

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

		Date of order:	05.08.2025
NAME OF THE BUILDER		M/s ILD Millennium Pvt. Ltd.	
PROJECT NAME		ILD Spire Greens	
S. No.	Case No.	Case title	Appearance
1.	CR/1968/2023	Col. Rahul Dev Singh Vs. M/s ILD Millennium Pvt. Ltd.	Shashi Bhushan Prasad (Complainant) Rishabh Gupta (Respondent)
2.	CR/1858/2023	Mr. Sudhakar Agarwal Vs. M/s ILD Millennium Pvt. Ltd.	Navneet Kumar (Complainant) Rishabh Gupta (Respondent)

CORAM:	
Arun Kumar	Chairman
Ashok Sangwan	Member

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the Apartment buyer agreement executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **ILD Spire Greens** Sector 37C, Gurugram being developed by the same respondent/promoter i.e., **M/s ILD Millennium Pvt Ltd**. The terms and conditions of the buyer's agreements/MoU and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking valid offer of possession of the unit along with delayed possession charges.
3. The details of the complaints, reply status, unit no., date of agreement, due date of possession, total sale consideration, total paid amount, offer of possession and relief sought are given in the table below:

Project Name and Location			ILD Spire Greens, Sector 37 C, Gurugram, Haryana		
Nature of the project			Residential		
Project area			15.4829 acres		
Occupation certificate			02.07.2021		
Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainants	Offer of possession
1	CR/1968/2023 Col. Rahul Dev Singh Vs. M/s ILD Millennium Pvt Ltd DOF: 27.04.2023 Reply: 05.03.2024	0604, 6 th floor, Tower No. - 07 1355 sq. ft. (Total super Area) (page no. 29 of complaint)	BBA: 05.11.2013 (with original allottee) (page 27 of complaint) Date of Endorsement - 15.04.2014 (page no. 25 of complaint)	T.S.P: Rs. 63,54,005/- (as per page no. 30 of complaint) A.P.: - Rs. 44,41,041/- (as per page 74 of complaint)	O.O.P:16.08.2021 (page no. 71 of complaint)
2.	CR/1858/2023 Mr. Sudhakar Agarwal Vs.	Ground Floor -- 01, Tower No. - 06	BBA: 23.09.2013 (page 34 of complaint)	T.S.C: Rs. 89,01,875/- (as per page no. 37 of complaint)	O.O.P: 02.08.2021 (as per page no. 84 of the complaint)

M/s ILD Millennium Pvt Ltd. DOF: 02.05.2023 Reply: 05.03.2024	1875 sq. ft. (Total super Area) (page no. 36 of complaint)	A.P.: Rs. 74,98,443/- (as per page 91 of complaint)
Relief sought by the complainant(s) in abovementioned complaints: - 1. Direct the respondent to handover possession of the unit and to pay interest on the paid-up amount at the prescribed rate.		

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date and seeking the delayed possession charges.
5. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/1968/2023 titled as Col. Rahul Dev Singh Vs. M/s ILD Millennium Pvt Ltd** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, if any, have been detailed in the following tabular form:

**CR/1968/2023 titled as Col. Rahul Dev Singh
Vs. M/s ILD Millennium Pvt Ltd.**

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.	0604, Tower-07 (page no. 29 of complaint)
8.	Unit measuring	1355 sq. ft. (page no. 29 of complaint)
9.	Date of builder buyer agreement	05.11.2013 (page no. 27 of complaint)
10.	Date of Endorsement	15.04.2014 (page no. 27 of complaint)
11.	Possession clause	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.” (emphasis supplied) (page 38 of complaint)

12.	Total sale consideration	Rs. 63,54,005/- (as per page no. 30 of complaint)
13.	Amount paid by the complainant	Rs. 64,44,106/- (as per page no. 74 of complaint)
14.	Due date of possession	05.05.2017 [calculated as per possession clause] (grace period is allowed being unqualified)
15.	Occupation certificate	02.07.2021 (as per pg. no. 15 of the reply)
16.	Offer of possession	16.08.2021 (page 71 of complaint)

B. Facts of the complaint

7. The complainant has made the following submission: -

- I. That the present complaint is being preferred by Col Rahul Dev Singh (hereinafter referred to as the "Complainant"). Mr. Satya Prakash Aggarwal (original allottee), transfer the flat no. 0604, 6th Floor, Tower 7, Block - 4, in the "Spire ILD Greens" developed by respondent at Sector 37C, Gurugram, Haryana to the Complainant with all the rights and responsibilities/liabilities and the same was endorsed by the Respondent.
- II. That Mr. Satya Prakash Aggarwal, the "Original Allottee" and the "Transferor" referred herewith had agreed to purchase one unit/flat (2bhk) at the above-mentioned project and pursuant thereto booked the flat on dated 02nd July, 2012 in the residential project "ILD Spire Greens" of the Respondent and paid an amount of Rs. 2,00,000/- (Rupees Two Lakh Only) as advance towards the total purchase cost of Rs. 63,54,005/- (rupees sixty-three lakhs fifty-four thousand & five only), which was inclusive of basic price, EDC & IDC,

PLC, IFMS, parking space charges and club membership charges. At the time of booking,

- III. That, Mr. Satya Prakash Aggarwal, original allottee and the transferor has made further payment of Rs. 17,75,728/- (seventeen lakhs seventy-five thousand seven hundred twenty-eight only) before the execution of the "Apartment buyer agreement" dt. 05th November 2013.
- IV. That the complainant kept paying the required amount as per demand notice issued by the respondent and till 05.05.2017 i.e., (date up to which possession should had been offered to the complainant), a total amount of 44,41,041/- (forty-four lakhs forty-one thousand and forty-one only) was paid to respondent, that was equal to 70% of total cost price of the unit.
- V. Accordingly, the respondent was entitled to have a grace period of only for 6 months (after the expiry of 3 years) in respect of the said unit and/or the project. Even after the benefit of such grace period, the possession ought to have been handed over latest over by 05/05/2017.
- VI. Thereafter, the complainant received a notice dt. 16-08-2021 & 18.11.2021 from the respondent informing that the "Occupancy Certificate" for the third phase of Tower's 6 & 7 in ILD Greens has been obtained and accordingly offered the possession of the aforesaid allotment of flat no. 0604, 6th Floor, subject to the payment of balance due amount of Rs. 45,41,304/- (forty-five lakhs forty-one thousand three hundred & four only) towards the final installment payable within 30 days from the date of the letter. It is pertinent to mention here that out of the total consideration of Rs. 63,54,005/- (sixty-three lakhs fifty-four thousand and five only) payable against the purchase cost, an amount of Rs. 44,41,041/- (forty-four lakhs forty-one thousand

and forty-one only) had already been paid till 05.05.2017, accordingly total balance payable amount was Rs. 22,12,964/- (Twenty-Two Lakhs Twelve Thousand Nine Hundred Sixty-Four) only.

VII. Accordingly, after many meetings and negotiations, as the complainant wanted to avoid litigations and was also in a hurry to move into the flat, agrees to pay Rs. 20,00,000/- (Twenty Lakh Only) with the condition that the flat will be completed in every aspect to become habitable and registry of the same will be done simultaneously. Thereafter, the complainant made the payment of Rs. 20,00,000/- (Twenty Lakh Only) on 10.12.2022 towards full & final payment after assurance by the respondent that the flat will be in habitable condition within a month.

VIII. 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 violated the clause 10.1 of the apartment buyer agreement executed on dt. 05/11/2013, accordingly the respondent has defrauded the applicant/complainant by not providing the flat in habitable condition as promised, which is an obligation of the promoter under section 11(4) (a) of the Act.

C. Relief sought by the complainant:

8. 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.
9. 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.

