

**PROCEEDINGS OF THE DAY**

Day and Date	Friday and 07.12.2018
Complaint No.	556/2018 Case Titled As Mr. Ashutosh V/S M/S ILD Millenium Pvt. Ltd.
Complainant	Mr. Ashutosh
Represented through	Complainant in person
Respondent	M/S ILD Millenium Pvt. Ltd.
Respondent Represented through	Shri Satish Gola Company Secretary of respondent-company.
Last date of hearing	18.9.2018
Proceeding Recorded by	Naresh Kumari

**Proceedings**

**Project is registered with the authority for Tower-2,6,7.**

Arguments heard.

As per clause 10.1 of the Builder Buyer Agreement dated 11.1.2013, for unit No.1402, ILD Spire Greens, Sector-37-C, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period which comes out to be 11.7.2016. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.70,60,106/- against total sale consideration amount of Rs.82,64,375/-. Project is registered with the authority and as per registration application, the revised date of delivery of unit is 15.8.2019 and as such, complainant is entitled for delayed possession charges @ 10.75%

per annum w.e.f 11.7.2016, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over the offer of possession failing which the complainant is entitled to seek refund of the amount with interest.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.

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

Samir Kumar  
(Member)  
7.12.2018

Subhash Chander Kush  
(Member)  
7.12.2018

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

**Complaint No. : 556 of 2018**  
**First date of hearing : 18.09.2018**  
**Date of Decision : 07.12.2018**

Mr. Ashutosh,  
R/o: - 805, MS – 8, KendriyaVihar,  
Sector – 56, Gurugram, Haryana.

**...Complainant**

Versus

ILD Millennium Pvt. Ltd.  
Address:- International Land Developers P.  
Ltd.,  
9<sup>th</sup> floor, ILD Trade Center, sector – 47,  
Sohna Road, Gurgaon - 122018  
Haryana.

**....Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Austosh Complainant in person  
Shri Satish Gola Company secretary of the respondent company

**ORDER**

1. A complaint dated 18.07.2018 under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Ashutosh against the promoter ILD millennium account of violation of



clause 10.1 of the apartment buyer's agreement executed on 11.01.2013 for unit no. 1402, tower 6, block 2 of the project, 'ILD spire greens' located at sector 37 C, Gurugram, Haryana for non-delivery of possession on stipulated date i.e. 11.07.2016 which is in violation of section 11 (4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 11.01.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

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

1.	Name and location of the project	"ILD spire greens", sector 37C, Gurugram, Haryana.
2.	Unit/apartment no.	1402
3.	Flat area	1875 sq. ft.
4.	Project area	15.4829 acres
5.	RERA registered/ unregistered	<b>Registered vide no. 60 of 2017</b>
6.	Due date of delivery of	Clause 10.1:- 3 years + 6



	possession as per the agreement dated 11.01.2013	months grace period from the date of execution of agreement <b>i.e. - 11.07.2016</b>
7.	DTCP license	13 of 2008
8.	Date of booking	02.07.2012
9.	Date of apartment buyer agreement	11.01.2013
10.	Total consideration (Pg.52)	Rs. 82,64,375/-
11.	Total amount paid by the complainant	Rs. 70,60,106/-
12.	Percentage of consideration paid by the complainant	85 % (approx.)
13.	Payment plan	Construction linked payment plan
14.	Date of delivery of possession as per RERA certificate (extended date)	<b>15.08.2019</b>
15.	Delay of number of months/ years	2 years and 5 months (approx.)
16.	Compensation payable as per clause 10.3 of the agreement dated 11.01.2013	Rs. 5/- per sq. ft. per month of the super area for the entire period of such delay.

4. As per the details provided above, which have been checked as per record of the case file. An apartment buyer's agreement is available on record for apartment no. 1402, 13<sup>th</sup> floor, block 2, tower 6 of the project, according to which the possession of the aforesaid unit/apartment was to be delivered by the respondent on 11.07.2016, but the respondent by failing to fulfil its commitment has violated



clause 10.1 of the apartment buyer's agreement dated 11.01.2013.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 18.9.2018. The case came up for hearing on 18.09.2018 and 07.12.2018. The reply has been filed by the respondent on 28.09.2018 which has been perused.

