35,10,050/-  [for increased area of 1230 sq. ft., the total sale consideration is Rs.39,22,350/-]
12.	Total amount paid by the complainant as per final statements of account dated 19.12.2019	Rs. 29,32,040/-
13.	Due date for delivery of possession as per clause 10.1 of the said apartment buyer's agreement: Developer contemplates to complete the construction of the said unit by 30.06.2013 + grace period of 6 months	30.12.2013
14.	Delay in handing over possession from the due date i.e. 30.12.2013 till the offer of possession i.e. 20.12.2017	3 years 11 months and 20 days
15.	Penalty clause as per clause 11.4 of apartment buyer's agreement dated 16.12.2010	Rs.5/- per sq. ft. of the super area of the said unit per month for the period of delay beyond 3 years or such extended

		periods as permitted under this agreement.
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4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainants and the respondent. An apartment buyer's agreement dated 16.12.2010 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 30.12.2013 and the possession was offered to the complainants on 20.12.2017. The respondent has failed to give interest for the period he delayed the possession of the said unit as in terms of the said agreement. Therefore, the promoter has not fulfilled their committed liability.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 15.02.2019, 11.04.2019, 26.04.2019 and 17.05.2019. The reply filed on behalf of the respondent on 15.02.2019 has been perused.

**Facts of the case:**

6. The complainants submitted that they have preferred the complaint under sections 11(4)(a), 12, 18, 19, 31, 34(F), 36, 37 and any other applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.
7. The complainants submitted that grievance of the complainants relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regard to apartment no-1002, floor-10, tower-5, admeasuring 1090 sq. ft. in the project called 'ILD Spire Greens' in Sector 37C, District Gurugram, Haryana.
8. The complainants submitted that the respondent is carrying out business as builder, promoter and colonizer and is inter alia engaged in developments and construction activities under licences from the State of Haryana and its statutory authorities. The company, ILD Millennium Pvt. Ltd. has mentioned in its 'apartment buyer's agreement' that "M/s Jubilant Malls Pvt. Ltd. and M/s Goldman Malls Pvt. Ltd., (hereinafter referred to as the "owners") presently own and

possess the land admeasuring 15.4828 acres situated at Sector-37C, Gurugram, Haryana and the Director, Town and Country Planning, Government of Haryana, Chandigarh vide license bearing no. 13 of 2008 have granted permission for setting up a residential colony/group housing to be known as “ILD Spire Greens” on the said land and based on the understandings between land owning companies and the company has inter alia full authority and power to develop the said complex, market the same and collect monies”. The project consists of seven residential towers with commercial shops, EWS flats, community centre, club, parks etc.

9. The complainants submitted that on the basis of this license, the company ILD Millennium Pvt. Ltd. had collected a huge amount from gullible, naive, and young buyers from 2008 to 2014 and promised the buyers to handover the possession of their apartment on 30.06.2013. After a delay of four years and six months, now the company ILD Millennium Pvt. Ltd. is offering possession to the buyers but with the increase of super area from 1090 sq. ft. to 1230 sq. ft., around 13% increase and also demanding more than 24% extra cost of the

apartment from the complainants. Thereby, complainants are now being forced to pay for the super area of 1230 sq. ft. instead of 1090 sq. ft. and more than 24% extra cost of the apartment.

10. The complainants submitted that the genesis of the present complaint lies due to gross indifference, refusal, failure of the various obligations on the part of the respondent. Firstly by enticing various customers including the complainants to spend their hard earned money in the purchase of a residential apartment in the said project known as 'ILD Spire Greens' in Sector-37C, Gurugram and later on getting apartment buyer's agreement signed by the allottees who are not offered to rectify denounce/delete/modify the terms and conditions of the said apartment buyer's agreement despite knowing fully-well that the said agreement was a one sided agreement and there was no fair play and transparency observed and followed by the respondent. It is submitted that even before signing the said apartment buyer's agreement, the allottees had already paid a substantial amount based on their



application in 2010 for which they applied for allotment of an apartment in the said residential complex.

11. The complainants submitted that the allottees were approached by the representatives of the company. The allottees were invited to the sale office and were lavishly entertained and promises were made to them that the project would be completed by June 2013, including parking, horticulture, parks, club, gym and other common areas. The allottees were impressed by their statements and oral representations and ultimately lured to pay Rs.2,00,000/- as booking amount of the said apartment in 2010. At the time of booking application form it was committed by the respondent via clause 10 of booking application form, that the possession of the said unit shall be delivered by the company to the original allottees within three years of date of application.
12. The complainants submitted that they bought the apartment in re-sale from the previous original allottees. A NOC (no objection certificate) was issued by the respondent to certify that the respondent has received Rs.27,52,640/- as on 22.11.2014 from the allottees and that the tower-5 is already



reached up to external plaster, thereafter assuring the complainants that the apartment would be completed soon.

