

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

Complaint no. : 164 of 2019  
First date of hearing: 05.11.2019  
Date of decision : 10.02.2023

Ved Prakash S/o Amar Singh  
R/o: Mohalla Kasthe Wala, Ward no. 6,  
Sohna- Gurugram

**Complainant**

Versus

M/s ILD Millennium Pvt. Ltd.  
Regd. Office at: - 901, Sohna Road, Near Subhash  
Chowk, D1 Block, Malibu Town, Sector-47,  
Gurugram, Haryana

**Respondent**

**CORAM:**  
Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**  
Shri Sushil Yadav  
Shri Himanshu Singh

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 31.01.2019 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.

**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, 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.	1004, 10th floor Tower 7 (page no. 30 of complaint)
8.	Unit measuring	1355 sq. ft. (page no. 30 of complaint)
9.	Date of builder buyer agreement	28.10.2014 (page no. 28 of complaint)
10.	Possession clause	<b>10.1 POSSESSION</b> “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 <b>within three years from the date of execution of this agreement, with grace period of six month, unless there shall delay or there</b>



		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. <b>(emphasis supplied)</b>
11.	Total sale consideration	Rs. 66,92,755/- (as per agreement on page no. 31 of complaint)
12.	Amount paid by the complainant	Rs. 57,02,336/- (as alleged by complainant)
13.	Due date of possession	11.02.2018 [calculated as per possession clause]
14.	Occupation certificate	02.07.2021 (page no. 20 of reply)
15.	Offer of possession	22.09.2021 (page no. 23 of complaint)

**B. Facts of the complaint**

3. That on the representations made by the respondent, the complainant made booking on 06.07.2012 of a unit and paid a booking amount of Rs. 2,00,000/-. The respondent issued provisional allotment letter dated 28.10.2014 to him and allotted the above-mentioned unit.



4. That as per clause 10.1 of the said agreement, the respondent was under an obligation to handover the possession of the flat booked by the complainant, within 3 years from the date of execution of agreement i.e., on or before 28.10.2017 with an additional grace period of six months i.e., 28.04.2018.
5. That as on 20.12.2014 the complainant had already made a total payment of Rs. 57,02,336/- out of total basic sale price of Rs. 57,58,750/-.
6. That the complainant made almost full payment of the basic sale price of the allotted unit as early as on 20.12.2014 and has not been handed over the possession of the unit allotted in the said project.
7. That complainant waited long enough for the respondent to handover the complete unit in the said project. Even as on the date of filing of the complaint, the respondent has failed to complete the said project in all respects and has further not yet offered the possession to him.
8. That the complainant has invested all the hard-earned money in the said project, in order to get the possession and start residing therein. However, the respondent clearly failed to honour its commitments under the representations made and also the terms and conditions of the builder buyer agreement dated 28.10.2014.
9. That as on date almost 6 years have passed since the complainant made the booking in the said project of the promoter. However, till date the respondent has failed to complete the project and handover the possession of the allotted unit to the complainant. The complainant has lost all hope of delivery of possession as said date has long passed. The complainant is no longer interested in retaining the unit in the said project and which has still not been completed and have lost all trust on the respondent.

10. That by not refunding the amount of the complainant, the promoter-developer has indulged in unfair trade practise.

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

11. The complainant has sought the following relief:

- Refund the amount of Rs. 57,02,336/- with interest @ 18% p.a. which rate of interest is equivalent to the rate of interest as charged by the respondent from the customers in the event of delay in making payments.
- Pay compensation of Rs. 20,00,000/- to the complainant for undergoing the mental agony and harassment at the hands of promoter developer due to the unfair trade practice and deficient services of gross delay in completing the project and sitting tight on his money.
- Direct the opposite party to compensate the complainant of the legal costs in instituting the present complaint.

12. 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.**

13. That after having keen interest in the project constructed by the respondent, the complainant decided to book a unit in its project and paid a booking amount of Rs. 2,00,000/- to it.

14. That the respondent vide letter dated 28.10.2014 issued a provisional allotment letter to the complainant wherein allotting flat no. 1004, admeasuring super area 1355 sq. ft. block/tower- no. 7, floor 16th In

the above said project subject to terms and conditions in the final allotment letter/booking form/buyer agreement or any other document.