**Facts of the case -**

6. Briefly put facts relevant for the disposal of the present complaint are that on 11.01.2013, the complainant booked an apartment in the project namely 'ILD spire greens' located at sector 37C, Gurugram by paying Rs. 2,00,000/- as booking amount to the respondent. Pursuant to aforesaid booking of the complainant, respondent vide allotment letter dated 20.12.2012 allotted flat no. 1402 in the project in favour of complainant. On 11.01.2013, apartment buyer's agreement was executed between the complainant and the respondent wherein as per clause 10.1, the possession of the unit was to be delivered within 36 months plus 6 months' grace period



from the date of execution of the agreement i.e. on 11.07.2016. Total consideration of the flat/ unit was fixed at Rs. 82,64,375/- and the complainant has made total payment of Rs. 70,60,106/- (i.e. 85% of the consideration) on various dates as per the payment plan and demands raised by the respondent. However, despite collecting more than 85% of the consideration respondent has failed to complete the construction and deliver the possession till date.

7. The complainant has time and again approached the respondent to know the status of the completion of project, but the respondent repeatedly misrepresented the complainant about the completion of project and kept on revising the date of delivery of possession. Due to aforesaid deficiency in service on the part of the respondent by not fulfilling its contractual obligation, the complainant is bearing additional financial burden of paying loan EMIs and additional rent for alternative accommodation. Hence, the complainant was constrained to file the present complaint.



**Issues to be decided -**

- I. Whether failing to deliver timely possession of the unit no. 1402, admeasuring 1875 sq. ft., in tower 6, block 2 in the project in question with all promised amenities, the respondent has been in a material breach of its obligations under the terms of agreement dated 11.01.2013 and provisions of Real Estate Regulatory Authority Act.
- II. Whether the respondent has repeatedly misrepresented to the complainant regarding the timeframe of delivery of the unit as well as the status of the project/unit.
- III. Whether the respondent is liable to deliver the possession of the flat no. 1402 with all promised amenities as per the terms of apartment buyer's agreement dated 11.01.2013 and also liable to pay interest for the delay period.

**Reliefs sought -**



1. Direct the respondent to provide possession of the flat/unit no. 1402 (subject unit) in habitable condition with time bound manner and pay interest as per RERA, 2016 norms for the delay period dated January, 2016 till actual possession.



2. Direct the respondent for input TAN credit benefit be passed to the complainant as per GST law.

**Reply of the respondent: -**

8. The respondent in their reply denies each and every allegation, averment and submissions made by the complainant. The respondent submitted that the present complaint is grave abuse of process of this hon'ble authority and is not maintainable.
9. The reliefs sought by the complainant pertaining to compensation and interest for a grievance under section 12,14,18 and 19 of Real Estate (Regulation and Development) Act, 2016 are to be filed before the adjudicating officer and not before this hon'ble authority.
10. It is submitted by the respondent that the complainant has voluntarily and with his free booked the flat no. 1402 in the project and made application for provisional registration on 02.07.2012, admeasuring super area 1875 sq. ft. for total consideration of Rs. 82,64,275/-. It was further submitted by the respondent that the project got delayed due to reasons beyond their control. The major reason for delay for the



construction and possession of project is lack of infrastructure in these area. The preliminary objections raised by the respondent are that the complaint is not maintainable before this Authority u/s. 31 of RERA Act, 2016 read with section 28 or 29 of HRERA Rules, 2017.

11. The respondent submitted that the complainant was a regular defaulter in making payments of instalments since 2014 and is yet to clear his over dues. Hence, in terms of the buyer's agreement dated 11.01.2013, there is no delay which can be drawn as a delay in handing over of possession by the developer under section 18 of the Act.
12. The delay in completion of construction was also due to the fact that the building plan has been revised on 16.06.2014 vide memo no. ZP370/AD(RA)/2014/16 dated 16.06.2014 and further revised on 21.09.2015 vide memo no. ZP370/AD(RA)/2015/18145. The change in the building plan was made for the benefit of the purchaser/allottee.
13. The respondent submitted that they got the project 'ILD spire greens' registered with HARERA vide regn. no. 60 of 2017 dated 18.08.2017 and further registration was extended by



the hon'ble authority till 15.08.2019 vide extension letter dated 08.08.2017, therefore, according to HRERA registration project will be completed on or before 15.08.2019.

**Determination of issues:**

14. As regards the **first, second and third issues** raised by the complainant. As per clause 10.1 of the apartment buyer's agreement dated 11.01.2013, the respondent was under contractual obligation to deliver the possession of the unit no. 1402, ILD spire greens, sector 37C, Gurugram within a period of 36 months' plus 6 months grace period which comes out to be 11.07.2016. Clause 10.1 of the agreement dated is reproduced below -

*"10.1the 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....."*

However, the respondent has failed to deliver the possession of the subject apartment/unit till date which is in violation of section 11(4)(a) of the Act *ibid*.

**Findings of the authority: -**



15. The preliminary objection raised by the respondent regarding jurisdiction of the authority stands dismissed. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.



16. During the course of arguments, it is brought to the notice of the authority that the project is registered vide no. 60 of 2017 and as per registration application, the revised date of delivery of possession of the unit in question is 15.08.2019

and as such, the complainant is entitled for delayed possession charges @ 10.75% p.a. w.e.f. 11.07.2016 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over of the possession of the unit, failing which the complainant is entitled for the refund of his paid amount alongwith interest.

17. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

**34 (f) Function of Authority -**

*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.*

18. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*



**Decision and directions of the authority: -**

After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions in the interest of justice :

- i. The respondent is directed to deliver the possession of the flat no. 1402 admeasuring 1875 sq. ft., in tower 6, block 2 in the project in question with all promised amenities to complainant by 15.08.2019 as per the date given in RERA registration certificate.
- ii. The respondent is directed to pay interest @ 10.75% p.a. on the paid amount to the complainant from the due date of delivery of possession i.e. 11.07.2016 to 15.08.2019 for the delay occurred in delivery of possession.
- iii. The arrears of interest so accrued @ 10.75% p.a. from the due date of delivery of possession till the order of order on the paid amount of the complainant which comes to be Rs. 18,27,745.39/- shall be paid to the complainant within 90 days from the date of this order.



- iv. Thereafter, the monthly payment of interest i.e. Rs.63,246.78/- till handing over of the possession, so accrues shall be paid before 10<sup>th</sup> of subsequent month.

19. The order is pronounced.

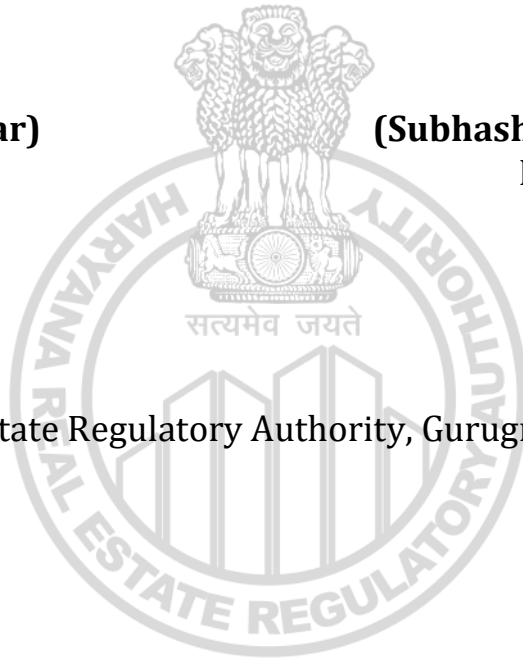
20. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated.....



HARERA  
GURUGRAM