13. The complainants submitted that in the apartment buyer's agreement, the respondent has fraudulently and illegally charged from the complainants such charges separately which ought to be inclusive in basic sale price such as the parking charges, specification charges, club membership charges, preferential location charges, etc and violates the basic nature of agreement between the parties.
14. The complainants submitted that the respondent has taken a loan from Punjab National Bank by submitting their complete project as collateral, wherein the complainants have been allotted apartment. It is breach of trust and unfair trade practice as how the respondent could sell an already mortgaged property without informing the complainants.
15. The complainants submitted that the respondent is offering possession of the apartment without completing the common area facilities meant for the complainants including the club, nursery school, community centre, shopping plaza, swimming pool, kids splash pool, steam and sauna, billiards room,

gymnasium, organic café, party lawn, tennis court, basketball court, plantation, solid waste and sewage treatment plant, amphitheatre etc. The respondent has received the occupation certificate for tower-5 fraudulently since the common area facilities have still not been completed as presented and showcased by the respondent.

16. The complainants submitted that they do not intend to withdraw from the project. As per section 18(1) proviso, the promoters are obligated to pay the complainants interest at the prescribed rate for every month of delay till the handing over the possession. The respondent/promoter has not fulfilled his obligations. The complainants reserve their right to seek compensation from the promoter for which they shall make a separate application to the adjudicating officer, in case if it is required.
17. The complainants submitted that they left with no alternative, they contacted the office of District Town Planner, (Planning) at Sector 14, Gurugram to redress their grievances against the respondent in regard to delay in delivery of apartments even after taking ninety percent of payments (90%) and increase of

super area from 1090 sq. ft. to 1230 sq. ft. The District Town Planner also failed to provide any information to the complainants and directed the complainants to approach RERA to redress their grievances.

18. The complainants submitted that as per the Town and Country Planning department, the said project, whose owner is M/s Jubilant Malls Pvt. Ltd. and others have revised building plans of group housing colony area measuring 15.4829 acres out of the total group housing scheme measuring 21.1804 acres (license no. 13 of 2008 dated 31.1.2008, license no. 96 of 2010 dated 3.11.2010 and license no. 118 of 2011 dated 26.12.2011) in Sector 37C, Gurugram Manesar Urban Complex being developed by M/s Jubilant Malls Pvt. Ltd. and others. The Town and Country Planning Department, Government of Haryana has issued various licenses to four parties. The complainants are still not aware about the agreement/ memorandum of understanding (MOU) amongst these four license holders for developing the said project. Despite approaching time and again to the respondent, the complainants are still not aware under which license and on

which part of the land their tower falls. The respondent has taken multiple licences from the concerned authorities fraudulently for different projects on the same said land, confusing the complainants completely.

19. The complainants submitted that it is more shocking and beyond imagination that the respondent sent a letter of offer of possession dated 23.09.2017 fraudulently to extort money from the naive and gullible complainants despite having no occupation certificate (OC) from the concerned authorities. The respondent mislead and cheated a number of buyers of tower-5 by using fraud, illegal, unlawful and bogus letter, sent by the respondent to the complainants and all other buyers of tower-5 of ILD Spire Greens, Sector 37C, Gurugram. The respondent has got the occupation certificate from the concerned authorities on 19.12.2017.
20. The complainants submitted that as per the apartment buyer's agreement, the total cost of apartment was mentioned as per the super area of 1090 sq. ft., but now the super area has been increased to 1230 sq. ft., thereby increasing the area by 13%, without stating any reasons. However, all of a sudden, in

December 2017 the cost of the apartment was increased to 24% without assigning any justified reasons and causes for such escalation, thereby creating extra unjustified and unlawful burden on the complainants. The respondent has demanded electrical electrification charges (EEC), fire fighting charges (FFC), specification charges, electricity metre charges, tile up-gradation charges, gas connection charges, maintenance charges, utility charges, Interest free maintenance security charges illegally, unlawfully from the complainants. Such huge increase of cost of apartment is illegal, unjust and thus constitutes unfair trade practice.

**Issues to be decided:**

- i. As per statement of the counsel of the complainants recorded in open court during proceedings dated 17.05.2019, the sole issue remains whether the respondent has violated the terms and conditions of the said agreement and the complainants are entitled to get interest for every month of delay in handing over the possession of the said unit?

