

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

<b>Complaint no.</b>	:	<b>3228 of 2019</b>
<b>Date of filing complaint</b>	:	<b>08.08.2019</b>
<b>First date of hearing</b>	:	<b>03.12.2019</b>
<b>Date of decision</b>	:	<b>02.08.2022</b>

1.	Sh. Ankit Gupta S/o Sh. Shamsher Kumar Gupta Smt. Anita Gupta W/o Sh. Ankit Gupta	<b>Complainants</b>
2.	<b>Both R/o:</b> House no. 977, Ground Floor, N-Block, Mayfield Garden, Sector-51, Gurugram- 122018	
Versus		
	ALM Infotech City Private Limited <b>Regd. office:</b> B-418, New Friends Colony, New Delhi -110065	<b>Respondent</b>

<b>CORAM:</b>		
Dr. K.K. Khandelwal		<b>Chairman</b>
Shri Vijay Kumar Goyal		<b>Member</b>

<b>APPEARANCE:</b>		
Sh. Amit Dwivedi (Advocate)		Complainants
Sh. Pankaj Chandola (Advocate)		Respondent

**ORDER**

- 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 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.n.	Particulars	Details
1.	Name of the project	"ILD Grand", Sector-37C, Gurgaon
2.	Nature of project	Group housing project
3.	<b>RERA registered/not registered</b>	Registered vide registration no. 386 of 2017 dated 18.12.2017
	Validity status	17.09.2019
	Licensed area	41223.953 sqm.
4.	<b>DTPC License no.</b>	96 of 2010 dated 03.11.2010
	Validity status	02.11.2025
	Licensed area	21.1804 acres
	Name of licensee	M/s Jubilant Malls Pvt. Ltd.
5.	Application dated	04.08.2016 [As per page no. 03 of ABA of complaint]
6.	Allotment letter dated	12.05.2018

7.	Unit no.	Unit no. 9B on 9th floor of tower B2 (type- 3BR) [As per page no. 03 of ABA of complaint]
8.	Unit area admeasuring	1820 sq. ft. [Super area] [As per page no. 03 of ABA of complaint]
9.	Date of apartment buyer agreement	24.01.2018
10.	Possession clause	<p><b>Clause 7(i) of apartment buyer's agreement</b></p> <p><i>The company assures to handover the possession of the unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place on 30<sup>th</sup> Sept. 2018 unless there is delay or failure due to force majeure events government policies, guidelines or decisions. If, the completion of the project id delayed due to the force majeure events then the allottees agrees that the company shall be entitled to the extension of time for delivery of possession to the unit for residential usage.</i></p>
11.	Due date of possession	30.09.2018 [As per clause 7(i) of agreement to sale dated 24.01.2018 ]
12.	Payment plan	Subvention scheme
13.	Total sale consideration	Rs. 81,98,700/-

		[As per statement of account dated 30.07.2019]
14.	Amount paid by the complainants	Rs. 63,37,064/- [As per statement of account dated 30.07.2019]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint**

3. That the complainants booked a flat in the project of the respondent and paid booking amount Rs. 856765/- vide cheque no. 033254, 033255 & 33271 dated 28.6.2017, 17.07.2017 & 17.01.2018 respectively drawn on ICICI bank. Vide allotment letter dated 12.05.2018, they were allotted unit bearing no. 9B in tower- Vision(B2) in for an agreed price at the rate of Rs. 3,700/ per sq. ft. along with Rs. 3,00,000/- against utility charges, Rs 1,00,000/ as club membership, interest free maintenance charges at the rate of Rs. 50/- per sq. ft. along with other charges as mentioned in application form dated 28.06.2017.
4. That at the time of execution of said application form, it was agreed and promised by the respondent that there shall be no change, no amendment, no modification in layout and area of the said apartment.
5. That the respondent assured them that he would issue the builder buyer agreement at the earliest. The complainants time and again requested it to execute buyer's agreement as promised, but it neglected the request made

by them and deliberately & intentionally delayed its execution. The builder buyer agreement was finally executed on 24.01.2018.

