

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

<b>Complaint no.</b>	<b>:</b>	<b>694 of 2021</b>
<b>First date of hearing:</b>		<b>22.04.2021</b>
<b>Date of decision</b>	<b>:</b>	<b>12.09.2023</b>

1. Nidhi Chawla 2. Ashish Kochhar <b>Address:</b> T-6/201, Unitech Escape, Nirwana Country, Sector-50, Gurugram.	<b>Complainants</b>
<b>Versus</b>	
1. M/s ILD Millennium Pvt. Ltd. <b>Regd. Office at:</b> - B-148, F/F New Friends Colony, New Delhi, South Delhi-110065 2. Dewan Housing Finance Corporation Limited <b>Address:</b> 2nd Floor, Warden House, PM Road, Fort, Mumbai	<b>Respondents</b>
<b>CORAM:</b>	
Shri Ashok Sangwan Shri Sanjeev Kumar Arora	<b>Member</b> <b>Member</b>
<b>APPEARANCE:</b>	
Shri Sukhbir Yadav	Advocate for the complainants
Shri Rishabh Gupta	Counsel for the respondent no. 1

**ORDER**

1. The present complaint dated 03.02.2021 has been filed by the complainants/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 allottees 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	<b>Registered</b> 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.	Unit no.	1420, 14th floor, tower 02, block 20 (page no. 17 of complaint)
8.	Unit measuring	1828 sq. ft. of super area (page no. 17 of complaint)
9.	Date of provisional allotment letter	18.09.2010 (page no. 24 of complaint)
10.	Date of builder buyer agreement	12.05.2011 (page no. 15 of complaint)





11.	Date of tripartite agreement	29.02.2012 (page no. 41 of complaint)
12.	Due date of possession	30.06.2013 [as per possession clause 10.1 of the agreement] Note: - Grace period is not allowed
13.	Possession clause	<b>10.1 SCHEDULE FOR POSSESSION OF THE SAID UNIT</b> 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 <b>30th June 2013</b> with grace period of Six month, unless there shall be 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. (emphasis supplied)
14.	Total consideration	Rs 61,03,720/- [as per the agreement on page no. 18 of complaint]
15.	Total amount paid by the complainants	Rs. 51,53,909/- [as per statement of account on page no. 25 of reply]
16.	Occupation certificate	Not received
17.	Offer of possession	Not offered



**B. Facts of the complaint**

3. That believing on the representations and assurance of respondent/builder complainants booked an apartment on 03.08.2010 and paid Rs. 2,00,000/- as booking amount.
4. That on 12.05.2011 a pre-printed, unilateral, arbitrary flat buyer agreement was executed inter se the builder and the complainants. As per clause 10.1 of the agreement, the respondent/builder agreed to complete the said project and handover possession of unit by 30<sup>th</sup> June 2013. Therefore, the due date of possession was 30.06.2013.
5. That the complainants availed a home loan from respondent no. 2, under the interest subvention scheme payment plan, and a tripartite agreement was signed between parties.
6. That thereafter the complainants kept paying the demands raised by respondent no. 1 have already paid Rs. 52,41,502/-
7. That as per the tripartite agreement the respondent no. 1 is liable for pre EMIs till that the actual handover of the possession.
8. That in January 2018, respondent no. 2 fraudulently tried to convert the Pre EMI to EMI for the complainants unilaterally. This was reverted to pre-EMI on 15 February 2018 after multiple complaints and follow up by the complainants.
9. That on 14.05.2019, complainants sent a grievance email to the respondent no.1 and asked for possession of the flat and payment of interest to respondent no. 2 under the subvention scheme.
10. That on 10.08.2021 respondent no. 2 sent letter stating that the loan account is classified as NPA on 01.04.2019 and threatened to proceed under SARFAESI Act 2002. As per the said letter, the





closing loan balance was Rs. 39,66,836/- and MEI/PEMI outstanding was Rs. 11,31,921/- and additional interest on EMI/PEMI outstanding was Rs. 2,51,608 and total outstanding balance was Rs. 53,51,865/-.

11. That respondent no. 1 failed to hand over the physical possession of the flat on the due date of possession, therefore, the complainants with other allottees had filed a complaint before Hon'ble National Consumer Dispute Redressal Commission at New Delhi vide complaint no. 1282 of 2016. The Hon'ble NCDRC pronounced the order on 03.03.2022.

