BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**3351 of 2020**
Date of filing complaint	**14.10.2020**
First date of hearing	**21.01.2021**
Date of decision	**14.09.2022**

	Chandan Shrivastava **R/O**: House no. 59, Godawari Estate, Pilibhit, Uttar Pradesh-209801	**Complainant**
	Versus	
	1. M/s. ILD Millenium Pvt. Ltd. **Regd. office:** B-418, F/F, New Friends Colony, New Delhi-110065 2. HDFC Limited **Regd. Office:** Commercial Shop no. #27, SCF, sector-14, Urban Estate, Gurgaon	**Respondents**

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 no. 1

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.	Unit no.	GCB-1406, 13th floor, tower/block GCB (Page 23 of complaint)
8.	Unit area admeasuring (super area)	1300 sq. ft. (Page 23 of complaint)

9.	Date of apartment buyer agreement	27.11.2017 (Page 21 of complaint)
10.	Possession clause	**7(i) Schedule for possession of the said Unit** The Company agrees and understands that timely delivery of possession of the Unit to the Allottee and the Common Areas to the association of allottees or the Authority, as the case may be, as provided under the Real Estate Act is the essence of the Agreement. The Company assures to hand over possession of the Unit along with ready and complete Common Areas with all specifications, amenities and facilities of the Project in place on **28 February 2020**, unless there is delay or failure due to Force Majeure events, Court orders, Government policy/ guidelines or decisions. If, the completion of the Project is delayed due to the Force Majeure events then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Unit for residential usage. The Allottee agrees and confirms that, in the event it becomes impossible for the Company to implement the Project due to Force Majeure conditions, then this allotment shall stand terminated and the Company shall refund to the Allottee the entire amount received by the Company from the allotment within 90 days from that date.
11.	Due date of possession	28.02.2020 (Page 37 of complaint)
12.	Total sale consideration	Rs. 58,25,300/- (Page 29 of complaint)

13.	Amount paid by the complainants	Rs. 6,34,167/- (As alleged by complainant in CAO) Rs. 15,35,020 paid by HDFC
14.	Payment Plan	Subvention Scheme
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 2015-16, the respondent advertised about its new project namely "ILD GRAND CENTRA" (**hereinafter called as 'the project'**) located in Sector-37C, Gurugram. The said respondent painted a rosy picture of the project in their advertisement making tall claims. 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 paying an amount of Rs. 2,00,000/- vide instrument no. 281789 on 19.09.2017 and Rs. 4,34,164/- vide instrument no. 281794 on 01.11.2017 towards booking against the total consideration amounting to Rs. 58,25,300/-.

4. That thereafter, the complainant started pursuing the respondent to execute the agreement. Pursuant to repetitive requests by the complainant, finally, on 27.11.2017, an apartment buyer agreement was

executed between the parties wherein unit bearing no. GCB-1406, admeasuring super area 1300 sq. ft. in tower no. GCB, 13th Floor in Grand Centra, Sector-37 C, Gurugram. As per clause 7(i) of the said agreement dated 27.11.2017, the respondent undertook to complete construction and handover possession by 28.02.2020.

5. That the complainant at the time of purchase of the said unit requested the respondent for loan facility upon which the respondent arranged a call from the HDFC limited, i.e. respondent no.2 bank for home loan. Subsequently, the bank official approached the complainant and assured him to provide loan amounting to Rs. 54 lacs under subvention scheme of the respondent. A tripartite agreement was also executed between the complainant, respondent no. 1 and 2. It is important to mention here that while the unit in question is located in the project 'Grand Centra', while in tripartite agreement, the project is mentioned as 'ILD Greens'. The Complainant has never been informed about any change in the project name.

6. That the total sale consideration of the unit in question is Rs. 58,25,300/- and the payment plan agreed between the parties was construction linked payment plan wherein the complainant opted for subvention scheme. The complainant as per the demand from the respondent no. 1 paid an amount of Rs. 6,34,167/- and an amount of Rs. 15,35,201/- was also disbursed by the respondent no. 2 despite knowing the fact that no construction is going on at the project site.

7. That thereafter, in February, 2019, the complainant visited the unit site only to find out that despite depositing a huge amount, no considerable progress had been made at the project site. Upon this, the complainant contacted the respondent no.1 and objected to payment demands when the project was still at its inception stage only, but the said 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 no.1 and explained that the said respondent is not making good efforts to develop the project and he will not be able to handover the physical possession of the plot by the scheduled date. On this, respondent no.1 replied that they will complete the project and will hand over the plot strictly according to schedule.

8. That subsequently, on receiving no update upon the construction status from the respondent no.1, the complainant telephonically contacted the respondent no.1'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.

