

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

<b>Complaint no.</b>	<b>1038 of 2020</b>
<b>Date of filing complaint</b>	<b>11.03.2020</b>
<b>First date of hearing</b>	<b>07.04.2020</b>
<b>Date of decision</b>	<b>14.09.2022</b>

1. Nikunj Rishi, S/o Shri. Kamlesh Chand 2. Nidhi Sharma, W/o Shri. Nikunj Rishi  <b>Both R/O:</b> Near PWD Office, V.P.O. Dehra, Dist. Kangra, Himachal Pradesh-177101	<b>Complainants</b>
Versus	
M/s. ILD Millenium Pvt. Ltd.  <b>Regd. office:</b> B-418, F/F, New Friends Colony, New Delhi-110065	<b>Respondent</b>

<b>CORAM:</b>	
Dr K.K. Khandelwal	<b>Chairman</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Sahil Solanki (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. No.	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.	Unit no.	105, 14 <sup>th</sup> floor, tower/block GCB (Page 60 of complaint)
8.	Unit area admeasuring (super area)	1300 sq. ft. (Page 60 of complaint)
9.	Date of apartment buyer agreement	25.05.2016 (inadvertently mentioned as 25.05.2015 in proceedings dated

		14.09.2022 and the same stands corrected by this order) (Page 46 of complaint)
10.	Possession clause	<b>10.1 Possession of Apartment</b> The Developer shall endeavor to complete the construction of the said Apartment within <b>36 (thirty-six) months from the date of execution of this Agreement and further extension/grace period of 6(six) months.</b>
11.	Due date of possession	25.11.2019 (inadvertently mentioned as 25.11.2018 in proceedings dated 14.09.2022 and the same stands corrected by this order) (Calculated as 36 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
12.	Total sale consideration	Rs. 65,00,000/- (As per BBA at page 63 of complaint)
13.	Amount paid by the complainants	Rs. 19,82,230/- (As alleged by complainant on page 9 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

### B. Facts of the complaint:

3. In the year 2016, the complainants being lured by the respondent, decided to book a unit in the above detailed project being developed by the

respondent by paying an initial booking amount of Rs. 2,00,000/- vide cheque bearing no. 671464.

4. The complainants thereafter received a welcome letter from the respondent company dated 18.01.2016.
5. Thereafter, the respondent between 20.01.2016 to 11.05.2016, demanded various instalments from the complainants which were duly paid by the complainant. During this period, the complainant requested for a copy of builder buyer agreement repeatedly however the same was not supplied.
6. The complainant has till dated paid an amount of Rs. 19,82,230/- to the respondent.
7. The complainant was only provided a copy of builder buyer agreement four months after the booking of the unit i.e., on 25.05.2016. Through the BBA, the complainant was allotted apartment no. 105, 1<sup>st</sup> floor, tower B having approximate super area of 1300 sq. ft. with one parking slot for total sale consideration of Rs. 65,00,000/-
8. That the complainant, in apartment buyer agreement as well as orally had represented and committed that time was of essence of the contract and being a builder of great repute, the respondent would ensure that the said project is complete within a period of 42 months from the date of signing of agreement.

9. That the complainant received a MIS report of the project dated 06.08.2016 from the respondent stating that ground floor slab has been completed on 06.08.2016.
10. That after the due date of possession had expired i.e., 25.12.2019, the complainants decided to visit the site and to their utter shock of the complainants the project had not even come out from the ground in the last four years. The complainants have been unable to get any positive response from the respondent even after multiple intimations through emails.
11. The complainant, seeing no sense of commitment from the respondent, was forced to send a legal notice dated 30.10.2019 to the respondent for refund of amount but to no avail.
12. That the complainant is left with no option but to approach the Authority due to the behaviour of the respondent and deficiency in services that were to be provided by the respondent.

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

13. The complainants have sought following relief(s):
  - i. Direct the respondents to refund the total amount paid to them amounting to Rs. 19,82,230/- along with interest as prescribed rate.

