

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

Complaint no. : 241 of 2020
First date of hearing: 12.02.2020
Date of decision : 16.11.2022

Digvijay Singh Rathore
Address: H.no. 23, Block-C, 1st Floor,
Vipul World, Sector-48, Gurugram-122001

Complainant

Versus

M/s ILD Millennium Pvt. Ltd.
Regd. Office at: - B-148, F/F New Friends Colony,
New Delhi, South Delhi-110065

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member
Member**

APPEARANCE:

Shri Utkarsh Thapar
Shri Pankaj Chandola

Advocate for the complainant
Advocate for the respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 16.01.2020 has been filed by the complainant/allottee 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 allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"ILD Spire Greens" at sector-37 C, Gurugram
2.	Nature of the project	Residential group housing project
3.	Project area	15.4829 acres
4.	DTCP license no.	13 of 2008 dated 31.01.2008
5.	Name of license holder	M/s Jubilant Malls Pvt. Ltd. and 3 others
6.	RERA Registered/ not registered	Registered For 64621.108 sq mtrs for towers 2,6 and 7 vide no. 60 of 2017 issued on 17.08.2017 up to 16.08.2018
7.	Unit no.	GF-14, Ground floor, tower 2 (page no. 17 of complaint)
8.	Unit measuring	2518 sq feet. (page no. 17 of complaint)
9.	Date of provisional allotment	02.12.2010

12



		(page no. 7 of complaint)
10.	Date of apartment buyer agreement	13.12.2010 (page no. 15 of complaint)
11.	Due date of possession	30.06.2013 [as per possession clause] Note: Grace period is not allowed.
12.	Possession clause	10.1 POSSESSION "The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said Building/said unit by 30th June 2013 with grace period of six month , unless there shall delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Allottee(s) to pay in time the price of the said Unit along with other charges and dues in accordance with the schedule of payments given in Annexure-C or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by all or any of the terms or conditions of this Agreement.
13.	Total consideration	Rs. 86,66,954/- [as per statement of account on page no. 46 of complaint]
14.	Total amount paid by the complainant	Rs. 78,65,651/- [as per statement of account on page no. 46 of complaint]
15.	Occupation certificate	Not received

A



16.	Offer of possession	Not offered
-----	---------------------	-------------

B. Facts of the complaint

3. That the complainant on 30.11.2010 paid the booking amount of Rs. 16,00,000/- in favour of the respondent and also received a provisional allotment letter dated 02.12.2010 in lieu of the same.
4. That he was allotted a residential apartment unit no. GF-14 in tower 02, block no. 14, ground floor admeasuring 2518 sq. ft. in the residential group housing project "ILD Spire Greens" being built by M/s. ILD Millennium Pvt. Ltd. situated in Sector 37 C, Gurgaon, Haryana.
5. That the respondent then shared a draft of the builder buyer agreement with him which was unjust, one sided and completely favoured it. The complainant made several requests to the respondent to amend the builder buyer agreement, but, it blatantly refused to do the same. It threatened the complainant that in case he refused to sign the builder buyer agreement, the money paid by him towards the unit would be forfeited. Under duress and in fear of his money getting forfeited, the complainant signed on the dotted lines of the builder buyer agreement. The builder buyer agreement between the complainant and the respondent was signed and executed on 13.12.2010.
6. That as per clause no. 10.1 of the builder buyer agreement, the developer was supposed to handover the possession by 30.06.2013+6 months grace period. i.e., maximum by and before 30.12.2013.

A

7. That it failed to complete the work of tower 02 long after the date of possession and the grace period which had been promised by the respondent. The complainant has been waiting for almost 6 years from the lapse of date of possession and the grace period promised to him. The complainant is extremely disturbed as till date the possession has not been offered till date which is about 6 years after the lapse of the date of possession and the grace period.
8. Hence, the complainant wants refund of his total paid up amount of Rs. 76,33,884/- and has additionally paid an amount Rs. 2,22,767/- towards H-VAT and which amounts to Rs. 78,56,651/- till date.

C. Relief sought by the complainant:

9. The complainant has sought the following relief:
 - Refund of the entire amount of Rs. 78,56,651/- with an interest of 10.5% per annum from the proposed date of the possession of the unit i.e., 30.06.2013.
10. On the date of hearing, the authority explained to the respondent /promoter about the contraventions 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.

11. That the project of the respondent got delayed due to reasons beyond its control. The major reason for delay for the construction and possession of project was 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

A



hurdles to complete the project. For completion of road, the respondent is totally dependent upon the Govt. Department/machinery and the problem is beyond the control of the respondent.

12. That the complainant has intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement. The present complaint is devoid of merit and thus is liable to be dismissed.
13. That the complainant has alleged some baseless allegations without stating as to how he is being aggrieved by the respondent. The complainant be put to the strict proof of the same. 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.
14. 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.
15. That the complainant is guilty of placing untrue facts and is attempting to hide the true colour of his intention.
16. 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 deserves to be dismissed with heavy costs.
17. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint

Az

can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of authority

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

F. I Territorial jurisdiction

19. 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.

F. II Subject matter jurisdiction

20. 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.

A

21. 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 complainant at a later stage.

G. Findings on the objections raised by the respondent:

G.I Objection regarding force majeure conditions:

22. The respondent-promoter pleaded that the construction of the project was delayed due to non-construction of the 24 meter sector road and creating other infrastructure by the local authorities as well as government. So, in the absence of those facilities, there was delay in carrying of construction and building material at the site. But the plea advanced in this regard is devoid of merit. The flat buyer's agreement was executed between the parties on 13.12.2010 and as per the possession clause of the agreement, the possession of the said unit was to be delivered by 30th June 2013 with a grace period of 6 months. There may be some delay due to non-construction of sector road in the area but a period of more than 9 years has already expired and the project is still incomplete. The delay in completing the project due to non-creating of infrastructure by the government may result in taking sometime and not a long period of 9 years. Even there is no hope as to when the project would be completed. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

H. Findings on the relief sought by the complainant.

A



- Refund of the entire amount of Rs. 78,56,651/- with an interest of 10.5% per annum from the proposed date of the possession of the unit i.e., 30.06.2013.
23. The complainant booked a residential unit in the project of the respondent named as "ILD Spire Greens" situated at Sector-37 C, Gurugram, Haryana for a total sale consideration of Rs. 86,66,954/- . The allotment of the unit was made on 02.12.2010. Thereafter a buyers' agreement was executed between the parties on 13.12.2010.
24. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and is 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.
25. The due date of possession as per agreement for sale as mentioned in the table above is 30.06.2013 and there is delay of 6 years 6 months 17 days on the date of filing of the complaint.
26. 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**

A



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.....”

27. 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)** and 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 as under:

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.

28. 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

A



is 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 he 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.

29. This is without prejudice to any other remedy available to the allottee including compensation for which he 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.
30. The authority hereby directs the promoter to return to the complainant the amount received by him i.e., Rs. 78,56,651/- with interest at the rate of 10.25% (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*.

I. Directions of the authority


31. 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 is directed to refund the amount i.e., **Rs. 78,56,651/-** received by it from the complainant along with interest at the rate of 10.25% p.a. as prescribed under rule 15 of

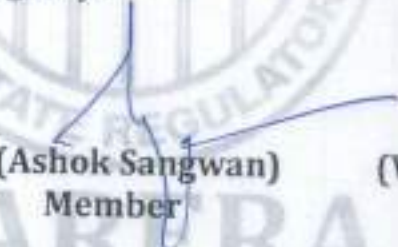
A



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 respondent 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 complainant, and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainant.
32. Complaint stands disposed of.
33. File be consigned to registry.


(Sanjeev Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.11.2022