15. That on 28.10.2014, a builder buyer agreement was executed between the complainant and the respondent wherein allotted unit no. 1004, on 10th floor, block 4, tower-7, unit type 2BR, admeasuring 1355 super area for a total amount payable of Rs. 66,92,755/- and further agreed to pay additional amount of Rs. 67,750/-, for preferential location charges. The complainant was aware of the project and was also satisfied with every proposal deemed necessary for its development.
16. That time was essence in respect to the allottees obligation for making the respective payment and, as per the agreement so signed and acknowledged. The allottee was bound to make the payment of installment as and when demanded by the respondent.
17. That the complainant has failed to pay the entire instalment as per the agreed payment schedule. It is evident that the complainant was well aware of the payment schedule and despite after being aware of the same, he failed to make any such payments on time.
18. That the respondent has been issued with an occupation certificate vide Memo no. ZP-370 Vol- IV/AD(RA)/2021/15763 dated 02.07.2021 for the tower 6 and 7 of the project of the respondent. It is further important to mention that the unit of the complainant is in tower -7 of the project and the respondent is making efforts to complete the project as soon as possible and hand over the possession to the complainant in a short span of time.
19. That as soon as after receiving the occupation certificate for the tower 6 & 7 in the project, the respondent issued offer of possession to the

- complainant vide letter 22-09-2021 on e-mail subject to payment of remaining amount due at his end to it.
20. That the project of respondent got delayed due to reasons beyond its control. The major reason for delay for the construction and possession of project is lack of infrastructure in the said area. The twenty-four-meter road was not completed on time. Due to non-construction of the sector road the respondent faced many hurdles.
  21. That due to ban levied by the competent authorities' the migrant labour was forced to return to their native places creating an accurate shortage of labourers in NCR.
  22. That project was not completed within time due to the several other reasons 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 and Haryana in CWP NO. 20032/2008 where ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in month of April, 2015 and again in November 2016, adversely affecting the progress of the project.
  23. That the demonetization and new tax law i.e., GST, affected the development work of the project. The respondent has intention to complete the project soon for which it is making every possible effort in the interest of allottees of the project.
  24. The Covid-19 pandemic resulted in serious challenges for the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no: 40-3/2020- DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days

which started on March 25, 2020. By virtue of various subsequent notifications the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial and construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

25. That as development of the project delayed due to the reasons beyond the control of the respondent. Hence the complainant is not entitled for refund in any way and the same was agreed into between the parties under clause 11.1, 11.2, 11.3 and 40 of the buyers agreement.

26. 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 those undisputed documents and submissions made by the parties.

#### **E. Jurisdiction of authority**

27. 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**



28. 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**

29. 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.*

30. 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 objections raised by the respondent.**

**F.I Objection regarding delay due to force majeure.**



31. The respondent-promoter raised the plea that the construction of the project was delayed due to force majeure conditions such as national lockdown, shortage of labour due to covid 19 pandemic, demonetization, stoppage of construction due to various orders and directions passed by hon'ble NGT, New Delhi, Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time but all the pleas advanced in this regard are devoid of merit. As per the possession clause 10.1 of the builder buyer agreement, the possession of the said unit was to be delivered within three years with grace period of 6 months from the date execution of agreement. The builder buyer agreement between the parties was executed on 28.10.2014. So, the due date comes out to be 11.02.2018 including grace period of 6 months. The authority is of the view that the events taking place after the due date do not have any impact on the project being developed by the respondent/promoter. Thus, the promoter/ respondent cannot be given any leniency based on aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

**G. Findings on the relief sought by the complainant.**

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

- i. Refund the amount of Rs. 57,02,336/- with interest @ 18% p.a. which rate of interest is equivalent to the rate of interest as charged by the respondent from the customers in the event of delay in making payments.**



32. 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 its 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.
33. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received after filing of application by the complainant for return of the amount received by the promoter on his failure to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project he has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as it failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate. 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.
34. 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.*

35. 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 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.
36. 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 section 71 read with section 31(1) of the Act of 2016.

37. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 57,02,336/- 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 Haryana Rules 2017 *ibid*.

- ii. **Pay compensation of Rs. 20,00,000/- to the complainant for undergoing the mental agony and harassment at the hands of promoter developer due to the unfair trade practice and deficient services of gross delay in completing the project and sitting tight on his money.**
- iii. **Direct the opposite party to compensate the complainant of the legal costs in instituting the present complaint.**

38. The complainant in the aforesaid relief is seeking relief w.r.t compensation. 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.** (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is 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 complainant is advised to

approach the adjudicating officer for seeking the relief of compensation

**H. Directions of the authority**

39. 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. 57,02,336/- 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.

40. Complaint stands disposed of.

41. File be consigned to registry.

**HARERA**  
GURUGRAM

  
Sanjeev Kumar Arora  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 10.02.2023