

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

Complaint no.: 4201 of 2021
Date of filing complaint: 22.10.2021
Date of Decision: 14.09.2023

Shri Surender Singh

R/o: - House No. J-210A, New Palam Vihar, Phase-1,
Gurugram

Complainant

Versus

M/s ILD Millennium Pvt. Ltd.

Regd. Office at: - B-418, New Friends Colony, New Delhi-
110065

Also, at: - 9th Floor, ILD Trade Center, Sector- 47, Sohna Road,
Gurugram - 122018

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Shail Malik (Advocate)

None

Complainant
Respondent

ORDER

1. This complaint 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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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.	DTPC License no.	13 of 2008 dated 31.01.2008
5.	Name of licensee	Jubliant Malls Pvt. Ltd.
6.	RERA registered/not registered	Registered vide no. 69 of 2019 dated 14.11.2019
7.	RERA registration valid upto	30.10.2023
8.	Unit no.	1003, 10 th floor, Tower 07 (As per page no. 21 of complaint)
9.	Unit measuring	1355 sq. ft. (As per page no. 21 of complaint)
10.	Date of Builder buyer agreement	21.05.2014 (As per page no. 20 of complaint)
11.	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 three years from the date of execution of agreement, with grace period of 6 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</p>

		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.” (Emphasis supplied)
12.	Due date of possession	21.11.2017 (Note: - 3 years from date of execution of buyer's agreement i.e., 21.05.2014 plus additional grace period of 6 months) Vide proceeding of the day dated inadvertently mentioned as 21.05.2017
13.	Total consideration	Rs. 65,34,815/- (As per statement of account on page no. 57 of complaint)
14.	Total amount paid by the complainant	Rs. 60,85,638/- (As per statement of account on page no. 57 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Delay in handing over possession from the due date of possession till filing of this complaint i.e., 22.10.2021	3 years 11 months and 1 day

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant submitted an application form on 02.07.2012, to respondent and was thus allotted a residential unit bearing no. 1003

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admeasuring 1355 sq. ft. located on tenth floor in tower no. 7 and both the parties entered into an apartment buyer's agreement dated 21.05.2014 for an agreed amount of Rs.62,86,255/- out of which the basic sale price constituted of Rs.54,20,000/- and the remaining amount constituted the charges pertaining to car parking, club charges, maintenance security, etc.

- II. That the complainant opted for construction linked payment plan and in furtherance of the said plan respondent raised demands from time to time and the same were acceded to by complainant. As such the apartment buyer's agreement dated 21.05.2014 was executed between the parties. Prior to the said execution, complainant had already paid a sum of Rs.37,06,449/- to the respondent.
- III. That as per the specific clause 10.1 of the said apartment buyer's agreement, respondent was under an obligation to handover the possession of the flat within 3 years from the date of execution of the agreement, i.e., on or before 21.05.2017 with an additional grace period of 6 months, i.e., on 21.11.2017. However, respondent failed to comply with their obligations in handing over the possession of the said unit as agreed upon in apartment buyer's agreement.
- IV. That complainant had waited long enough to get the possession of the flat, but respondent has failed to complete the said project in all respects and have chosen to offer a delayed possession vide offer of possession dated 02.08.2021 thereby raising another demand of Rs.10,68,100/-. It is worthwhile to point out here that vide the

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construction linked payment plan as opted by complainant, only 6% of BSP plus IFMS plus maintenance advance was to be paid on offer of possession. But the final statement of account showcases an increase of more than 30 percent in the amount to be paid at the time of possession as agreed upon vide the apartment buyer agreement dated 21.05.2014. That the demand raised of Rs.10,68,100/- includes the charges pertaining to increased area, interest charges due, 3 months advance CAM charges, tile up gradation charges, meter charges, and HVAT due.

- V. That after a delay of 3 years and 8 months, now respondent has offered possession to complainant but with an increase of super area from 1355 sq. ft. to 1365 sq. ft. thereby demanding extra amount towards the increased area which has been increased without the consent of complainant. Moreover, the respondent is fraudulently and illegally charging separate charges which ought to be inclusive in agreed sale price such as the tile up gradation charges, meter charges, HVAT and the same clearly violates the basic nature of agreement. Apart from the same, respondent has offered possession of the apartment without completing the common area facilities including the club, community center, shopping plaza, swimming pool, party lawn, sewage treatment plant, etc. and the same reflects the illegalities and unfairness on the part of respondent wherein despite receipt of more than 94% of payments respondent has failed to deliver possession of the apartment till November 2017. It is submitted that as on 31.08.2018, respondent

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was already in receipt of Rs.59,61,744/- out of an agreed amount of Rs.62,86,255/-, which is more than 94% of the agreed consideration amount.

