

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

Complaint no.	:	5729 of 2019
First date of hearing:		18.12.2019
Date of decision	:	14.02.2023

Arnab Ghosh R/o: E-164, Westend Heights, DLF Phase-5, Gurugram, Haryana	Complainant
Versus	
1. M/s ILD Millennium Pvt. Ltd. Regd. Office at: B-148, 1 st Floor, New Friends Colony, Delhi-110065 2. Dewan Housing Finance Limited Office at: 2 nd Floor, Warden House, Sir P.M Road, Fort, Mumbai-Maharashtra 400001	Respondents

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Shri Utkarsh Thapar	Advocate for the complainant
None	Advocate for the respondent no. 1
Shri Shyam Taneja	Advocate for the respondent

ORDER

1. The present complaint dated 04.12.2019 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.

2. On hearing dated 04.10.2022 counsel for the respondent appeared and was directed to file reply in the authority with a period of one week. The present compliant was filed on 04.12.2019, and lots of opportunities were given to the respondent-builder to file reply. Since, till today no reply has been submitted and even none is present on behalf of respondent- builder. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the authority proceeds with the case without reply and the defence of the respondent stands struck off.

A. Unit and project related details

3. 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, Sector 37 C, Gurgaon, Haryana
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.	Apartment no.	1602, 16th floor Tower 2 (page no. 21 of complaint)



8.	Unit measuring	2256 sq. ft. (page no. 21 of complaint)
9.	Date of builder buyer agreement	11.02.2011 (page no. 19 of complaint)
10.	Date of tripartite agreement	24.02.2011 (page no. 109 of complaint)
11.	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 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. (emphasis supplied)
12.	Total sale consideration	Rs. 72,44,336/- (as per SOA dated 06.11.2019 on page no. 50 of complaint)



13.	Amount paid by the complainant	Rs. 58,06,138/- (as per SOA dated 06.11.2019 on page no. 50 of complaint)
14.	Due date of possession	30.06.2013 [calculated as per possession clause]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

4. That in 2010 complainant was allotted a residential unit in the project of the respondent situated at sector-37 C, Gurugram for a total sale consideration of Rs. 72,44,336/-. The builder buyer agreement was executed between the parties on 11.02.2011.
5. That on 24.02.2011 a tripartite agreement was executed between the parties and an amount of Rs. 44,00,000/- was sanctioned.
6. That as per clause 10.1 of the said agreement the respondent was under obligation to handover the possession of the flat booked by the complainant, by 30.06.2013.
7. That respondent-builder has failed to complete the works at tower 2 even after long after the date of possession had been promised to him. Till date no construction has been completed by the respondent-promoter.
8. That from August 2018 complainant received numerous calls from the respondent no. 2 to clear the pre-EMI interest as the same had not been cleared by the respondent no. 1.
9. That the complainant till date has not been provided with the possession of the said apartment and the respondent-builder has not paid the pre EMI to the financial institution as promised.

C. Relief sought by the complainant:

10. The complainant has sought the following relief:

- Claim the entire amount of Rs. 11,49,979/- with an interest of 18% p.a. from the date of payments till date of realization.
- Claim the remaining loan amount of Rs. 38,25,463/-.

11. 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 no. 2.

The respondent no. 2 by way of separate written reply submitted as under:

12. That the complainant has been against the respondent-builder for failure of its commitments to handover the possession of the allotted unit as per the agreement.
13. That the answering respondent has no way concerned as it has sanctioned and disbursed the loan in terms and conditions of loan A/c no. 13100000218 and tripartite agreement both dated 24.02.2011.
14. All other averments made in the complaint were denied in toto.
15. 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 authority



16. 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

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 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.

F. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant had sought following relief(s):

i. Claim the entire amount of Rs. 11,49,979/- with an interest of 18% p.a. from the date of payments till date of realization.

ii. Claim the remaining loan amount of Rs. 38,25,463/-.

20. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

“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.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case 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 that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee 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.”

(Emphasis supplied)

21. Clause 10 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

“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 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.

22. The complainant had booked the unit in the project named as "ILD Spire Greens" situated at Sector 37-C for a total sale consideration of Rs. 72,44,336/-. The flat buyer agreement was executed between the parties on 11.02.2011. As per possession clause 10.1 of the flat buyer agreement, the possession of the unit was to be handed over 30th June 2013.
23. 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....."

24. 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 (c), 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 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."

25. 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) of the Act. 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.
26. 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.
27. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided 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.”

28. 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.
29. 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., 14.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
30. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 58,06,138/-with interest at the rate of 10.60% (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 Rules *ibid*.
31. While refunding the amount paid by the complainant to the respondent builder the amount received from the financial institution i.e., Dewan Housing Finance Ltd. besides interest if any, would be a charge and the same would be paid to that institution before paying any amount to the complainant against the total amount.

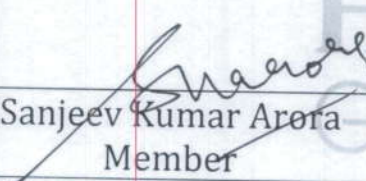
H. Directions of the authority

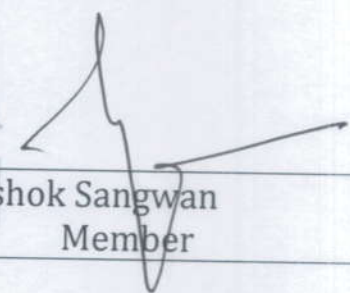
32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount of Rs. 58,06,138/-paid by the complainant along with prescribed rate of interest @ 10.60% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited 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 balance amount with the respondent builder after paying to the financial institution be refunded to the complainant along with interest at the prescribed rate.

33. Complaint stands disposed of.

34. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.02.2023