

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

Complaint no. 2847 of 2019
Date of First hearing 18.12.2019
Date of decision 18.12.2019

1. Smt. Rekha Kumari Sharma

2. Shri Pradeep Sharma

**Address – A-1, Jain Mandhir Road, Mohan Nagar,
Hindaun City District Karauli (Rajasthan)**

Complainants

Versus

M/s ILD MILLENNIUM PVT. LTD.

**Regd. Office: -B-418, New Friends Colony,
New Delhi – 110025.**

**Corporate Office – ILD Trade Centre, 9th Floor,
Sohna Road, Gurugram (Haryana)- 122001.**

Respondent

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE.

Shri Sukhbir Yadav

Shri Venkat Rao

Advocate for the complainants

Advocate for the respondent

ORDER

1. The present complaint dated 19.07.2019 has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of 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.	Project name and location	ILD Spire Greens, Sector 37 C, Gurugram
2.	Project area	15.4829 acres (approx)
3.	Nature of project	Group Housing Colony
4.	RERA registered/ not registered	Registered vide no. 60 of 2017 dated 18. 08.2017 (for Tower 2, 6 and 7)
5.	RERA registration valid upto	16.8.2018 (already expired)
6.	DTCP license no. & validity status	13 of 2008 dated 31.1.2008 valid/renewed upto 31.1.2008.
7.	Name of licensee	M/s. Jubilant Malls Pvt. Ltd. and M/s. Goldman Malls Pvt. Ltd.
8.	Unit no., Tower no.	403, 4 th floor, Tower 7
9.	Carpet area	1365 sq. ft. (super area)
11.	Date of execution of agreement	30.6 2017 (Pg. 27 of the complaint)
12.	Payment plan	Construction linked payment interest subvention plan (as per SOA dt. 03.07.2019, Pg. 80 of the complaint)
13.	Total sales consideration	Rs. 66,91,585/- (as per SOA dt. 03.07.2019, Pg. 80 of the complaint)

14.	Total amount paid by the complainant	59,19,897/- (as per SOA dt. 03.07.2019, Pg. 80 of the complaint)
15.	Due date of delivery of possession as per agreement	31.12.2018 (clause 10.1 - 1 year + 6 months from the date of agreement)
16.	Period of delay in handing over possession till date	11 months and 18 days.
17.	Status of project (ongoing/complete)	ongoing
18.	Details of Occupation Certificate, if any,	OC received on 31.10.2016 for tower 3 and 4, Further OC was received on 19.12.2017 for Tower5 Area/Tower for which OC obtained- Tower 3, 4 and 5
19.	Date of offer of possession, if any	Not offered till dated
20.	Relief sought (in specific terms)	<ul style="list-style-type: none"> • Direct the respondent to pay pre -EMI directly to HDFC Ltd. against the loan, till the possession of flat (as per subvention scheme); • Direct the respondent to pay delay possession charges at the prescribed rate of interest on the amount paid by the complainants; • Direct the respondent to reimburse the pre EMI paid by the complainants to HDFC Ltd.; • Direct the respondent that no further demand should be raised till possession.

3. As per the apartment buyer's agreement in question vide clause no. 10.1 the possession was to be handed over within a period of one year plus grace period of six months which comes out to 31.12.2018.

The relevant clause of the apartment buyer's agreement reads as under:

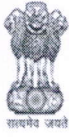
"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said Building/said Unit within one year



from the date of execution of this agreement, with grace period of Six Months.....”

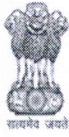
4. Possession of the apartment has not been offered or given so far despite repeated reminders and requests. It was alleged by the complainants that on 06.09.2017, the complainants have taken a housing loan of Rs. 53,45,000/- with the permission of the respondent to mortgage the apartment in question in favour of HDFC Ltd. and also entered into a tripartite loan agreement with HDFC Ltd. and the respondent on 22.09.2017.
5. The HDFC Ltd. disbursed Rs. 51,89,065/- in favour of respondent from loan amount. The complainants further alleged that the respondent has failed to honour the obligations under buyer's agreement, tripartite agreement and stopped making payments of pre EMI since May, 2018. Hence, this complaint for the aforementioned reliefs.
6. On the date of hearing the Authority explained to the respondent/promoter 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.
7. However, despite service of notice through speed post as well as vide email the respondent did not file its reply to the complaint, though it has been represented through an advocate.





8. 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.
9. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
10. Arguments heard.
11. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
12. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and based on the findings of the authority regarding contravention as per rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. Accordingly, it is the failure of the respondent-promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 30.6.2017 to hand over the possession within





the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established.

13. By virtue of clause 10.1 of the apartment buyer's agreement executed between the parties on 30.6.2017, possession of the booked apartment was to be delivered to the complainant with a period of one year plus 6 months' grace period which comes out to be 30.12.2018. Hence, the complainants are entitled for delayed possession charges at the prescribed rate of interest as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

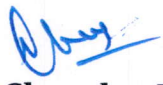
14. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:-

1. The complainants are entitled for delay possession charges at the prescribed rate of interest of 10.20% p.a. with effect from 30.12.2018 (due date of delivery of possession) till the offer of possession;
2. The arrears of interest accrued so far from the due date of delivery of possession till the date of this order shall be paid to the complainants within a period of 90 days and thereafter monthly payment of interest till offer of possession shall be paid before 10 of each subsequent English calendar month;



3. The complainants are directed to pay outstanding dues, if any after adjustment of interest for the delayed period. Interest on the due payments from the complainants shall be charged by the respondent at the prescribed rate of interest @ 10.20% p.a. which is the same as is being granted to the complainants in case of delayed possession charges.
4. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.
15. Complaint stands disposed of.
16. Case file be consigned to the registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Date: -18.12.2019

Judgement uploaded on 28.01.2020.

