

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

Complaint no.:	7200 of 2022
First date of hearing:	11.04.2023
Date of decision:	17.05.2024

1. Sunirmal Boksi 2. Sushmita Samanta R/o H. no. 646, 2 nd floor, Sector-10, Gurugram-122001, Haryana	Complainants
Versus	
M/s Jubilant Malls Pvt. Ltd. Office address: B-418, New Friends Colony, New Delhi-110065	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Shri Abhay Jain (Advocate)	Complainants
Shri Rishabh Gupta (Advocate)	Respondent

ORDER

1. The present complaint dated 05.12.2022 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 as provided 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 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 Engracia" at Sector 37-D, Gurugram, Haryana
2.	Nature of the project	Residential plotted colony
3.	Area of the project	3.93 acres
4.	Rera Registered or not	Registered Vide no. 66 of 2017 issued on 18.08.2017 valid upto 31.08.2019
5.	Allotment Letter	19.03.2018 (page no. 31 of complaint)
6.	Date of plot buyer's agreement	20.03.2018 (page no. 30 of complaint)
7.	Plot no.	21, (Type-B) (page no. 31 of complaint)
8.	Plot area	266.14 sq. yd. (page no. 31 of complaint)
9.	Possession Clause	5. Possession of Plot <i>5.1 Subject to Clause 5.2 and subject to the Buyer making timely payment, the Company shall endeavor to complete the development of infrastructural facilities for the plot within 30 months, with an additional grace period of 6 months from the date of execution of this Agreement provided that all amounts due and payable by Buyer have been</i>

		<i>paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Plot in the event of any default or negligence attributable to the Buyer's fulfillment of terms and conditions of this Agreement.</i>
10.	Due date of possession	20.03.2021 (calculated from the date of plot buyer's agreement including grace period of 6 months as it is unqualified)
11.	Total sale consideration	Rs. 1,06,45,600/- (as per SOA on page no. 53 of complaint)
12.	Total amount paid by the complainants	Rs. 1,06,45,600/- (as per SOA on page no. 53 of complaint)
13.	Occupation Certificate	22.07.2022 (page no. 52 of complaint)
14.	Offer of possession	01.08.2022 (page no. 52 of complaint)
15.	Conveyance deed	17.10.2022 (page no 58 of complaint)
16.	Memorandum of settlement	17.10.2022 (page no. 24 of reply)
17.	Certificate of Possession	23.12.2022 (page no. 22 of reply)

B. Facts of the complaint

3. The complainant has pleaded the complaint on the following facts:

4. That the complainants, Sunirmal Boksi and Sushmita Samanta were approached by the sale representatives of the respondent company, who made tall claims about the project 'ILD Engracia' as the world class project. The complainants were impressed by their oral statements and representations and ultimately booked a plot measuring 266.14 square yards in the project 'ILD Engracia' in Sector 37D, Gurugram by paying Rs.10,64,000/- as booking amount.
5. That the plot buyer agreement was executed on 20th March, 2018 between the respondent and the complainants for purchase of plot no. B-21, type - B, admeasuring 266.14 square yards in the project 'ILD Engracia' at Village Basai, sector 37D, Gurugram, Haryana. The total sale consideration of the plot is Rs.1,06,40,000/- including any other charges and taxes, as per clause 3.1 of the plot buyer agreement.
6. That the due date of handing over the possession of the plot comes out to be 20th September 2020, as per clause 5.1 of the agreement. The respondent offered the possession of the said plot on 1st August, 2022 and raised the demand of Rs.59,86,267/-. The complainants had already paid a sum of Rs.47,13,440/- to the respondent till May, 2022, as and when demanded by the respondent.
7. That the total cost of the allotted plot is Rs.1,06,40,000/-, including all the charges. The complainants paid all payable amounts, as and when demanded by the respondent, a total of Rs.1,06,99,707/- to the respondent till date, which includes Rs.54,107/- as interest towards delayed payments collected by the respondent whereas the complainants have not defaulted in any payments.
8. That the respondent got executed the conveyance deed in the favour of the complainants, registered vide registration no.9127 dated 17

October, 2022 at Kadipur Tehsil, Gurugram, for the said plot no.B 21, admeasuring 266.14 square yard at sector 37D, Gurugram.

9. That the complainants have been time and again approaching the respondent for completion of the project and delivery of possession of their plot as per the plot buyer agreement. The respondent has miserably failed to submit any justified response to various letters, emails, telephone calls, seeking information about completion of the project.
10. That the respondent has, in an unfair manner siphoned of funds meant for the project and utilised same for their own benefit for no cost. The respondent being builder, promoter, colonizer and developer whenever in need of funds from bankers or investors ordinarily have to pay a heavy interest per annum. However, in the present scenario, the respondent utilised funds collected from the complainants and other buyers for its own good and utilised it in other projects, being developed by the respondent.
11. That the complainants have lost confidence and in fact have got no trust left in the respondent, as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainants beside being guilty of indulging in unfair trade practices and deficiency in services in not delivering the possession of the plot in time and then remaining non-responsive to the requisitions of the complainants.
12. That the complainants do not intend to withdraw from the project. As per the obligations on the respondent/promoter under section 18 of the Act, 2016 read with Rules 15 and 16 of the Rules, 2017, the promoter has an obligation to pay interest on the delayed possession on the amount deposited by the complainants at the rate prescribed. .

C. Relief sought by the complainant:

13. The complainant has sought following reliefs:

- a. Direct the respondent to complete the development of the project and deliver the plot along with all facilities and amenities like water, electricity, roads, green belt, etc.
- b. Direct the respondent to pay interest for every month of delay in handing over the possession of the plot since 20.09.2020 to the complainants on the amount taken from the complainants towards sale consideration for the plot with interest at the prescribed rate as per the Act, 2016 till the respondent hands over the legal and rightful possession of plot.
- c. Direct the respondent to transfer the IFMS charges, power backup charges and maintenance charges to RWA.
- d. Direct the respondent to refund the sum of Rs. 54,107/- charged by the respondent from the complainants towards interest on delay payments, as the complainants have not defaulted in making payments.
- e. Direct the respondent not to charge anything beyond the charges stipulated in plot buyer agreement.
- f. Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by complainants.

14. On the date of hearing, the authority explained to the respondents/promoters about the contravention 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

15. The respondent has contested the complaint on the following grounds:

16. That the complainant has not come with clean hands before this Hon'ble Forum and have suppressed the true and material facts from this Hon'ble Forum.
17. That the complainant has no locus standi to file the present complaint. The sale deed has been executed in favour of complainant and the complainant has also obtained possession vide possession letter dated 23.12.2022.
18. That the Directorate of Urban Local Bodies, Haryana issued necessary LOI bearing memo no. CT/A2/2014/4604 dated 26.8.2014 to develop the said land into residential plotted colony. Thereafter vide order dated 28.8.2014, in exercise of power conferred by sub-section 3 of section - 276 of Haryana Municipal Corporation Act 1994. The Government of Haryana has sanctioned the Town Planning scheme No. 14 bearing drawing no. MCG/CTP/2014/19 dated 11.8.2014 over the said land. In terms of LOI dated 26.8.2014, the respondent company got approval of Demarcation plan bearing No. MCG/CTP/2014/21 dated 9.4.2015, zoning approval plan no. DULB/CTP/TP-GGM/2022/6579 dated 6.7.2022 in the said residential plotted colony.
19. That after receiving necessary approvals from the Concerned Departments, the respondent company has developed a residential plotted colony under name "ILD Engracia" situated at Section - 37 D, Tehsil and District Gurgaon.
20. That after due verification of record and inspection of site visit, the complainant agreed to purchase plot no. B-21 admeasuring 266.14 sq yards for sale consideration of Rs. 1,06,45,600/-.
21. That after receiving the sale consideration, the complainant and respondent company entered into MOU for settling the terms of the conveyance deed and to pay the remaining sale consideration. As per

terms of the MOU, the complainant has waived the right to claim any further interest or to file any litigation in respect of same plot against the respondent company. Even the complainant has concealed the NO dues certificate has also been issued by the respondent company to the complainant on 1.10.2022.

