

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

Complaint no.	:	860 of 2022
First date of hearing:		20.04.2022
Date of decision	:	15.03.2023

Parminder Singh Sohal Address: - G-265, Nanakpura, New Delhi	Complainant
Versus	
M/s ILD Millennium Pvt. Ltd. Regd. Office at: - B-418, New Friends Colony, New Delhi-110065	Respondent
CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Karan Govel (Advocate)	On behalf of the complainant
Ms. Aradhya Singh (AR)	On behalf of the respondent

ORDER

1. The present complaint dated 08.03.2022 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.	Apartment no.	0119, Tower 02 (page no. 20 of complaint)
8.	Unit measuring	1753 sq. ft. (page no. 20 of complaint)
9.	Date of Allotment	03.09.2010 (page no. 29 of complaint)
10.	Date of Builder buyer agreement	27.08.2010 (as alleged by both parties)
11.	Total consideration	Rs. 57,77,209/- (as per agreement on page no. 16 of complaint)
12.	Total amount paid by the complainant	Rs. 45,05,155/-

		(as per SOA on page no. 21 of reply)
13.	Possession clause	<p>10.1 Schedule for Possession of the said Unit</p> <p>"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 within 3 years from the date of execution of buyers agreement 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."</p>
14.	Due date of possession	27.08.2013 (as per possession clause)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint




3. That the complainant on 25.08.2010, purchased an apartment bearing unit no. 0119, 1st Floor, block/ tower no. 02 situated in ILD Spire Greens, Sector - 37C, Gurugram and paid a sum of Rs. 2,00,000/-.
4. That for the payment of Rs. 44,08,096/- to be made to the builder, they had applied to M/s. DHFL for a housing loan for making the payment to the respondent.
5. That a buyer's agreement was also signed between the parties on 27.08.2010. Thereafter, from time-to-time further payments were made to the respondent by DHFL.
6. That as per clause 10(1) of the buyer's agreement, the respondent agreed to complete the said project and handover possession of unit within 3 years of the execution of agreement with 6 month grace period.
7. That till date the respondent has not received the OC from the concerned authorities and has taken an amount of Rs. 40, 00, 000/- (Rupees Forty Lakhs Only) approx. from the complainant.
8. That the complainant time and again requested the respondent to provide the account statement of the said unit but the said respondent did not pay any heed to the said request.
9. That the complainant visited at the so-called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.
10. That they tried their best to resolve the issue of the delayed possession, but the respondent did not pay any heed to their request. On the contrary the respondent kept on asking for illegal demand of payment to the complainant by adding delayed payment interest and other illegal charges like maintenance etc.

11. That the complainant requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

C. Relief sought by the complainant:

12. The complainant has sought the following relief:

- Direct the respondent to provide the possession of the said flat and delayed interest thereafter till the time of actual handover of possession.

13. 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.

14. That the complainant herein, learned about the project launched by the respondent titled as 'ILD Spire Greens' and approached the respondent repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.

15. That after having keen interest in the project constructed by the respondent the complainant herein decided to purchase an apartment bearing no. 0119, 1st floor, block/tower no. 2, situated at ILD Spire Greens, Sector 37C, Gurugram for a total sale consideration of Rs. 48,79,600/-.



16. That on 27.08.2010, a builder buyer agreement was executed between the complainant and the respondent wherein an apartment bearing unit no. 0119, 1st floor, tower 2, having a super area admeasuring 1753 sq. ft., situated in ILD spire greens, Sector-37C, Gurgaon, Haryana, was allotted to the complainant in the said project of the respondent. The complainant was aware of the project and were also satisfied with every proposal deemed necessary for the development of the project in question.
17. 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.
18. That the project of the respondent got delayed due to reasons beyond control of the respondent. Major reason for delay for the construction and possession of project is lack of infrastructure in the said 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. The aforementioned road has been recently constructed.
19. That the building plan has been revised on 16.06.2014 vide memo no. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide memo no. ZP370/AD(RA)/2015/18145 dated 21/09/2015. The building plan has been changed for the benefit of the purchaser/allottee and due to this reason, the project got delayed.



20. That in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
21. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after lifting of ban by the Hon'ble Court the construction activity could not resume at full throttle due to such acute shortage.
22. 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.
23. That in past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019

- banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
24. That the Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
25. That the demonetization and new tax law i.e. GST, affected the development work of the project. In the view of the facts stated above it is submitted that the respondent has intention to complete the project soon for which the respondent is making every possible effort in the interest of allottees of the project.
26. That even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and such period shall not be added while computing the delay.
27. That Covid-19 pandemic has 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 completed 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 activities, stopping all 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 has 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.

28. Despite, after such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the World wide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances.
29. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. That on 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM-I (A) recognized that entire nation was threatened with Covid-19

pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020.

30. Subsequently, 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. It is to note, various State Governments, including the Government of Haryana have also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.

31. That the complainant has intentionally concealed material facts and filed the present complaint with the sole purpose of avoiding the agreed terms of the agreement. The construction work of the concerned tower wherein the unit of the complainant situated is almost complete and thus, the possession of the said unit of the complainant shall be offered very soon. The complainant is very much aware about the said facts and has still filed the present complaint on false and vexatious grounds.

E. Jurisdiction of authority

32. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection 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.1 Territorial jurisdiction

33. 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

34. 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.

35. 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.

36. The respondent-promoter raised the contention 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, 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 within a period of 3 years from the date of execution of agreement. The due date for handing over of possession comes out to be 27.08.2013. 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. Direct the respondent to provide the possession of the said flat and delayed interest thereafter till the time of actual handover of possession.
37. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"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, —

.....
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."

38. Clause 10.1 of the builder buyer agreement provides the time period of handing over possession and the same is reproduced below:

10.1 Schedule for Possession of the said Unit

"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 within 3 years from the date of execution of this agreement 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."

39. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.

40. 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.
41. 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., 15.03.2023 is 10.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70% per annum.
42. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
Explanation. —For the purpose of this clause—
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
43. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.



44. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is a matter of fact that the builder buyer agreement was executed between the parties on 27.08.2010. As per the clause 10.1 of the builder buyer agreement the possession of the booked unit was to be delivered within a period of 3 years from the date of execution of this agreement. The due date for handing over of possession comes out to be 27.08.2013.
45. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 10.70% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 27.08.2013 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

46. 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 pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 27.08.2013 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.
 - ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
 - iii. The complainant is also directed to pay the outstanding dues, if any.
 - iv. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.
47. Complaint stands disposed of.
48. File be consigned to registry.


HARERA
GURUGRAM
(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.03.2023