**Reliefs sought:**

21. The complainants are seeking the following reliefs:

- i. Direct the respondent to withdraw/cancel/waive off the enhanced amount of the apartment which is around 24% increase in the cost of the apartment, as it was increased by the respondent illegally, unlawfully and fraudulently.
- ii. Direct the respondent to immediately hand over the possession of the unit.
- iii. Direct the respondent to refund with interest all such amounts to the complainants which the respondent has surreptitiously charged and collected for specification charges, preferential location charges (PLC), parking space charges, club membership charges and interest free maintenance security charges, etc. from the complainants.
- iv. Direct the respondent to complete the construction of common area infrastructural amenities like club, community centre, shopping plaza, swimming pool, kids splash pool, steam and sauna, billiards room, gymnasium, organic café, party lawn, tennis court,

basketball court etc. for the complainants and other buyers of tower-5.

**Reply on behalf of the respondent**

22. The respondent submitted that the hon'ble authority lacks the jurisdiction to decide the present matter. It is humbly submitted that the project namely ILD Spire Greens does not come under the category of "*on Going Project*" as defined under the Act *ibid*. The respondent applied for the occupation certificate on 16.05.2017 and obtained occupation certificate on 19.12.2017. Therefore, the aforesaid project is exempted from the requirement of registration under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "Act") and the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "Rules").
23. The hon'ble authority does not have the jurisdiction to try and decide the present matter as it was mutually agreed between the complainants and respondent under apartment buyer's agreement to settle all or any dispute through arbitration.



**Clause 52** of the apartment buyer's agreement dated 16.12.2010 clearly provides that

*“All or any disputes out of or touching upon or in relation to the terms of this Agreement including interpretation and validity of any of the terms and respective rights and obligation of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration”.*

24. The respondent submitted that the complainants have voluntarily with their free will and consent booked a 2 bedroom apartment in the respondent's project for total consideration of Rs. 32,81,290/- and made a payment of Rs. 2,00,000/- towards booking amount. It is further submitted that the complainants entered into apartment buyer's agreement with the respondent on 16.12.2010 and agreed to all the terms and conditions of the agreement.

25. The respondent submitted that it had adopted general marketing strategies to launch and promote its project by advertisement through print media, electronic media, website etc. It is denied that the respondent made any fraudulent misrepresentations, incorrect and false statements in the brochure in order to lure the prospective customers. It is

submitted that the complainants have purchased the apartment from the 3<sup>rd</sup> person in the market and not directly from the respondent.

26. The respondent submitted that the project of the respondent got delayed due to reasons beyond control of the respondent.

It is submitted that major reason for delay for the construction and possession of project is lack of infrastructure in the area. The twenty four meter sector road was not completed on time. Due to non-construction of the sector road, the respondent faced many hurdles to complete the project. For completion of road, the respondent is totally dependent upon the Government department and the problem is beyond the control of the respondent. The road has been recently constructed.

27. It is submitted 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 further submitted that the building plan has been changed for the

benefit of the purchaser/allottee and due to this reason, the project got delayed.

28. The respondent submitted that the complainants were well aware about the fact at the time of booking that the area of flat was tentative and subject to change in future, the sale consideration of the unit/ apartment was also subject to change based on change of area of the unit at the time of possession. It is submitted that the area of the unit was changed as per the agreement duly signed by the complainants and complainants were well aware about the fact that the area allotted to them is tentative and final area of the unit shall be confirmed after construction of the unit. Clause 1.6 of the agreement clearly mentions that

*“the Super area stated in this Agreement is tentative and is subject to change till the construction of the said building is complete. The final super area of the said Unit shall be Confirmed by the developer only after the construction of the said building is complete and occupation certificate is granted by the Competent Authority(s).”*

29. It is pertinent to mention here that according to the clause 9 of the apartment buyers agreement the allotted super area was tentative for calculating the sale price and subject to change till offer of possession or grant of O.C.

30. It is further submitted that time limit to complete the construction of the unit given as per **clause 10.1** of the agreement is 30.06.2013 along with a grace period of six months, and the prescribed time to complete the construction of the unit is subject to terms and conditions mentioned in clause no. 11.1, 11.2, 11.3 and 41. It is submitted that the delay in completion of the project was caused due to reasons beyond control of the respondent. It is relevant to mention here that an amount of Rs. 12,79,056/- is still pending against sale consideration. It is further submitted that the EDC and IDC were charged from the respondent as per the agreement duly signed and agreed by the complainants.
31. The respondent denied that the respondent has illegally charged from the complainant for PLC, club membership, parking charge etc. It is submitted that the basic cost of the unit/apartment is only the cost of the apartment and charges for other amenities such as preferential location charges, parking charges, specification charges, club membership etc. are exclusive of the basic sale price and the complainants were fully aware about this fact when they booked the unit and

entered into the agreement and these details are clearly mentioned the agreement. It is submitted that the demands were raised as per the payment plan at particular stage of construction.