10. That in around the year 2013, the Complainant herein, learned about the project launched by the Respondent titled as 'ILD Spire Green' (herein referred to as 'Project') situated at Sector 37C, Gurgaon and approached the Respondent repeatedly to know the details of the said project.
11. Thereafter, the respondent allotted the unit bearing no. 604, 6th floor Tower-7 (herein referred to as 'Unit') admeasuring to 1355 Sq. ft. to the Complainant for a basic sale price of Rs. 63,64,005/- (Rupees Eighty-Six Lakhs and Twenty Thousand Six Hundred Twenty-Five Only).
12. That on 05.11.2013, a Builder Buyer Agreement (herein referred to as 'Agreement') was executed between the complainant and the respondent, for the aforesaid unit being allotted to the complainant.
13. That the respondent under the supervision of this Hon'ble Authority had already completed the construction of Tower 6 and 7, falling under the project way back in the year 2016 and had also obtained the Occupation Certificate in the year 2016 & 2017.
14. It is submitted that the complainant being the habitual defaulter in terms of payment has failed to adhere to the payment plan and has violated the terms and conditions embodied under clause 5 of agreement.
15. That as on date the complainant has only paid an amount of Rs.62,81,112/- which amounts to merely of the total sale consideration against the unit being allotted to the complainant.
16. It is pertinent to mention that the respondent on 21.07.2022 had already offered the possession of the respective unit booked by the complainant and had requested the complainant to take the possession of the same post clearing the amount due and pending on account of the complainant.
17. That the complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Ld. Authority, for the reasons stated above.

It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this Ld. Authority and in the interest of justice.

E. Jurisdiction of the authority

18. 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

19. 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

20. 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.

21. 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.1 Direct the respondent to handover possession of the unit and to pay interest on the paid-up amount at the prescribed rate.

22. The complainant was allotted a residential apartment bearing no. 0604 on 6th floor, Tower 07, in the project of the respondent named "ILD Spire Greens", Sector 37C, Gurugram vide provisional allotment letter dated 02.07.2012. Thereafter, an apartment buyer's agreement dated 05.11.2013 was executed between the parties regarding the said allotment for a total sale consideration of Rs.63,54,005/- against which the complainant has paid a sum of Rs.44,41,041/- 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 16.08.2021, 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. The counsel for the complainant has submitted that unreasonable demands were made by the respondent along with offer of possession without giving any explanation.
23. 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."

24. Clause 10.1 of the apartment buyer's agreement dated 05.11.2013, 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."*

25. 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. The drafting of this clause and incorporation of such conditions is 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.
26. 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 05.11.2013. Further a grace period of 6 months is allowed to the

respondent being unqualified. Thus, the due date of possession come out to be 05.05.2017.

27. **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.

28. 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.
29. 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 05.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90% per annum.
30. The definition of term 'interest' as defined under section 2(z) 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;"*

31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
32. In **CR/1858/2023**, it is noted that the complainant has placed reliance on a report prepared by a private company to contend that the allotted unit is not in a habitable condition. However, the Authority observes that the Directorate of Town and Country Planning (DTCP), Haryana, has already granted Occupation Certificate (OC) in the year 2021 for the concerned tower wherein the complainant's unit is situated. Once the Competent Authority has certified the tower to be fit for occupation, the report of any Independent Architect like PropChk (Property Inspection Service) cannot override or displace the certification issued by DTCP. Accordingly, the Authority does not find any merit in the reliance placed by the complainant on such private report to establish that the unit is not in a habitable condition.
33. 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 05.11.2013, the possession of the booked unit was to be delivered by 05.05.2017. 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 16.08.2021. 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 05.11.2013 to hand over the possession within the stipulated period.

34. 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 (16.08.2021) which comes out to be 16.10.2021.

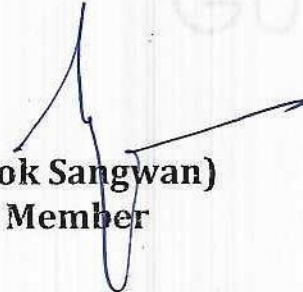
35. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 10.90% p.a. w.e.f. 05.05.2017 till the expiry of 2 months from the date of offer of possession (16.08.2021) which comes out to be 16.10.2021 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: -

36. 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 at the prescribed rate of 10.90% p.a. for every month of delay on the amount paid by the complainant from the due date of possession i.e., 05.05.2017 till offer of possession i.e., 16.08.2021 plus 2 months 16.10.2021 to the complainant as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.90% per annum for every month of delay from due date of possession i.e., 05.05.2017 till offer of possession i.e. 16.08.2021 plus 2 months i.e. 16.10.2021.

- iv. 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.
 - v. 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.
 - vi. 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.
 - vii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.90% 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(zb) of the Act.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. Complaint stands disposed of.
39. File be consigned to the registry



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated:05.08.2025