- Complete the construction of the units allotted to the complainants in all respect, duly obtaining the requisite occupancy certificate as its own cost and responsibility and offer and give possession on the respective units to the complainants within six months of this order along with delay compensation @ 8% per annum simple interest from the proposed date of possession as per the respective agreements which will include the grace period till the offer of possession or obtaining occupation certificate whichever is later. If the opposite party fails to deliver the possession of the unit within six months, the delay compensation will be @ 12% per annum simple interest.
- In case of delay beyond six months, the complainants will have an option to seek refund of the deposited amount which the opposite party has to pay within six weeks with delay compensation @ 9% per annum simple interest from the



respective dates of deposit till realization. Any delay beyond six weeks will attract an interest rate of 12% per annum.

- At the time of possession the opposite party shall work out the delay compensation after making adjustments off the outstanding charges payable by the complainants as per their respective agreements and make payment of the compensation to the complainants.
  - Pay Rs. 50,000/- to the complainants as the cost of litigation.
12. That the complainants visited several times the office of the respondent/builder for the compliance of the TPA and BBA, but the respondent no. 1, not paid any heed to the just and reasonable demands of the complainants. It is pertinent to mention here that due to non-payment of Pre-EMI on time, the CIBIL of the complainants has been adversely affected and caused huge irreparable losses.
  13. That the main grievance of the complainants in the present complaint is that despite the complainants paying more than 85% of the actual cost of the flat and is ready and willing to pay the remaining amount (due if any), the respondent party has failed to deliver the possession of the flat along with the proposed amenities and failed to pay Pre-EMI to NBFC.
  14. The complainants several times visited the local office of the respondent no. 2 to recover the pre-emi from the builder, but respondent no. 2 is hand in gloves with respondent no. 1 and kept sending outstanding demand letters.
  15. That the complainants had purchased the flat with the intention that after purchase, their family will live in their flat. that it was promised by the respondent no. 1 at the time of receiving payment





for the flat that the possession of a fully constructed flat along with surface parking, landscaped lawns, club/ pool, EWS, etc. as shown in the brochure at the time of sale, would be handed over to the complainants as soon as construction work is complete i.e., by June 2013. It is pertinent to mention here that the unit is yet not ready for possession with all proposed amenities promised at the time of booking.

16. That, since 2013 the complainants are contacting the respondent/builder and made several phone calls to the respondent party and made efforts to get possession of the allotted flat but all in vain. Despite several phone calls and requests by the complainants, the respondent/builder did not give possession of the flat/apartment. The complainants have never been able to understand/know the actual state of construction. Though the towers seem to be built up, and there was no progress was observed on finishing and landscaping work and amenities for a long time.
17. That the Hon'ble NCDRC has already decided the matter of possession vide order dated 03.03.2022.
18. That in the present complaint, the complainants are seeking compliance of TPA for payment of Pre-Emi till the physical possession of the flat, after obtaining the OC and completing all the promised facility and interiors as per the apartment buyer's agreement.

**C. Relief sought by the complainants:**

19. The complainants have sought the following relief:



- Direct the respondent/builder to pay the Pre-EMI till possession of the fully developed/constructed flat/apartment with all amenities.
  - Direct the respondent/builder party to pay the outstanding Pre-EMI.
  - To get the area calculation of the flat (super area, carpet area, and common loading).
  - To get GST input tax credit on GST levied.
  - To get credit for HVAT wrongly charged and held with respondent/builder.
  - Direct the respondent/builder to refrain from charging holding charges and any area increase beyond what is agreed in the apartment buyer's agreement.
  - Direct the respondent/builder to refrain from giving effect to the unfair clauses unilaterally incorporated in the builder buyer agreement.
20. 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 no. 1.**

21. That the complainants have made several visits to the office of the respondent no. 1 to know about the whereabouts of the project titled as "ILD Spire Greens" located at Village Basai, sector 37 C, Gurugram, Haryana. That the complainants have enquired about the veracity of the subject project of respondent no. 1 and had immense deep interest to invest in the subject project. Therefore,





- the complainants come forward to invest in the subject project of respondent no. 1 to extract speculative gain.
22. That the complainants have made the booking on 03.08.2010 and thereby allotted with unit bearing no. 1420, 14<sup>th</sup> floor, tower-2A, having admeasured super area 1828 sq. ft.
  23. That the apartment buyer agreement was executed in between the complainants and respondent no. 1 on dated 12.05.2011 in regard to the allotted unit of complainants. That it is submitted that during the execution of the agreement, the complainants has signed the agreement through wilful consent by agreeing with every clause of agreement and also with the payment plan and total sale consideration. That the clause 10.1 of the agreement clearly states that the schedule period of handing over possession would be on or before 30.06.2013.
  24. That till date the complainants have made total payment amounting to Rs. 52,41,502/- against the total basic sale consideration i.e., Rs. 61,03,720/-. It is submitted that the complainants did not adhered to the payment schedule which was issued by respondent no. 1 during the execution of agreement i.e. on 12.05.2011 which readily amounts to the violations of the clauses of the agreement and provisions of section 19(6) and 19(7) of the RERA Act, 2016. That the complainants being a habitual defaulter has not made the payment within the stipulated period of time as enshrined in the payment plan which was also becomes a major reason for hampering the scheduled development of the respondent no.1.
  25. That the respondent no. 1 has executed a tri-partite agreement among the complainants, respondent no. 2, and respondent no. 1



on 29.02.2012, being a customer-friendly company. That the TPA was executed upon the repetitive request on the part of complainants that they are unable to bear the price of expensive allotted unit and hence, engaged in request to provide loan and also to execute the TPA. That the allegations raised by complainants in regard to subvention scheme, which has no foundation in the agreement which was executed in between the complainants and respondent no. 1 on 28.09.2015.

26. That the respondent no. 1 being a responsible developer has already conveyed the information to the complainants that the respondent no. 1 has faced with unforeseen circumstances which were beyond the control of respondent no. 1.
27. That major reason for delay for the construction and possession of project is due to force majeure conditions and lack of infrastructure in this area. The twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, the respondent no. 1 faces many hurdles to complete the project. For completion of road, the respondent no. 1 totally dependent upon the Govt. Department/machinery and the problem is beyond the control of the respondent no. 1.
28. 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 no. 1. The demonetization and new tax law i.e. GST, affected the development work of the project. Thereby it is pertinent to mention that respondent no. 1 was not liable if any delay causes due to force majeure conditions or any government order or policy.





29. That the respondent no. 1 has already completed the construction of the subject project and the respondent no. 1 has filed for obtaining occupation certificate for the towers in question and the same is conveyed to the complainants.

**E. Reply by the respondent no. 2.**

30. That the respondent no. 2 Dewan Housing Finance Limited is a company incorporated under the Companies Act, 1956 and registered with the national housing bank as a housing finance company.
31. The respondent no. 2 i.e., DHFL is no way concerned with the present complaint except that it has disbursed an amount of Rs. 50 lakhs as the home loan in terms and conditions of the tripartite agreement dated 24.09.2010.
32. That the answering respondent no.1 had granted loan to the borrower, and it shall be repayable by the complainants by way of equated monthly instalments (EMI). The EMI will start only when possession is offered by the builder or 31st December 2012 whichever is earlier. Till the offer of possession or 31st December 2012 whichever is earlier, the pre-EMI shall be paid by the builder on behalf of borrower. It has also been mutually agreed between the parties that it will be sole responsibility of the builder to pay Pre-EMI interest till the time peaceful possession is offered to the buyer or 31st December 2012 whichever is earlier. Further it is specifically agreed by and between the parties that after 31st December 2012 or once the possession has been offered to the borrower, the liability of the builder to pay the Pre-EMI interest shall come to an end irrespective of the delay in offer of possession



by the builder and thereafter any liability to pay the EMI/pre-EMI to DHFL shall be solely of the borrower alone.

33. That the respondent no. 2 has been arrayed as a party by the complainants only with a view to harass the answering respondent/builder. The entire grouse of the complainants is against the respondent/builder.
34. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

#### **F. Jurisdiction of authority**

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

##### **F. I Territorial jurisdiction**

36. 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.

##### **F. II Subject matter jurisdiction**

37. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

38. 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.

**G. Findings on the relief sought by the complainants.**

- Direct the respondent/builder to pay the Pre Emi till Possession of the fully developed/constructed flat/apartment with all amenities.
- To get an order in their favour by directing the respondent/builder party to pay the outstanding pre-EMI.
- To get the area calculation of the flat (super area, carpet area and common loading)
- To get GST input tax credit on GST levied.
- To get credit for HVAT wrongly charged and held with respondent/builder.
- Direct the respondent/builder to refrain from charging holding charges and any area increase beyond what is agreed in the apartment buyer's agreement.



- Direct the respondent/builder to refrain from giving effect to the unfair clauses unilaterally incorporated in the builder buyer agreement.
39. A project by the name of ILD Spire Greens situated in sector-37-C, Gurugram was being developed by the respondent builder. The complainants booked a unit in that project on 18.09.2010 for a sum of Rs. 61,03,720/-. A buyer's agreement was executed in this regard between the parties on 12.05.2011 and the due date of possession was fixed as 30.06.2013. A tripartite agreement between the parties and the financial institution i.e., respondent no. 2 was executed on 29.02.2012. The complainants paid a sum of Rs. 51,53,909/- against the allotted unit but the respondent builder failed to complete the project and offer possession of the allotted unit leading to filing a complaint seeking delay possession charges, possession of the unit, a direction to the respondent builder to pay pre-EMI till possession, outstanding EMI's etc. Though replies on behalf of respondents were filed but in between, the complainants filed an amended complaint deleting certain reliefs and adding additional reliefs. But vide proceeding dated 03.08.2022, they were allowed certain reliefs on the basis of previous pleadings filed by them which leads to filing of application dated 14.09.2022 for rectification and allowing them the relief as per the amended pleadings. Now on the basis of amended pleadings, the claimants are seeking the relief of payment of outstanding pre-Emi till possession, to get the area of the unit calculated, to get GST input tax credit, HVAT, refraining from giving effect to unfair terms of buyers agreement and not to charge holding charges.





40. Though prior to 03.08.2022, the complainants filed amended complaint seeking somewhat other reliefs then taken earlier but it has come on record that prior to filing of complaint with the authority, they along with some others have filed a consumer complaint bearing no. 1282 of 2016 before the National Consumer Disputes Redressal Commission, New Delhi and which was disposed of on **03.03.2022**. In that complaint besides delay possession charges, the complainants were given an option to seek refund if there is delay of more than 6 months in compliance besides avoiding cost of litigation and payment of compensation as per buyers' agreement. The complaint before the authority seeking delay possession charges and other reliefs was filed on **03.02.2021** i.e., after filing of consumer complaint before NCDRC and that fact was concealed by the complainants while filing affidavit dated **16.12.2020** before the authority. Moreover, when a previously instituted complaint on the same cause of action was already disposed of by the competent forum, then the second complaint on the same cause of action could not have been filed and attracts bar under Section 11 of Code of Civil Procedure, 1908 which is reproduced under for ready reference:

*Section 11: Res Judicata*

*No Court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.*

41. Keeping in view the above-mentioned facts, it is to be noted that the present complaint is barred by section 11 of Code of Civil



**HARERA**  
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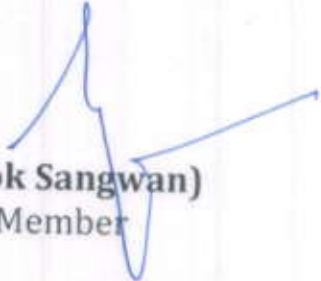
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Procedure, 1908 which provides for Res Judicata. Therefore, the present complaint is not maintainable.

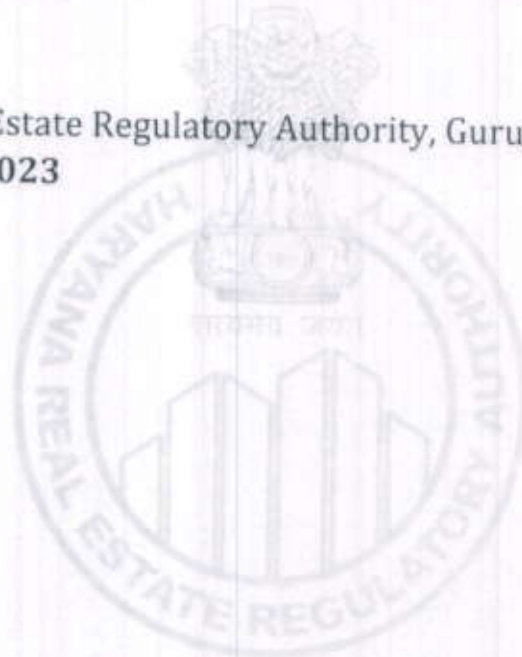
42. Complaint stands disposed of.

43. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 12.09.2023



**HARERA**  
**GURUGRAM**