- VI. That the conduct of respondent is vexatious and deficient. It is submitted that as per the apartment buyer's agreement, respondent was to deliver possession of the said apartment on or before 21.11.2017 inclusive of the grace period and despite the receipt of more than 94% payment towards the payment of the agreed consideration amount, respondent has failed to deliver possession of the said apartment and has also increased the remaining amount by more than 30 percent of the final amount.
- VII. That the respondent has failed to provide possession in promised date and therefore is liable to refund the entire amount paid along with simple interest @ 18% per annum. That despite several request and visits to the offices of the respondent till date no amount has been paid back to the complainant and the respondent is enjoying the hard-earned money of the complainant for nearly past more than three and half years approximately.
- VIII. That the respondent has yet to register their project, "ILD Spire Greens" with this authority. The registration of the project is mandatory under Section 3 of the Act, 2016 within the stipulated time period, which the respondent has failed to do.
- IX. That the complainant has suffered great losses in terms of loss of rental income, opportunity to own and enjoy a home in Gurugram. He has not

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been able to buy another flat in Gurugram as majority of his life's hard-earned money is stuck in this project. The complainant continues to travel from pillar to post to safeguard his hard-earned money in seek of justice. The respondent is liable to compensate the complainant for its above acts and deeds causing loss of time, opportunity and resources of the complainant. Due to the malpractices of the respondent, the complainant suffered greatly on account of mental & physical agony, harassment, and litigation charges. Thus, due to such hardship faced by the complainant by the act and misconduct of the respondent, the complainant is exercising his right to file and pursue a case for compensation before this authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to refund amount deposited with interest for every month of delay @ 18% p.a. from the actual date of deposit of each payment till date of realization on pro rata basis.
 - ii. To pay the compensation.
5. The present complaint was filed on 22.10.2021 in the authority. On 13.04.2023, the counsel for the respondent put in appearance and stated at bar that the copy of reply has already been supplied to the complainant and the said fact was duly confirmed by the complainant. The respondent was directed to file the reply within 2 weeks in the registry of the Authority. However, despite specific directions and providing an opportunity of being heard, no written reply has been filed by the respondent. Thus, keeping in

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view the opportunity given to the respondent and the fact that despite lapse of one year the respondent has failed to file copy of reply in the registry. Therefore, in view of order dated 10.08.2023, the defence of the respondent was struck off.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

D. Jurisdiction of the Authority:

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial Jurisdiction:

8. 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:

9. 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:

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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.

10. 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.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and 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*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the

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outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant.

E. I. Direct the respondent to refund amount deposited with interest for every month of delay @ 18% p.a. from the actual date of deposit of each payment till date of realization on pro rata basis.

13. The complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Section 18(1) of the Act 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:

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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)

14. As per clause 10 of the buyer’s agreement dated 21.05.2014 provides for handing over of possession and 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 three years from the date of execution of agreement, with grace period of 6 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.”

15. At the outset, it is relevant to comment on the preset possession clause of the booking form wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority’s action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by him in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the booking application form by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the

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allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

16. Due date of handing over possession and admissibility of grace period:

As per clause 10.1 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by May 2017. However, considering the ground in above mentioned clause of handing over possession which led to delay in completion of the project, in the present case, the grace period of 6 months is allowed.

17. Admissibility of refund along with prescribed rate of interest: The complainant is seeking refund the amount paid by him at the prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.

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18. 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.
19. 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., 14.09.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
20. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the agreement to sell executed between the parties on 21.05.2014, the possession of the subject unit was to be delivered within a period of 36 months from the date of execution of buyer's agreement which comes out to be 21.05.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 21.11.2017. (Inadvertently mentioned as 21.05.2017 vide proceeding of the day dated 14.09.2023)
21. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the

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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.

22. The due date of possession as per agreement for sale as mentioned in the table above is 21.11.2017 and there is delay of 3 years 11 months and 1 days on the date of filing of the complaint. The authority has further, observes that even after a passage of more than 3.11 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which they have paid a considerable amount of money towards the sale consideration. It is also pertinent to mention that complainant has paid more than 93% of total consideration till 2017. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

23. Moreover, 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 allottees 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

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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....."

24. 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. (supra) 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

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."

25. 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

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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 it in respect of the unit with interest at such rate as may be prescribed.

26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.75% p.a. (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*.

E. II To pay litigation compensation.

27. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The

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adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. 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 paid-up amount i.e., Rs.60,85,638/- received by it from the complainant along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the 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.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainant.
29. Complaint stands disposed of.
30. File be consigned to registry.

Dated: 14.09.2023

V. I - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram