



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

**Complaint no. 1760 of 2019
Date of First hearing 18.12.2019.
Date of decision 18.02.2020.**

**1. Shri Gyan Chand Arora; and
2. Shri Ved Prakash Arora.**
**Address – 7A/28, Jyoti Park,
Gurugram (Haryana) – 122001.**

Complainants

Versus

M/s ILD MILLENNIUM PVT. LTD.

**Regd. Office: -4H, Plaza- M6, NHCC District Centre,
Jasola, New Delhi – 110025.**

**Corporate Office – ILD Trade Centre, Sector 47,
Sohna Road, Gurugram (Haryana)- 122001.**

Respondent

CORAM:

**Shri Samir Kumar
Shri Subhash Chander Kush**

**Member
Member**

APPEARANCE.

Ms. Charu Rustogi

Advocate for the complainants

Shri Venkat Rao

Advocate for the respondent

ORDER

1. The present complaint dated 09.05.2019 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 apartment buyer agreement executed inter se them.

2. The particulars of the project, the details of 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.	Project name and location	ILD Spire Greens, Sector 37 C, Gurugram
2.	Project area	15.4829 acres
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, registered area 64621.108 sq. mtrs.)
5.	RERA registration valid upto	16.8.2018 (already expired)
6.	License No. & validity status	13 of 2008 dated 31.1.2008
7.	Name of licensee	M/s. Jubilant Malls Pvt. Ltd. and others.
8.	Unit no., Tower no.	601, Tower 6, block no. 1
9.	Carpet area	1875 sq. ft. (super area)
11.	Date of execution of agreement	17.08.2013 (Pg. 27 of the complaint)



12.	Payment plan	Construction linked payment plan (as per SOA dated 18.09.2018, Pg. 47 of the complaint)
13.	Total sales consideration	58,80,625/- (as per SOA dated 18.09.2018, Pg. 47 of the complaint)
14.	Total amount paid by the complainants	51,29,582/- (as per SOA dated 18.09.2018, Pg. 47 of the complaint)
15.	Due date of delivery of possession as per agreement	17.02.2017 (clause 10.1 - 3 years + 6 months from the date of agreement)
16.	Period of delay in handing over possession till date of decision i.e. 18.02.2020.	3 years.
17.	Status of project (ongoing/complete)	ongoing.
18.	Details of Occupation Certificate, if any,	OC received on 21.10.2016 for tower 3 and 4, Further OC was received on 19.12.2017 for Tower 5
Note - Occupation certificate for the Tower in question i.e. Tower no. 6 has not been received by the respondent till the date of decision.		
19.	Date of offer of possession, if any	Not offered till date
20.	Relief sought (in specific terms)	<ul style="list-style-type: none"> To direct the respondent to refund the excess amount collected on account of any area in excess of caret area as the respondent has sold the super area which also includes the common areas, which is totally in contravention of this Act; To direct the respondent to handover the possession of the unit in question to the complainants alongwith prescribed rate of interest on the amount paid by the complainants towards delayed possession charges.

3. As per the apartment buyer agreement in question vide clause no. 10.1 the possession was to be handed over within a period of three years



plus grace period of six months which comes out to 17.02.2017. The relevant clause of the apartment buyer 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 three years 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 is alleged by the complainants that respondent has failed to honour the obligations under buyer's agreement. Hence, this complaint for the following reliefs :-
- To direct the respondent to refund the excess amount collected on account of any area in excess of caret area as the respondent has sold the super area which also includes the common areas, which is totally in contravention of this Act;
 - To direct the respondent to handover the possession of the unit in question to the complainants alongwith prescribed rate of interest on the amount paid by the complainants towards delayed possession charges.
5. 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.
6. The respondent contests the complaint on following grounds:-
- i. That the project of the respondent got delayed due to reasons beyond the control of the respondent. It is submitted that major





reason for delay for the construction and possession of the project is lack of infrastructure in the area. The 24 meter sector road was not completed on time. Due to non- construction of the sector road, the respondent faces many hurdles to complete the project. For completion of road, the respondent totally dependent upon the government department/machinery and the problem is beyond the control of the respondent.

- ii. That the complainants have intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement. The present complaint is devoid of merit and thus liable to be dismissed.
- iii. That the complainants have alleged some baseless allegations without stating as to how they are being aggrieved by the respondent. That the complainants be put to the strict proof of the same. The complainants have not come with clean hands and have withheld crucial information and the present complaint is liable to be dismissed on this ground alone.
- iv. That the present complaint is an abuse on the process of law and on the complaint is liable to be dismissed on this ground alone.
- v. The Authority lacks the jurisdiction to decide the present matter.

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.





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8. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
9. 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.
10. Arguments heard at length.
11. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and based on the findings of the authority regarding contravention as per provisions 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 promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 17.08.2013 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.



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

1. The respondent shall pay delay possession charges at the prescribed rate of interest of 10.20% p.a. with effect from 17.02.2017 (due date of delivery of possession) till the offer of possession as provided under the proviso to section 18(1) of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
2. The arrears of interest accrued so far from due date of delivery of possession i.e.17.02.2017 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 on or before 10th of each subsequent English calendar month.
3. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.

13. Complaint stands disposed of.

14. Case file be consigned to the registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -18.02.2020