32. The respondent submitted that the complainants are not entitle to interest of delayed possession as the delay was caused due the reasons beyond control of the respondent. It is further submitted that the respondent has offered the possession of the unit way back vide letter dated 20.12.2017 and directed the complainants to clear the due against the total sale consideration of the unit. The respondent had enclosed a copy of account statement showing due to be payable by the complainants. However, complainants have failed to complete the formalities to take over the possession of the unit.

#### **Determination of issues**

After considering the facts submitted by the complainants, and perusal of record on file, the findings of the authority on sole issue is as under:

33. With respect to **sole issue**, the authority came across that as per clause 10.1 of apartment buyer's agreement, the

possession of the said apartment was to be given by 30.06.2013 + grace period of 6 months. Grace period of 6 month is given to the respondent due to exigencies beyond the control of the respondent. The clause regarding the possession of the said unit is reproduced below:

*“10.1: Schedule for possession of the said unit  
The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said unit by 30.06.2013+ grace period of 6 months...”*

Accordingly, the due date of possession was 30.12.2013. The respondent received occupation certificate on 19.12.2017 and thereafter offered the possession of the said apartment to the complainants on 20.12.2017. Therefore, the possession has been delayed by 3 years 11 months and 20 days till the offer of possession. Thereby violating the terms of the said agreement. As the promoter has failed to fulfil its obligation under section 11(4)(a) of the Act *ibid*, the respondent is liable to pay prescribed interest for the period it delayed in giving possession. Thus, the complainants are entitled for interest for the period it delayed in offering possession at the prescribed rate of 10.65% p.a. under the Act *ibid*. Delay charges will

accrue from the due date of possession i.e. 30.12.2013 till offer of possession i.e 20.12.2017.

### **Findings of the authority**

34. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

35. 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. 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.

36. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter. The complainants requested that necessary directions be issued by the authority under section



37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.

37. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

38. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015*, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the

territory of India and accordingly, the authority is bound by the aforesaid view.

39. A statement has been made at bar by the counsel for the respondent that the moot point w.r.t litigation is handing over possession of the unit to the complainants. Complainants have already paid an amount of Rs.29,32,040/- against a total sale consideration of Rs.35,10,050/-. Counsel for the complainants has stated at bar that all other sundry issues involved in the litigation are being withdrawn in the interest of the complainants. Counsel for the respondent has stated that the respondent has already offered them possession vide letter dated 20.12.2017 a copy of which is placed on record. In view of the letter of offer of possession issued to the complainants and occupation certificate 19.12.2017 received by the respondent, a copy of the same is also placed on record, in order to bury the hatchet inter-se the parties, it is ordered that the complainants may take possession of the unit within 30 days. As such, complainants are entitled for delayed possession charges w.e.f. 30.12.2013 till the date of offer of possession letter dated 20.12.2017.

40. It has been pointed out by counsel for the respondent that the complainants have demanded refund on account of PLC, parking space charges, club charges, IFMS, waiver of area increase which are matter of adjudication and are being dropped per se the statement of the counsel for the complainants. For delayed payments on the part of the complainants, the respondent is also entitled to charge interest at the same rate of 10.65% which is being awarded to the complainants for getting late delivery of the unit.
41. Accordingly, the respondent is directed to hand over the possession to the complainants within a period of 30 days.

**Decision and directions of the authority**

42. Keeping in view the facts and circumstances of the case and perusal of record, following directions are issued to the respondent –

- i. The respondent is directed to give interest to the complainants at the prescribed rate of 10.65% on the amount deposited by the complainants for every month of delay from the due date of possession i.e. 30.12.2013 till offer of possession i.e. 20.12.2017 within 90 days of this order.

- ii. The respondent is directed to hand over the possession to the complainants within a period of 30 days.
  - iii. For delayed payments on the part of the complainants, the respondent is also entitled to charge interest at the same rate of 10.65% which is being awarded to the complainants for getting late delivery of the unit.
43. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.
44. The order is pronounced.
45. Case file be consigned to the registry.

**(Samir Kumar)**

Member

**(Subhash Chander Kush)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:17.05.2019

Judgement Uploaded on 31.05.2019