

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

**Complaint no.** : 1422 of 2022  
**Date of complaint** : 08.04.2022  
**Date of order** : 07.08.2024

Ajay Dogra, S/o Onkar Chand,  
**R/o:** DRDO Township, Kanchanbagh, Hyderabad.  
**Also at:** Ward no.7, Brahampuri Mohulla Sujapur  
Tira, District- Hamirpur, Himachal Pradesh.  
(Through SPA Holder Shashi Bhushan Prasad),  
**R/o:** E-43, Basement, Panchsheel Park, New Delhi.

**Complainant**

Versus

M/s ILD Millennium Pvt. Ltd.  
**Regd. Office at:** - ILD Trade Centre,  
Sector-47, Sohna Road, Gurugram-122018.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Shashi Bhushan Prasad (Advocate)  
Rishabh Gupta (Advocate)

Complainant  
Respondent

**ORDER**

1. The present 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**

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, 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.	1503, 14 <sup>th</sup> floor, Tower 6 (page no. 41 of complaint)
8.	Unit measuring	1875 sq. ft. (page no. 41 of complaint)
9.	Date of builder buyer agreement	18.02.2014 (page no. 40 of complaint)
10.	Possession clause	<b>10.1 PROCEDURE FOR TAKING POSSESSION</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 <b>within three years from the date of execution of this agreement, with grace period of six month</b> , unless there shall delay or there shall be failure

		<p>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.”</p> <p><b>(emphasis supplied)</b></p> <p>(page 51 of complaint)</p>
11.	Total sale consideration	<p>Rs. 85,64,375/-</p> <p>(as per SOA dated 03.05.2017 on page no. 87 of complaint)</p>
12.	Amount paid by the complainant	<p>Rs. 74,23,844/-</p> <p>(as per SOA dated 03.05.2017 on page no. 87 of complaint)</p>
13.	Due date of possession	<p>18.08.2017</p> <p>[calculated as per possession clause]</p> <p>(grace period is allowed being unqualified)</p>
14.	Occupation certificate	<p>02.07.2021</p> <p>(as per record)</p>
15.	Offer of possession	<p>02.08.2021</p> <p>(page 93 of complaint)</p>

**B. Facts of the complaint**

3. The complainant has made the following submission: -

- I. That the present complaint is being filed by the complainant through his duly constituted attorney and appointed vide the Special Power of Attorney Deed dated 25.03.2022.

- II. That the complainant was allotted a flat bearing no. 1503 on 14th floor, Tower 06, in the project of the respondent named "ILD Spire Greens", Sector 37C, Gurugram vide provisional allotment letter dated 02.11.2012. Thereafter, an apartment buyer's agreement dated 18.02.2014 was executed between the parties regarding the said allotment for a total sale consideration of Rs.85,64,375/- against which the complainant has paid a sum of Rs.74,23,84/- in all.
- III. That the possession of the flat was to be delivered within three years from the date of execution of the buyer's agreement. However, the respondent has failed to deliver the same on time there by committing breach of the agreement dated 18.02.2014. Moreover, the respondent has been illegally demanding additional money from the complainant, which has no legal and contractual basis thereby making the respondents liable in terms of the provisions of the Act, 2016.
- IV. That time was the essence of the agreement. Moreover, vide clause 10.1 of the agreement, it was agreed that the respondent would deliver the possession of the said unit within three years with a grace period of six months from the date of execution of this agreement. Accordingly, even after the benefit of such grace period, the possession ought to have been handed over latest by 17.08.2017. However, the complainant saw no sign of completion of work and handing over the possession, as promised. As per the agreement, the complainant has been regularly paying the amount as per the invoice/demand made by the respondent from time to time and had already paid about 87% of total cost upto March 2016. However, the respondent has failed to deliver the possession of the flat on promised time.
- V. That As the delivery date of the project was delayed by about more than 4 years, from the agreed delivery date of 17.08.2017, the complainant had

no choice but to issue a notice to the respondent on 05.01.2021 asking for demand of interest and compensation till that time, but the complainant did not receive any reply against the same. Since there has not been any reply from the respondent, the complainant again sent a mail to the respondent asking for a refund of total principal amount paid along with interest @10% till the issue of this letter, but the complainant has not received any reply from the respondent.

- VI. That it is pertinent to mention here that the above said apartment has been mortgaged with HDFC Bank and EMI of Rs.45,000/- being paid against the total disbursement amount of Rs.40,97,185/-. This loan was availed by the complainant in July, 2017 and till date total interest amount of Rs.14,78,666/- has been paid. It is quite painful to pay regularly the Bank's EMI without even getting the possession of the flat/apartment. It is to be noted that the balance amount was not paid by the bank due to the non-receipt of offer of possession by the complainant. Accordingly, it is to be noted that the balance amount inclusive of service tax which was payable at the time of possession was Rs.13,47,258/- out of which a total amount of Rs.7,02,815/- is pending from the HDFC bank only.
- VII. That the complainant has recently called the office of respondent and enquire about the offer of possession, it was verbally replied that they had already sent a mail dated 05.08.2021 offering the possession of flat but only after the payment of a specified amount. The mail was sent to a mail ID, which the complainant does not access as the same was not operational at that point of time. After repeated call and request to them, they just forwarded the e-mail which was received by the complainant on 14.03.2022, according to which an amount of Rs. 32,83,257/- was shown



as payable by the complainant, while as per the agreement total balance payable inclusive of service tax was Rs.13,47,258/-.

VIII. That it is submitted that the respondent had not only harassed the complainants physically and mentally by its unscrupulous act of lying and deceiving, but also flouted the norms and provisions of the Real Estate (Regulation and Development) Act, 2016.

IX. That in view of above facts and circumstances of the case, it is evident that from the date of booking, the respondent has failed to deliver the possession of the said unit to the complainant, therefore, the respondent has not fulfilled his committed liability. The respondent has been indulged in cheating and fraudulent practices with the complainant in order to illegally grab more money from him.

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

4. The complainant has sought following relief(s):
  - i. Direct the respondent to handover possession of the unit and to pay interest on the paid-up amount at the prescribed rate.
5. 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.**

6. The respondent/promoter put in appearance through company's A.R and Advocate and marked attendance on 03.08.2022, 07.11.2022, 15.03.2023 and 23.08.2023. Despite specific directions for filing a reply in the matter, the respondent has failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 15.11.2023, it was observed that, "*None appeared on behalf of respondent nor*

*written reply has been filed till date despite multiple opportunities already granted. Therefore, the respondent of the respondent is struck off."*

7. 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 submission made by the complainant.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

9. 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**

10. 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.*

11. 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.

**F. Findings regarding relief sought by the complainant.**

**F. I Direct the respondent to handover possession of the unit and to pay interest on the paid-up amount at the prescribed rate.**

12. The complainant was allotted a residential apartment bearing no. 1503 on 14th floor, Tower 06, in the project of the respondent named "ILD Spire Greens", Sector 37C, Gurugram vide provisional allotment letter dated 02.11.2012. Thereafter, an apartment buyer's agreement dated 18.02.2014 was executed between the parties regarding the said allotment for a total sale consideration of Rs.85,64,375/- against which the complainant has paid a sum of Rs.74,23,84/- in all. The occupation certificate for the Tower in which the unit of complainant is situated was obtained by the respondent on 02.07.2021 and thereafter, possession of the unit was offered to him vide letter dated 02.08.2021, whereby the complainant was requested to clear the outstanding amount as per the SOA attached with it within 30 days from the date of that letter. On proceedings dated 22.05.2024, the counsel for the respondent has submitted that despite 4 reminders, the complainant has not come forward to take possession of the unit after payment of outstanding dues. The counsel for the complainant has submitted that unreasonable demands were made by the respondent alongwith offer of possession without giving any explanation. However, while filing the complaint neither there are any pleadings in this regard, nor any proof w.r.t the same has been placed on record by him. Therefore, in view of the above, the claim of the complainant that the respondent is making unreasonable demands along with offer of possession stands rejected.
13. The complainant has failed to make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) of the Act to



pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Proviso to section 19(6) and 19(7) reads as under:

*"Section 19: - Right and duties of allottees. -*

.....

