

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

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| Complaint no. | : | 1541 of 2022 |
| Order Reserve On | : | 02.02.2023 |
| Order Pronounce On | : | 11.04.2023 |

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| 1. Shantanu Khandelwal 2. Pallavi Singh Khandelwal R/o: Flat no. G-9, Phase 1, Mangalam Ananda, Sunflower Rampur Road, Sanganer Bazaar, Jaipur-302029 | Complainants |
| Versus | |
| M/s ILD Millennium Pvt. Ltd. Regd. Office at: B-148, 1 st Floor, New Friends Colony, Delhi-110065 | Respondent |
| CORAM: | |
| Shri Ashok Sangwan | Member |
| Shri Sanjeev Kumar Arora | Member |

APPEARANCE:

| | |
|---------------------------|-------------------------------|
| Shri Rajender Kumar Goyal | Advocate for the complainants |
| Shri Pankaj Chandola | Advocate for the respondent |

ORDER

1. The present complaint dated 26.04.2022 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.

- The present complaint was filed on 26.04.2022. On hearing dated 06.10.2022 counsel for the respondent appeared and was directed to file reply in the authority with a period of one week. The authority acting leniently gave ample opportunities to the respondent-builder to file reply. Since, till today no reply has been submitted. 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

- 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 Grand Centra, Sector 37 C, Gurgaon, Haryana |
| 2. | Nature of the project | Residential group housing project |
| 3. | RERA Registered/ not registered | Registered For 25690.450 sq mtrs vide no. 62 of 2017 issued on 17.08.2017 |
| 4. | Apartment no. | GCA-1503 (page no. 20 of complaint) |
| 5. | Unit measuring | 1745 sq. ft. (page no. 20 of complaint) |
| 6. | Date of booking | 11.10.2014 (page no. 21 of complaint) |



| | | |
|-----|---------------------------------|---|
| 7. | Allotment Letter | Not issued |
| 8. | Date of builder buyer agreement | Not executed |
| 9. | Possession clause | Not mentioned |
| 10. | Total sale consideration | Rs. 95,49,474/- (as alleged by complainants) |
| 11. | Amount paid by the complainants | Rs. 21,68,995/- (as alleged by complainants) |
| 12. | Due date of possession | 11.10.2017 [3 years from the date of bookings] |
| 13. | Occupation certificate | Not obtained |
| 14. | Offer of possession | Not offered |

B. Facts of the complaint

4. That the complainants were searching a residential unit to settle in Gurgaon. Respondent requested the complainants to book a flat.
5. That on the assurances and based on documents of project shown by the respondent, they handed over initial booking amount of Rs. 4,00,000/- through cheques with duly completed registration form. The same was duly received and acknowledged by the representatives of the respondent. Consequently unit no. GCA-1503 was booked and was identified for allotment in the name of the complainants. In spite of repeated requests builder Buyer's agreement was not got executed.
6. That on 05.12.2014 complainants were asked vide demand letter dated 05.12.2014 to deposit an amount of Rs. 8,64,595/-. The amount was deposited same day i.e., on 05.12.2022 through RTGS and receipt of the

same no. 2675 dated 25.12.2014 was received. An amount of Rs. 8,43,015/- was deposited and receipt no. 2988 dated 09.03.2015 of the same was received. An amount of Rs. 61,335/- was deposited vide receipt no. A- 3603 dated 11.04.2016. In this way they has paid Rs. 21,68,995/- to the respondent till date.

7. That the progress of construction was standstill and there was no progress. There is no possibility that the possession would be offered in next 4-5 years. The complainants send an e-mail dated 07.02.2019, followed by reminders, for cancellation of the registration of the flat and refund of amount paid with interest. There was no result and the respondent did not return the amount paid by them.
8. That the complainants have lost all interest in the project, the construction at the site is standstill, respondent has refused to return the amount paid by them with interest hence finding no alternate, the complainants have approached the Authority to direct the respondent to return the amount paid with interest with other relief that the authority deem fit.

C. Relief sought by the complainants:

9. The complainants have sought the following relief:
 - Direct the respondent to refund the entire amount paid by the complainants with interest.
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. Jurisdiction of authority



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

D. I Territorial jurisdiction

12. 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.

D. II Subject matter jurisdiction

13. 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.

14. 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

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compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. 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 refund the entire amount paid by the complainants with interest.

15. In the present complaint, the complainants intend 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)

16. The complainants had booked the unit in the project named as "ILD Grand Centra" situated at Sector 37-C for a total sale consideration of Rs. 95,49,474/-.



17. 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....."

18. 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."

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19. 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.
20. 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.
21. **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."



22. 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.
23. 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., 11.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
24. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 21,68,995/-with interest at the rate of 10.70% (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.

F. Directions of the authority

25. 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):
- The respondent/promoter is directed to refund the entire amount of Rs. 21,68,995/- paid by the complainants along with prescribed rate of interest @ 10.70% 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.



HARERA
GURUGRAM


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- 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.

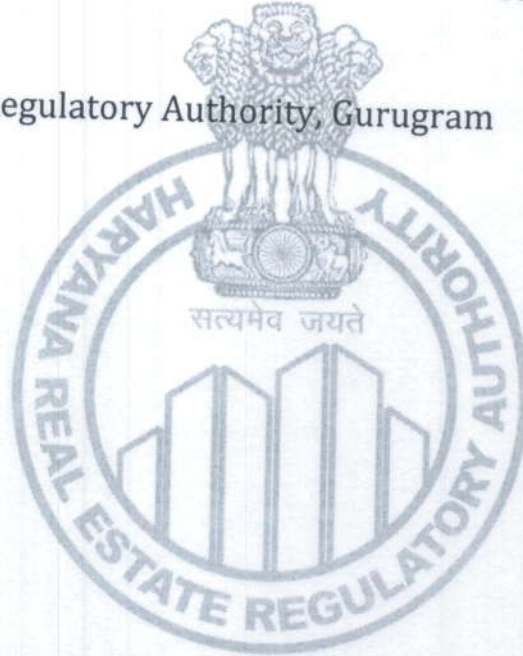
26. Complaint stands disposed of.

27. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.04.2023



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