**D. Reply by respondents:**

The respondents by way of written reply made following submissions

14. That at the outset each and every averment, statement, allegation, contention of the complainant which is contrary and inconsistent with the reply submitted by the respondent is hereby denied and no averment, statement, allegation, contention of the complainants shall deem to be admitted save those specifically admitted to be true and correct. It is respectfully submitted that the same be treated as a specific denial of the complaint. The respondent is a leading real estate company aiming to provide state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.
15. It was submitted that the project of the respondent got delayed due to reasons beyond control of the respondent. It was submitted that major reason for delay for the construction and possession of Project is lack of infrastructure in this area. 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 totally dependent upon the Govt. department/machinery and the problem is beyond the control of the Respondent. It is 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.

16. That the complainants have intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement. That it is brought to the knowledge of the Ld. Authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of the intention of the complainant. The present complaint is devoid of merit and thus liable to be dismissed.
17. That the complainants have alleged some baseless allegations without stating as to how they are being aggrieved by the respondent. That the complainants be put to the strict proof of the same. It is humbly submitted that the complainants have 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.
18. That the present complaint is an abuse on the process of law and on this sole ground alone, the present complaint is liable to be dismissed.
19. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story, hence, the present

complaint filed by the complainants deserves to be dismissed with heavy costs.

20. That the present complaint is filed with the oblique motive of harassing the respondent company and to extort illegitimate money while making absolutely false and baseless allegations against the Respondent.
21. 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.

**E. Jurisdiction of the authority:**

22. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

23. 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**



24. 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.*

25. 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 respondent:**

**F.1 Objection regarding force majeure conditions:**

26. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances 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 demonetization and new tax law i.e., GST. The plea of the respondent regarding various orders of the NGT, High Court and Supreme Court but all the pleas advanced in this regard are devoid of merit. First of all the possession of the unit in question was to be offered by 25.11.2018 and the orders by the Hon'ble High Court were passed in 2012 and hence, the same cannot be said to impact the construction of the project in any way. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder adversely. Other pleas like demonetisation and enforcement of GST are also devoid of merit. 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 the complainants for refund:**

**G.I Direct the respondent to refund the entire amount along with interest at the prescribed rate.**

27. 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. 65,00,000/-. The complainants paid an amount of Rs. 19,82,230/-. The BBA was executed between the parties on 25.05.2015 and the due date of possession comes out to be 25.11.2018. However, neither OC has been obtained nor possession has been offered to the complainant as of now.

28. The respondent has detailed certain circumstances discussed earlier responsible for delay in completing the project but the same has been dealt with by the authority. The complainants filed the present complainant seeking refund of the amount deposited with the respondents besides interest at the prescribed rate. Thus, keeping in view the fact that the allottees- complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on his failure 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. The due date of possession as per agreement for sale as mentioned in the table above is 25.11.2019 and the date of filing of complaint is 11.03.2020 and there is delay of 3 months 15 days (inadvertently mentioned as 1 year 3 months 15 days in the proceedings dated 14.09.2022) on the date of filing of the complaint.

29. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents-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 they have 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....."*

30. 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. (2021-2022(1)RCR(Civil),357)* 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. it was observed

*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*

31. 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 allottees, as the allottees wish 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.

32. 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.
33. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 19,82,230/- 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*.

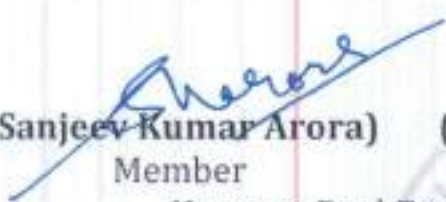
**H. Directions of the Authority:**


34. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondents /promoters are directed to refund the amount i.e., **Rs. 19,82,230/-** received by them from the complainants 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) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
  - iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount

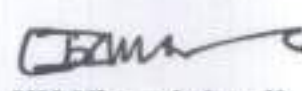
along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

35. Complaint stands disposed of.

36. 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**

**HARERA**  
**GURUGRAM**