9. That on 01.02.2020, when the complainant visited the project site, she was shocked to see that there is no progress in terms of construction from 2017 till said date. This left complainant completely shocked. The complainant immediately rushed to the respondent's office in order to inquire about the pitiable condition at the project site, but the

representatives of the respondent no.1 company refrained from giving a concrete answer to complainant's queries.

10. That the project is nowhere nearing completion, and the due date has already elapsed. Keeping in view the current circumstances, there is a very remote possibility of the project being completed in next 2-3 years. That on 17.06.2020, the complainant wrote an e-mail to respondent no.2 highlighting his plight and severe exploitation by the respondent no.1. He further conveyed that he is not entitled to pay the pre-EMI and the burden for paying the same rests upon respondent no.1. Further, it was pointed out that the respondent no.2 cleared the demand letters of the respondent no.1 and disbursed payment without adhering to construction linked payment plan. To this, vide e-mail dated 22.06.2020, the respondent no. 2 simply snubbed the genuine request of the complainant, rather said that the complainant is liable to pay pre-EMI irrespective of the project condition or construction status.

11. That the complainant has been severely exploited by the builder/respondent no.1. The current status of the project clearly portrays the amount of harassment and mental agony the complainant has gone through right from the date of booking till date. 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. 6,34,167/- 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 complainant due to the fraudulent acts of the respondent no.1 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:

12. The complainant has sought following relief(s):

i) Direct the respondent company to refund an amount of Rs. 6,34,167/- 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 no. 2 to recover the loan amount from the respondent no. 1 and issue NOC to the complainant regarding no liability of theirs towards the respondent no. 2.

D. Reply by respondent:

The respondent no. 1 by way of written reply made following submissions

13. 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 submitted that the same be treated as a specific denial of

the complaint. the respondent no. 1 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.

14. That the land upon which the respondent no. 1 has been engaged in developing the project titled "Grand Centra" belongs to M/s Jubiliant Malls Private Limited and M/s Goldman Malls Private Limited ("Owners'). Therefore, the land having Khasra no. 742/2, 743, 745/2, 469/2 min, 468/2, 746 min. 746 min. 742 1/2, and 745/1 totally admeasuring area 15.4829 acres (62657.0733 square metres) situated at Village Basai, Sector-37C, Gurugram, Haryana. It is pertinent to note that the owners and promoter have entered into a collaboration development joint development agreement dated 12.03.2008, 17.03.2008. 23.07.2008 for developing of the project carried out by respondent no. 1.

15. It was also submitted that the specification of the project is in accordance with the building plans, approved and subsequently sanctioned from the Director General, Town and Country Planning, Haryana (DGTCP) vide memo no. ZP-370 AD(RA) 2014/16 dated 16.06.2014. That the DGTCP, Haryana has granted the license no. 13 of 2008 dated 31.01.2008 to respondent no. 1 to develop the project. That it was submitted that the project being developed by the respondent no. 1 has been registered under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act'] and having registered no. HRERA

(reg.)536/2017/315. It is also pertinent to note that the project being developed by the respondent no. 1 has got the environmental clearance vide certificate no. SELAA/HR/2013/707 dated 06.09 2013, approval of NOC from the Airport Authority of India (AAI) vide no. AAL/NOC/2009/180/1688-1690 dated 25.08.2010. The project of the respondent no. i got the fire fighting scheme approval vide memo no. DFS/F A/2014/91/48312 dated 10.10.2014.

16. That there has been material concealment of the facts on behalf of the complainant. That the complainant had made detailed and elaborate enquiries with regard to the project and capacity/competency and ability of the respondent no. 1 to undertake the conceptualization, promotion, construction, development and implementation of the project and after being completely satisfied and agreeing to the payment schedule had proceeded to book a residential unit in the project for a total price of Rs. 58,25,300/- (Rupees Fifty Eight Lacs Twenty Five Thousand Three Hundred only). It is pertinent to note that after the detailed enquiry on the part of the complainant, applied for a residential unit in the project being developed by the respondent no. 1 vide application no. GC-084 dated 05.09.2017. That the respondent no 1 had issued the provisional allotment letter dated 26.09.2017 vide Ref ID: GC-084 in favour of the complainant and allotted flat no. GCB-1706, admeasuring super area 1300 sq ft. tower no.-GCB, floor no. sixteenth in Grand Centra, Sector 37 (C), Gurgaon under the subvention scheme. It is submitted that after the

careful perusal of the terms and conditions of agreement for sale (hereinafter referred to as "Agreement') by the complainant and after being fully satisfied, the agreement was executed on 27.11.2017, between the complainant and the respondent no. 1.

