

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

Complaint No. : 351 of 2018
Date of Institution : 30.05.2018
Date of Decision : 06.11.2018

Mr Rajat Gupta & Mrs. Aruna Gupta
R/o 1913, sector-4, Gurugram.

...Complainant

Versus

M/s ILD Millennium Pvt Ltd,
Office at: ILD Trade Centre, 9th floor,
sector- 47, Sohna Road-122018

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Puneet Nahar
Shri Satish Gola

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 30.05.2018 was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr Rajat Gupta & Mrs. Aruna Gupta against the promoter M/s ILD Millennium Pvt Ltd. on account of violation of clause 10.1 of the apartment buyer agreement executed on 01.10.2010 for



unit no. 1618 in tower 2 in the project “ILD Spire Greens” for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	ILD Spire Greens Sector-37C, Gurugram
2.	Area of the project	15.4829 Acres
3.	Registered/Not Registered	Tower 2 not registered Tower 3 , 6 and 7 Registered (60 of 2017)
4.	DTCP license number	13 of 2008
5.	Date of booking	27.09.2010
6.	Booking amount	Rs 2,00,000/-
7.	Date of agreement	01.10.2010
8.	Unit no.	1618, tower 2
9.	Total consideration	Rs . 51,84,648/- as per the agreement
10.	Total amount paid by the complainant	Rs 12,05,337/- (calculated as per the receipts attached)h y
11.	Date of delivery of possession As per clause 10.1 of apartment buyer's agreement (by 31.12.2012+ 6months grace period)	By 31.06.2013
12.	Delay in handing over the possession till date	5 years 04 months 06 days
13.	Revised date of delivery of possession	15.08.2019



3. As per the details provided above, which have been checked as per record available in the case file provided by the complainant and respondent. A builder buyer agreement is available on record for 1618, tower 2 according to which the possession of the aforesaid unit was to be delivered by 31.12.2012. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 25.07.2018. The case came up for hearing on 25.07.2018. the respondent appeared on 25.07.2018, 11.09.2018 and 25.09.2018. The reply has been filed on behalf of the respondent on 20.07.2018.

FACTS OF THE CASE

5. The complainant visited the Gurgaon office and project site of respondent. The complainant is the first buyer of the flat, bearing no.1618 on 16th Floor of tower 2 in the project that is ILD Spire Greens, Sector 37C, Gurugram constructed/developed by the respondent for the sale



consideration Rs.51,84,648/- with covered parking space and club membership.

6. That the main grievance of the complainant in the present complaint is that in spite of complainant paid almost the whole amount of the flat and willing to pay the remaining amount, the respondent party has failed to deliver the possession of the flat on promised time. It is pertinent to mention here that till date the construction is still pending.
7. It was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat would be handed over to the complainant as soon as construction completes i.e. 26 months as per flat buyer agreement which is 31st December, 2012.
8. The said apartment has been mortgaged with NBFC and the complainants belong to a middle class family. It is hard to bear the pain of the EMI and the rent as well for them.
9. There is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party.
10. The cause of action for the present complaint arose in or around 2013 when a pre-printed buyer agreement containing unfair and unreasonable terms was, for the first time, force upon the allottees. The cause of action is alive and



will continue to subsisted till such time as this Hon'ble authority restraint the respondent party by an order of injunction and that/or passed the necessary orders

11. As per section 18 of RERA Act, 2016 the promoter is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
12. The complainants are entitled to get the refund of paid amount and interest on paid amount from December 2012 to the date of refund.

ISSUES RAISED BY THE COMPLAINANT:

13. The following issues have been raised by the complaints:
 - i. Whether or not the developer has violated the terms and conditions of apartment buyer's agreement?
 - ii. Whether or not the complainants are entitled for refund of all money paid to respondent?

RELIEF SOUGHT BY THE COMPLAINANT

14. The following reliefs have been prayed for:
 - i. Pass an appropriate award directing the respondent parties to refund the paid amount with interest from



December 2012 to the date of refund on paid amount by the complaint to the respondent party.

- ii. Respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally in cooperated in the flat buyer agreement.

REPLY BY THE RESPONDENT

15. That the respondent offered special Subvention Scheme to the complainant. It was conveyed to the complaint that entire applicable interest on home loan availed by the complainant would be borne and paid by the Developer/Respondent up to the offer of possession.

