

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

Complaint no.	:	2327 of 2022
First date of hearing:		03.08.2022
Date of decision	:	15.03.2023

1. Vikas Wadhwa 2. Meetu Sukheja Wadhwa Address: - H. no. 17435, Street no. 1, Near Stadium, Bathinda, Punjab-151001	Complainants
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 Rishab Jain (Advocate)	On behalf of the complainants
Ms. Aradhya Singh (AR)	On behalf of the respondent

ORDER

1. The present complaint dated 06.06.2022 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 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 complainants, 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.	0516, 5th floor, Tower 02 (page no. 47 of complaint)
8.	Unit measuring	1691 sq. ft. (page no. 47 of the complaint)
9.	Date of Apartment buyer agreement	04.06.2010 (page no. 45 of the complaint)
10.	Total consideration	Rs. 49,61,126/- (as per agreement on page no. 48 of complaint)
11.	Total amount paid by the complainants	Rs. 43,46,629/- (As per receipts in complaint)



12.	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 by 31st December 2012 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>
13.	Due date of possession	31.12.2012 (as per possession clause)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. That the complainants are law abiding citizens of India, who nurtured hitherto an un realized dream of having their own house in upcoming society with all facilities and standards.





4. That the complainants herein booked an apartment in the project of the respondent named as ILD Spire Greens, situated at sector- 37C, Gurugram and paid an amount of Rs. 43,46,629/- as and when demanded by the respondent.
5. That the apartment buyer agreement was executed between the parties on 04.06.2010 and as per clause 10.1 of the agreement the possession of the said unit was to be handed over by 31.12.2012. Even after delay of more than 9 years and 5 months the respondent has failed to offer the legitimate possession of the apartment to the complainants till date.

C. Relief sought by the complainants:

6. The complainants have sought the following relief:
 - Direct the respondent to complete the development of the unit along with all facilities and amenities like water, electricity, roads, parks, club, etc.
 - Direct the respondent to handover the legal and rightful possession of the unit to the complainants.
 - Direct the respondent to pay interest at prescribed rate for every month of delay in offering the possession of the apartment since 31st December 2012 to complainants on the amount taken from the complainants.
7. On the date of hearing, the authority explained to the respondents/promoters 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.



8. That the complainants 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 complainants further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
9. That after having keen interest in the project constructed by the respondent the complainants herein decided to purchase an apartment bearing no. 0516, 5th floor, block/tower no. 2, measuring 1691 sq. ft. situated at ILD Spire Greens, Sector 37C, Gurugram for a total sale consideration of Rs. 49,61,126/-.
10. That on 04.06.2010, a apartment buyer agreement was executed between the complainants and the respondent wherein an apartment bearing unit no. 0516, 5th floor, tower 2, having a super area admeasuring 1691 sq. ft., situated in ILD spire greens, Sector-37C, Gurgaon, Haryana, was allotted to the complainants for total sale consideration of Rs. 49,61,126/-.
11. That as per clause 10.1 of the apartment buyer agreement at pg. 55 of complaint, the due date for handing over of the possession comes out to be 31st December 2012 including a grace period of 6 months which further makes the due date of possession shift forward to 6 months i.e., 30.06.2013 which was subject other proviions of the apartment buyer agreement i.e., clause 11.1, 11.2, 11.3 and clause 40 of the agreement.
12. That majority of allottees including the complainants defaulted in making timely payment as per the terms and conditions of the allotment letter and apartment buyer agreement executed between



- the parties, which severely and harshly affected the respondent to present the project to complainants on time due to non-availability of funds on time.
13. 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.
14. 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.
15. 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.



16. 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.
17. 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.
18. 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.
19. 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.

20. 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.
21. 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.
22. 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.

23. 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.
24. 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.
25. 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

4



imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.

26. That the complainants have 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 complainants situated is almost complete and thus, the possession of the said unit of the complainants shall be offered very soon. The complainants are very much aware about the said facts and has still filed the present complaint on false and vexatious grounds.

E. Jurisdiction of authority

27. 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. 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 complainants 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 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 apartment buyer agreement, the possession of the said unit was to be delivered by 31st December 2012. 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 complainants.

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

- i. Direct the respondent to complete the development of the unit along with all facilities and amenities like water, electricity, roads, parks, club, etc.
 - ii. Direct the respondent to handover the legal and rightful possession of the unit to the complainants.
 - iii. Direct the respondent to pay interest at prescribed rate for every month of delay in offering the possession of the apartment since 31st December 2012 to complainants on the amount taken from the complainants.
32. In the present complaint, the complainants intend 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."

33. Clause 10.1 of the apartment 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 by 31st December 2012 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."

34. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.

35. 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.
36. 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.
37. 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;"*
38. Therefore, interest on the delay payments from the complainants 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 complainants in case of delay possession charges.

39. 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 apartment buyer agreement was executed between the parties on 04.06.2010. As per the clause 10.1 of the apartment buyer agreement the possession of the booked unit was to be delivered by 31st December 2012.
40. 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 complainants are 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 complainants to the respondent from the due date of possession i.e., 31.12.2012 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

41. 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., 31.12.2012 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 complainants are also directed to pay the outstanding dues, if any.
 - iv. The respondent shall not charge anything from the complainants which is not part of the apartment buyer agreement.
42. Complaint stands disposed of.
43. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.03.2023