22. That the complainants are aware that the project has been completed and company has executed conveyance deed and possession has been handed over, No dues certificate has been issued by the respondent company, but still the complainants with malafide intention chose the Hon'ble Authority to agitate their frivolous claim.
23. That no cause of action has ever accrued in favour of the complainants to file the present complaint before the Hon'ble Regulatory Authority. The complaint being without any cause of action is liable to be dismissed on this ground alone.
24. That the complaint of the complainants lacks bonafide and smells smack of malafide who have not approached the Hon'ble Authority with clean hands. The complainants are not entitled for any relief under the Real Estate Regulatory Act.
25. That the complainants are estopped from filing the present complaint by their own acts, conduct, admissions, commissions, omissions, acquiescence and latches. The complainants have moved the instant vexatious complaint to harass the respondent to succumb to their illegal demands and to achieve speculative bargains.
26. That the statement of objects and reasons of the RERA inter-alia is an attempt to balance the interests of consumers and promoters by imposing certain responsibilities on both. It is submitted that the complainants have never been at all aggrieved and do not fall under the definition of aggrieved person, but still by filing such false,

frivolous and vexatious complaint, the complainants are not only harassing the respondent company to succumb to their illegal demand, but by filing such false complaint, they are misleading the Hon'ble Authority.

27. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

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

E.I. Territorial jurisdiction

29. 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

30. 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.

31. 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 relief sought by the complainant

F.I. Direct the respondent to complete the development of the project and deliver the plot along with all facilities and amenities like water, electricity, roads, green belt, etc.

32. The respondent promoter was granted OC for the subject unit from the competent authority on 22.07.2022 and had offered possession to the complainants allottee vide notice of possession letter dated 01.08.2022. The possession of the said unit was handed over on 23.12.2022. Hence, no direction is given to this effect.

F.II Direct the respondent to pay interest for every month of delay in handing over the possession of the plot since 20.09.2020 to the complainants on the amount taken from the complainants towards sale consideration for the plot with interest at the prescribed rate as per the Act, 2016 till the respondent hands over the legal and rightful possession of plot.

33. In the present complaint, the complainants intend to continue with the project and are seeking delayed possession charges on the amount

paid. Clause 5.1 of the buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"5.1 Subject to Clause 5.2 and subject to the Buyer making timely payment, the Company shall endeavor to complete the development of infrastructural facilities for the plot within 30 months, with an additional grace period of 6 months from the date of execution of this Agreement provided that all amounts due and payable by Buyer have been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Plot in the event of any default or negligence attributable to the Buyer's fulfillment of terms and conditions of this Agreement."

34. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter 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 clause in the unit buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the 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 mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

35. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the plot within 30 months with an additional grace period of 6 month from the date of execution of agreement. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause therefore, the grace period of 6 month is allowed and the due date hereby comes out to be 20.03.2021.

36. **Admissibility of delay possession charges at prescribed rate of interest:** 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.*

37. 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.

38. 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., **17.05.2024** is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

39. 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;"

40. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
41. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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. By virtue of clause 5.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 30 months with an additional grace period of 6 months from the date of execution of the

agreement. As such the due date of handing over of possession comes out to be 20.03.2021.

42. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 22.07.2022. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 20.03.2021 till the expiry of 2 months from the date of offer of possession (01.08.2022) plus two months (i.e., 01.10.2022).
43. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the 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, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 20.03.2021 till offer of possession plus two months (i.e., 01.10.2022),

at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.III Direct the respondent to transfer the IFMS charges, power backup charges and maintenance charges to RWA.

44. The above-mentioned relief sought by the complainants was not pressed by the complainant's counsel during the arguments in the passage of hearing. The authority is of the view that the complainants counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

F.IV Direct the respondent to refund the sum of Rs. 54,107/- charged by the respondent from the complainants towards interest on delay payments, as the complainants have not defaulted in making payments.

45. As per section 2(za) of the Act, 2016 the rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges.

F.V Direct the respondent not to charge anything beyond the charges stipulated in plot buyer agreement.

46. The respondent shall not charge anything from the complainants which is not the part of the plot buyer's agreement.

F.VI Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by complainants.

47. The complainants in the aforesaid relief are seeking 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. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

48. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 20.03.2021 till offer of possession i.e., 01.08.2022 plus two months i.e., upto 01.10.2022 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
 - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in


case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.

49. Complaint stands disposed of.

50. File be consigned to registry.




(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.05.2024

HARERA
GURUGRAM