6. That at the time of execution of the buyers' agreement, the respondent misusing its dominant position, coerced and pressurised them to sign arbitrary, illegal and unilateral terms of said agreement. When the complainants object to those arbitrary terms and condition of the said agreement and refused to sign the same, the respondent threatened to forfeit the amount already paid by them as sale consideration in respect of the said apartment. They were left with no other choice and found themselves helpless and under duress signed the said agreement.
7. That the respondent has illegally charged an amount Rs. 1,00,000/- as preferential location charges (PLC) at the rate Rs. 50/- per sq. ft. without giving enough or logical explanation for the same (three side open and road facing) and refused to entertain the concerns of the complainants.
8. That as per the clause 6(i) of the said agreement dated 24.01.2018 (*sic: clause 7(i)*), the respondent agreed and promised to complete the construction of the said apartment and deliver the same by September, 2018. However, the respondent has breached the terms of said agreement and failed to fulfil its obligations conferred upon it and has not delivered the possession of subject unit till date.
9. That they have paid the entire sale consideration to the respondent for the said apartment. As per the ledger statement, they have already paid Rs.

63,37,064 towards total sales consideration as and when demanded by the respondent.

10. That the complainants approached the respondent and its officers for inquiring the status of delivery of possession, but none bothered to provide any satisfactory answer to them about the possession and completion of said apartment. The complainants thereafter kept running from pillar to post asking for delivery of their unit but could not succeed as the construction of said apartment and the project was nowhere near to completion.
11. That the complainants thereafter tried their level best to reach the representative of the respondent to seek a satisfactory reply but all in vain. They also informed the respondent about financial hardship of paying monthly interest of Rs. 38,510/- per month accompanied by rental expense at the rate of Rs. 25,000/- per month, due to delay in getting possession of said apartment. They requested to the respondent to deliver the apartment as early as possible citing the extreme financial and mental pressure they were going through. But it never cared to listen to their grievances and left them with the sufferings and pain. They were constrained to pay the aforesaid rental amount solely due to the deficiency in service and negligence on the part of the respondent in delivering the said apartment within the timelines as agreed in the buyer's agreement. The complainants have suffered the monetary loss just because of the

unfair trade practices adopted by the respondent in the business with respect to deliver the apartment.

12. That the complainants have undergone mental harassments due to negligence on the part of the respondent and are facing financial burden and hardship from their limited income source and thus, are entitled for damages and compensation for the monetary loss and harassment suffered.

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

13. The complainants has sought following relief(s):
- i. Direct to the respondent to pay an amount paid by the complainants as per sale consideration of the said apartment along with future and pendente lite compounding interest @18% per annum from the date of payment till its final payment.
  - ii. Direct the respondent to pay the complainants for delay of project as per rules.
  - iii. The amount of penalty to be levied to the respondent and to be paid to the complainants.
  - iv. Direct the respondent to make payment of rental expense of Rs. 24000/- and loan interest of Rs. 38,510/- per month as complainants are paying both loan EMI and house rent.

v. Direct the respondent to handover the physical possession.

14. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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**

15. The respondent has contested the complaint on the following grounds.

- i. That in pursuant to application made by the complainants, the respondent on its own motion issued allotment on 12.05.2018 and executed the builder buyer agreement on 24.01.2018.
- ii. That the complainants filed the instant complaint with an intention to earn illegal profits and to harass the respondent. The respondent has charged the PLC as per the terms of the builder buyer agreement duly agreed upon by them. They did not raise the same issue at the time of execution of the agreement and agreed with such terms and conditions.
- iii. That they voluntarily signed the said agreement with free consent and now after a long period are raising baseless allegation with malicious intention to harass the respondent.
- iv. That the said project got delayed due to the reasons beyond the control of the respondent. However, the construction of the unit of the complainants is at advanced stage and same would be handed over to them soon. The respondent is making every possible effort to handover the unit in time. It has always acted for the interest of the allottees at



large. However, due to the unforeseen circumstances, the project got delayed. But now the development work is in full swing and the unit of the complainants will be delivered soon.

16. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

17. 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**

18. 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.*

19. So, in view of the provisions of the Act of 2016 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 relief sought by the complainants**

**Relief sought by the complainants:**

**F.I** Direct to the respondent to pay amount paid by the complainants as per sale consideration of the said apartment along with future and pendent lite compounding interest @18% per annum from the date of payment till its final payment.

**F.II** Direct the respondent to pay the complainants for delay of project as per rules.

**F.III** The amount of penalty to be levied to the respondent and to be paid to the complainants

20. The above-mentioned reliefs no. 1, 2 and 3, as sought by the complainants are being taken together as the findings in one relief would definitely affect the result of the other relief and the same being interconnected.
21. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottees does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

22. Clause 7(i) of apartment buyer's agreement dated 24.01.2018 provides for handing over of possession and is reproduced below:

***"Clause 7(i).***

*The company assures to handover the possession of the unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place on 30th Sept. 2018 unless there is delay or failure due to force majeure events government policies, guidelines or decisions. If, the completion of the project id delayed due to the force majeure events then the allottees agrees that the company shall be entitled to the extension of time for delivery of possession to the unit for residential usage.."*

23. The authority has gone through the possession clause and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying

period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession. As per such clause, the respondent-builder proposes to handover the possession of the allotted unit by 30.09.2018.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottees does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

25. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable

and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

26. 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., 02.08.2022 is @ 7.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.80%.
27. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottees, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default.*
- (ii) *the interest payable by the promoter to the allottees shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"*

28. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.80% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
29. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of

the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7(i) of apartment buyer's agreement executed between the parties on 24.01.2018, the possession of the subject apartment was to be delivered by 30.09.2018.

30. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has yet not obtained by the respondent- builder. The respondent shall offer the possession of the subject unit to the complainants after obtaining occupation certificate. So, it can be said that the complainants would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. from the due date of possession i.e., 30.09.2018 till actual handing over of possession or offer of possession plus two months, whichever is earlier.
31. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 24.01.2018 to hand over the possession within the stipulated period. Accordingly, the non-

compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.09.2018 till the date of actual handing over of possession or till offer of possession plus 2 months, whichever is earlier; at the prescribed rate i.e., 9.80 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**F.IV Direct the respondent to make payment of rental expense of Rs. 24000/- and Loan Interest of Rs. 38,510/- per month as complainants are paying both loan EMI and house rent.**

32. The complainants are seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*, held that an allottees are 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 may approach the adjudicating officer for seeking the relief of compensation

**F.V Direct the respondent to handover the physical possession.**

33. The respondent cannot offer the possession of the subject unit before obtaining occupation certificate. There is nothing on record to show that the occupation certificate has been obtained by the respondent from the concerned authority. Therefore, the respondent is directed to offer the

possession of allotted unit after obtaining occupation certificate from the concerned authority.

**F.VI An interest of Rs. 38,510/- is paid as interest on said loan. Direct the respondent to pay interest as per agreement**

34. The complainants submitted that the subject unit was booked under subvention scheme. But neither the complainants nor the respondent has placed any document on record in this regard. An agreement is an important document explaining the rights and obligations of parties entered into and is binding on the parties. Both are under a contractual obligation to discharge their liabilities conferred upon them by any such agreement. Therefore, the complainants or respondent, are directed to pay the EMI of loan as per the terms and conditions of the said agreement.

**G. 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 shall pay interest at the prescribed rate i.e. 9.80% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e.; 30.09.2018 till the date of actual handing over of possession or offer of possession plus 2 months after obtaining occupation certificate, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 30.09.2018 till date of this order shall be paid by the promoter to the allottees within a period of





- 90 days from date of this order and interest for every month of delay shall be payable by the promoter to the allottees before 10th day of each subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - v. Both the parties are directed to pay the EMI of loan as per the terms and conditions of the concerned loan agreement.
  - vi. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
36. Complaint stands disposed of.
37. File be consigned to registry.

v.i-   
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 02.08.2022**