16. It is submitted that the respondent has been paying all the interest against home loan to the DHFL from the sanction of loan and Tripartite Agreement dated 01.10.2010 executed between the parties. The respondent diligently adhering the terms and conditions of the Tripartite Agreement and depositing the due instalment to the DHFL.

17. It is humbly submitted that major reason for delay for the construction and possession of Tower-2, ILD Spire Green is lack of infrastructure in these are. The twenty-four-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 Govt. department/machinery and the problem is beyond the control of the Respondent. The aforementioned road has been recently constructed.

18. It is humbly submitted that the Respondent obtained the RERA Certificate from RERA Authority and valid up to 16.08.2018. It is humbly submitted that the respondent also applied for the Extension of project before the HARERA.

19. It is relevant to mention herein that the Respondent raised bills according to payment plan and some dues against sale consideration is still due on complainant.

20. It is submitted that the delay occurs due to unforeseen reasons and procuring necessary approvals and licenses. It is pertinent to mention here that till date, Respondent has given the possession in other tower of the project and the construction is going on and there will be a chance to deliver the project very soon.

DETERMINATION OF ISSUES

21. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:



- i. With respect to the **first issue** raised by the complainants, the authority came across that as per clause 10.1 of buyer's agreement, the possession of the said apartment was to be handed over by 31.06.2013. The clause regarding the possession of the said unit is reproduced below:

“10.1 Time of handing over the possession

The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said buildings/ said unit by 31.12.2012 with grace period of 6months unless there shall be failure...”

Accordingly, the due date of possession was 31.06.2013 and the possession has been delayed by five years six months till the date of filing of complaint. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay beyond 31.12.2012 + 6months grace period as per clause 11.4 of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:



“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

- ii. With respect to the **second issue**, keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the unit number 1612 on 16th floor Tower-2 in the project ‘ILD SPIRE GREENS’, to the complainant by the committed date i.e. 31.06.2013 as per the said agreement and the possession has been delayed by 5 years 4 months 6 days till date. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession.

More than 75% work of the said project has been completed. Thus, no refund shall be granted as providing the same shall hamper the completion/development of the project and shall adversely affect the interest of the allottees who wish to continue with the project.



FINDINGS OF AUTHORITY:

22. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in **Simmi Sikka V/s M/s EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
23. The authority is of the view of that the respondent has delayed the possession by approximately 5 years 4 months 6 days and thus is liable to hand over possession under section 11(4)(a) of the Act.
24. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
25. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.



26. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1).

27. It has been brought to the notice of the authority by counsel for the respondent that the project is registered with RERA and revised date of delivery of possession is **15.8.2019**. The complainant has come to join hands with the respondent under the subvention scheme and a loan of **Rs.31 Lakhs** had been sanctioned for this unit. The builder has deposited **Rs.20 Lakhs** on behalf of the buyer in the shape of interest. The interest of buyer is quite safe and untouched, as such, the unit will be delivered on the revised date of delivery

DECISION AND DIRECTIONS OF THE AUTHORITY:

28. Thus, The Authority exercising power under section 37 of Real Estate (Regulation & Development) Act, 2016 issue directions:

- (i) The respondent is duty bound to hand over the possession of the said unit by 31.06.2013 as committed by the respondent.



(ii) If the possession is not given on the date committed by the respondent then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. section 19(4) of the Act *ibid*.

29. The order is pronounced.

30. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 06.11.2018

HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 06.11.2018
Complaint No.	351/2018 case titled as Mr. Rajat Gupta V/S M/S ILD Millenium Pvt. Ltd.,
Complainant	Mr. Rajat Gupta
Represented through	Shri Puneet Nahar, Advocate for the complainant
Respondent	M/S ILD Millenium Pvt. Ltd.
Respondent Represented through	Shri Venkat Rao, Advocate for the respondent.
Last date of hearing	9.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

It has been brought to the notice of the authority by counsel for the respondent that the project is registered with RERA and revised date of delivery of possession is **15.8.2019**. The unit No.1618, Tower-2, in project "ILD Spire Greens" is situated for which more than 75% work has been completed. Complainant has come to join hands with the respondent under the subvention scheme and a loan of **Rs.31 Lakhs** had been sanctioned for this unit. The builder has deposited **Rs.20 Lakhs** on behalf of the buyer in the shape of interest. The interest of buyer is quite safe and untouched, as such, the unit will be delivered on the revised date of delivery.

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Complaint is disposed off. Detailed order will follow. File be
consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)