- (6) every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.
- (7) the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

14. The authority observed that the possession of the unit was offered to the complainant on 02.08.2021 and despite repeated reminders he is not coming forward to clear the outstanding dues and to take possession of the unit. Section 19(6) & 19(7) of the Act provides that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the Act. Therefore, in view of the above, the complainant is liable to pay the outstanding dues as per the buyer's agreement as he is willing to take possession of the unit.

15. The complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under: -

*"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, —*

.....

*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."*

16. Clause 10.1 of the apartment buyer's agreement (in short, the agreement) dated 18.02.2014, provides for handing over possession and the same is reproduced below:

**10.1 Procedure for Taking Possession:**

*"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 this agreement, with grace period of six 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.**"*

17. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreement and in 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 favour 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 apartment buyer's 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.

18. The respondent/promoter has proposed to handover the possession of the subject apartment within a period of 36 months plus grace period of 6 months from the date of execution of the apartment buyer agreement. The apartment buyer's agreement was executed between the parties on 18.02.2014. Further a grace period of 6 months is allowed to the respondent being unqualified. Thus, the due date of possession come out to be 18.08.2017.

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

The complainant is seeking delay possession charges at the prescribed rate of interest. However, 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.*

20. 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.

21. 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 07.08.2024 is



9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11% per annum.

22. 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;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
24. On consideration of documents available on record as well as submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of apartment buyer's agreement executed between the parties on 18.02.2014, the possession of the booked unit was to be delivered by 18.08.2017. The occupation certificate was granted by the concerned authority on 02.07.2021 and thereafter, the possession of the subject flat was offered to the complainant vide letter dated 02.08.2021. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on



part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 18.02.2014 to hand over the possession within the stipulated period.

25. 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 02.07.2021. The respondent offered the possession of the unit in question to the complainant only on 02.08.2021, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months time from the date of offer of possession. These 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 till the expiry of 2 months from the date of offer of possession (02.08.2021) which comes out to be 02.10.2021.
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 delayed possession at prescribed rate of interest i.e., 11% p.a. w.e.f. 18.08.2017 till the expiry of 2 months from the date of offer of possession (02.08.2021) which comes out to be 02.10.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.





**G. Directions of the authority: -**

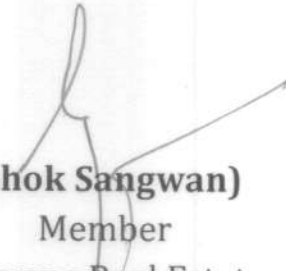
27. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 11% per annum for every month of delay from due date of possession i.e., 18.08.2017 till the expiry of 2 months from the date of offer of possession (02.08.2021) i.e., upto 02.10.2021 only.
- ii. The respondent is directed to supply a copy of the updated statement of account after adjusting the delayed possession charges within a period of 15 days to the complainant.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days from the date of receipt of updated statement of account.
- iv. The respondent is directed to handover possession of the unit/flat in question to the complainant in terms of Section 17(1) of the Act, 2016 and the complainant is also obligated to take physical possession of the allotted unit under Section 19(10) of the Act, 2016.
- v. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement. Further, the respondent-promoter shall not charge holding charges from the complainant-allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
- vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% 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 as per section 2(za) of the Act.

28. Complaint stands disposed off.
29. File be consigned to the registry.

Dated: 07.08.2024

  
**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
GURUGRAM