17. That it is pertinent to note that the complainant has taken a home loan from HDFC Pvt. Ltd and thereby entered into a tri-partite agreement on 11.12.2018. Whereas, the complainant had made a payment of Rs. 6,34,167/- up to 01.11.2017 and an amount of Rs. 15,35,201/- (Rupees Fifteen Lacs Thirty Five Thousand Two Hundred One only) through HDFC Bank Ltd on 27.12.2017 been received to respondent no. 1. Therefore, the complainant till date made total payment of Rs 21,69,368 (Rupees Twenty One Lacs Sixty Nine Thousand Three Hundred Sixty Eight only) against the total sale consideration of Rs. 58,25,300/- (Rupees Fifty Eight Lacs Twenty Five Thousand Three Hundred only). Therefore, it is pertinent to note that the complainant so far made 37% of the total sale consideration amount which is very low and quite hard for respondent no. 1 to handover the possession to the complainant within time bounded period i.e., 28.02.2020 as agreed under the agreement. That it was submitted that the complainant has failed to comply with the schedule of payments which was issued by respondent no. 1 during booking period i.e., 19.09.2017. Whereas, non-complying with the schedule of payments also violates the clause 5(ii) of the agreement which was voluntarily signed by the complainant during the

execution of the agreement on 27.11. 2017. Clause 5(ii) of the Agreement is reproduced for ready reference:

"5. TIME IS ESSENCE

(1) The Allottee understands that time is of the essence with respect to the Allottee(s) obligations to perform or observe all the obligations of the Allottee under this Agreement and are to pay the Total Price along with other payments such as applicable stamp dun registration fee and other charges stipulated under this Agreement to be paid on or before due date or as and when demanded by the Company as the case may be"

18. It was submitted that the project of the respondent no. 1 got delayed due to reasons beyond control of the respondent no. 1. It was submitted that major reason for delay for the construction and possession of project is due to force majeure conditions and 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 no. 1 faced many hurdles to complete the project. For completion of road, the respondent no. 1 totally dependent upon the govt department/machinery and the problem is beyond the control of the respondent no. 1. 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 no. 1. The demonetization and new tax law i.e., GST. affected the development work

of the project. Thereby it is pertinent to mention that respondent was not liable if any delay causes due to force majeure conditions or any government order or policy as mentioned under clause 7 (1) of the agreement. Clause 7 (1) of the agreement is reproduced for ready reference:

> *"7. POSSESSION OF THE UNIT FOR RESIDENTIAL USAGE:*
>
> *(1) Schedule for possession of the said Unit: The Company assures to hand over possession of the Unit along with ready and complete Common Areas with all specifications, amenities and facilities of the Project in place on 28th February 2020, unless there is delay or failure due to Force Majeure events, Court orders, Government policy guidelines or decisions....."*

19. That the complainant has intentionally concealed material facts and filed present with the sole purpose of avoiding the agreed terms of the agreement. That it was brought to the knowledge of the Authority that the complainant 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. 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.

20. 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 no. 1 are nothing but an afterthought and a concocted story. Hence, the present complaint filed by the complainant deserves to be dismissed with heavy costs. That the present complaint is filed with the oblique motive of harassing the respondent no. 1 and to extort illegitimate money while making absolutely false and baseless allegations against the respondent no. 1.

21. All averments were denied in toto.

22. 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:

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

E. I Territorial jurisdiction

24. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the

project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

25. 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.*

26. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Entitlement of the complainants for refund:

F.I Direct the respondent company to refund an amount of Rs. 6,34,167/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund.

27. That the complainant 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. 58,25,300/-. The complainants paid an amount of Rs. 6,34,167/-. The BBA was executed between the parties on 27.11.2017 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.

28. 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.

29. 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 14.10.2020 and there is delay of almost 8 months on the date of filing of the complaint.

30. 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....."

31. 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

32. 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.

33. 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.

34. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 6,34,167/- 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 no. 2 to recover loan amount from respondent no. 1 and issue NOC to the complainant regarding no liability of theirs towards respondent no. 2

35. The promoter is also directed to settle the bank account where the HDFC has paid Rs. 15,35,020/- on behalf of the complainant to the respondent under the subvention scheme. This amount is also paid on behalf of the complainant either the bank liability be discharged by the complainant and if bank liability is discharged by the complainant, then the same is payable to the complainant.

G. Directions of the Authority:

36. Hence, the authority hereby passes this order and issue the following directions under section37 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 complainant/promoter is directed to refund the amount i.e., **Rs.** 6,34,167/- 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) To respondent-promoter is directed to pay an amount of Rs. 15,35,020/- to the respondent no. 2 who had paid the same on behalf of complainant under subvention scheme. This amount is also paid on behalf of the complainant either the bank liability be discharged by the complainant and if bank liability is discharged by the complainant, then the same is payable to the complainant.

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.

37. Complaint stands disposed of.

38. 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