



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

Complaint no.	:	1159 of 2022
Order Reserve On:		02.02.2023
Order Pronounced On:		11.04.2023

1. Som Chakarbarty 2. Saswati Chakarbarty R/o: B-1-1001, Montvert Finesse, Baner-Pashan Link Road, Opposite HDFC Bank, Pashan, Pune, Maharashtra-411021	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	Advocate for the complainants
Shri Pankaj Chandola	Advocate for the respondent

ORDER

1. The present complaint dated 05.04.2022 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 05.04.2022. 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 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.	1717, 17th floor Tower 2A (page no. 29 of complaint)



8.	Unit measuring	1839 sq. ft. (page no. 29 of complaint)
9.	Date of builder buyer agreement	17.06.2019 (page no. 27 of complaint)
10.	Possession clause	<p>7. Possession of the Unit for Residential Usage</p> <p>(i) Schedule for possession of the said unit:</p> <p>"The Company agrees and understands that timely delivery of possession of the unit to the allottee and the common areas to the association of allottees or the Authority, as the case may be, as provided under the Real Estate Act is essence of the Agreement. The company assures to handover possession of the unit along with ready and complete Common area with all specifications, amenities and facilities of the project in place on 16 August 2019 unless there is delay or failure due to force majeure events, court orders, government policy, guidelines or decisions.....</p> <p>(emphasis supplied)</p>
11.	Total sale consideration	Rs. 90,01,003/- (as per SOA dated 23.10.2020 on page no. 76 of complaint)
12.	Amount paid by the complainants	Rs. 78,80,895/-

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		(as per SOA dated 23.10.2020 on page no. 76 of complaint)
13.	Due date of possession	16.08.2019 [calculated as per possession clause]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

4. That in the year 2015, complainants got information about the residential project named "ARETE" at village Dhunela Sector 33, Sohna, Gurugram, Haryana from local newspaper advertisements. When the complainants had visited the office of respondent the marketing staff of respondent showed a rosy picture of the project and allure with proposed specifications and invited for a site visit.
5. That they visited the project site and met with the local staff of respondent and booked a unit having flat no 1717, tower A, and paid an amount of Rs. 10,17,085 on 29.01.2015.
6. That the respondent could not deliver on its promise and scrapped the project "ARETE" and therefore on the insistence of the respondent the complainants agreed to shift the unit to another running project of the respondent. On 17.06.2019 an allotment letter was issued to the complainants with respect to said unit, and he was transferred from "Arete" to "ILD Greens" project. The respondent has also acknowledged the amount of Rs. 75,58,353 paid by the complainants.
7. That on 17.06.2019, complainants and respondent executed a pre-printed one-sided, arbitrary, and unilateral flat buyer agreement for the said unit.



8. That as per clause 7(i) of the said agreement the legal date to hand over the physical possession is 16.08.2019.
9. That the total sale consideration as per clause 1(a) and (b) of the agreement is Rs. 90,01,003/- (Rupees Ninety Lacs One Thousand and Three Rupee only) exclusive of taxes and the complainants have paid an amount of Rs. 78,80,895/-.
10. That the main grievance of this present complainants is that the respondent has not delivered the possession of the said unit on time even after the timely payments by the lead complainants.

C. Relief sought by the complainants:

11. The complainants have sought the following relief:
 - Direct the respondent to refund an amount of Rs. 78,80,895/- along with interest at prescribed rate.
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. Jurisdiction of authority

13. 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

14. 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

15. 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.

16. 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.

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 an amount of Rs. 78,80,895/- along with interest at prescribed rate.**
17. 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)

18. Clause 7 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

7. Possession of the Unit for Residential Usage

(i) Schedule for possession of the said unit:

“The Company agrees and understands that timely delivery of possession of the unit to the allottee and the common areas to the association of allottees or the Authority, as the case may be, as provided under the Real Estate Act is essence of the Agreement. The company assures to handover possession of the unit along with ready and complete Common area with all specifications, amenities and facilities of the project in place on **16 August 2019** unless there is delay or failure due to force majeure events, court orders, government policy, guidelines or decisions.....”

19. The complainants had booked the unit in the project named as “ILD Spire Greens” situated at Sector 37-C for a total sale consideration of Rs. 90,01,003/-. The buyer's agreement was executed between the parties on 17.06.2019. As per possession clause 7 of the buyer's



agreement, the possession of the unit was to be handed over by 16.08.2019.

20. 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....."

21. 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

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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."

22. 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.
23. 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.
24. **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."

25. 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.
26. 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%.
27. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 78,80,895/-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

28. 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. 78,80,895/-paid by the complainants along with prescribed rate of interest @ 10.7s0% 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.

29. Complaint stands disposed of.

30. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.04.2023



HARERA
GURUGRAM