

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

Complaint No. : 299 of 2018  
Date of Institution : 22.05.2018  
Date of Decision : 18.07.2018

1. Himanshu Goyal
2. Navneet Goyal

**Complainants**

Both R/o H.No.13, 1<sup>st</sup> Floor,  
Sector 10, Gurugram, Haryana.

Versus

1. ILD Millennium Pvt. Ltd.  
"ILD Trade Center", Sector 47,  
Sohna Road, Gurrugram-122018, Haryana.

**Respondent**

**CORAM:**

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

**Chairman  
Member  
Member**

**APPEARANCE:**

Mr. Himanshu Goyal  
Shri Puneet Nahar  
Shri Shrikant Kumar

Complainant in person  
Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. A complaint dated 22.05.2018 was filed 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 complainants, Himanshu Goyal and Navneet Goyal, against the promoter, ILD



Millennium Pvt. Ltd., on account of violation of clause 10.1 of the Builder Buyer Agreement executed on 21.05.2011 in respect of apartment described as below for not handing over possession on the due date i.e. 30<sup>th</sup> December 2013 which is an obligation under section 11 (4) (a) of the ibid Act.

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

1.	Name and location of the Project	"ILD Spire Greens", Sector-37C, Gurugram, Haryana.
2.	Flat/Apartment/Unit No.	0419, 4 <sup>th</sup> floor, Tower-02, Block-19.
3.	HRERA Registration No.	60 of 2017 dated 18.08.2017 for tower 2,6 & 7.
4.	Date declared in RERA Registration Certificate.	<del>16.08.2018</del> 15.08.2019
5.	Total consideration amount as per agreement dated 21.05.2011	Rs.49,14,708/-
6.	Total amount paid by the Complainant till date.	Rs. 47,16,067/-
7.	Date of delivery of possession as per Builder Buyer Agreement (30 June 2013 + 6 months grace period)	30 December 2013
8.	Delay of number of years / months/ days till date	4 Years 6 months 19 days
9.	Penalty Clause as per builder buyer agreement dated 21.05.2011	Clause 11.4 of the Agreement i.e. the developer is entitled to terminate the said agreement, whereupon the developers liability shall be limited to the refund of the amounts paid by the allottee with simple interest @ 9%

Corrected vide order dated 13.03.19.







		per annum for the period such amounts were lying with the developer and the developer shall not be liable to pay other compensation.
10.	Cause of delay in delivery of possession	Lack of infrastructure in this area. 24m sector road was not completed on time by the Government. The aforementioned road is recently constructed.

3. As per the details provided above, which have been checked as per record available in the case file. A builder buyer agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered to the complainants by 30<sup>th</sup> December 2013. The respondent company has not delivered the possession till 18.07.2018. Neither they have delivered the possession of the said unit as on date to the purchaser nor have terminated the said agreement, whereupon the developers liability shall be limited to the refund of the amounts paid by the allottee with simple interest @ 9% per annum for the period such amounts were lying with the developer and the developer shall not be liable to pay other compensation or not to terminate the Agreement and pay compensation @ Rs.5/- per sq. ft. per month of the super area of the said unit as per Clause 11.4 of builder buyer agreement dated 21.05.2011.



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 18.07.2018. The reply has been filed on behalf of the respondent on 04.07.2018 which has been perused.

5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The complainants submitted that the respondent has miserably failed to hand over the possession of the said unit within the stipulated time.

The respondent contended that the parties are bound by the terms and conditions of the Builder Buyer Agreement and in case of delay in handing over possession, necessary provisions for payment of compensation to allottee has been incorporated therein and any relief beyond the terms and conditions of BBA are unjustified. Further, the learned counsel for the respondent has stated that construction of the project is at advance stage and will be delivered soon to the complainants. The respondent also submitted that the complainants were regularly informed about the progress of the construction work and further were available at all times to answer relating the same.







6. As per clause 10.1 of the Builder Buyer Agreement, the possession of the flat was to be handed over by 30<sup>th</sup> December 2013 (including grace period of 6 months). The clause regarding the possession of the said unit is reproduced below:

*"10.1 Schedule for Possession of the said unit*

*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 by 30<sup>th</sup> June 2013 with grace period of 6 months, unless there shall be 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 the 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 allottee(s) to abide by all or any of the terms or conditions of this agreement."*

7. Accordingly, the due date of possession was 30<sup>th</sup> December 2013. As per Clause 11.4 of the Builder Buyer Agreement the developer can exercise his discretion either to terminate the this Agreement whereby the developer will return the amount paid by the allottee with simple interest @ 9% per annum for the period such amounts were lying with the Developer or not to terminate the Agreement and pay compensation @ Rs.5/- per sq. ft. per month of the super area of the said unit as per Clause 11.4 of the Builder Buyer



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 ors. (W.P 2737 of 2017), whereby 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."*

8. As the possession of the flat was to be delivered by 30<sup>th</sup> December 2013 as per the clause referred above, the authority is of the view that the promoter has miserably failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

*"11.4 The promoter shall—*

*(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:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."*

9. The complainant makes 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.*

The complainants 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.*



10. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for

every month of delay till the handing over of possession.

Section 18(1) is reproduced below:

*“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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.*

The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

11. In the present complaint, the complainants are seeking refund of the amount paid along with prescribed rate of interest and intend to withdraw from the project. As per section 18(1) of the Act, complainant have made a demand to the promoter to return the amount received by him in respect of the flat allotted to him with prescribed rate of interest.





12. However, keeping in view the present status of the project and intervening circumstances, the Authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. Also, the date declared by the respondent in HRERA Registration is ~~16.08.2018~~ and the promoter is duty bound to handover the possession by that date otherwise penal consequences will follow. The refund of deposited amount will also have adverse effect on the other allottees. Therefore, the complainants do not intend to withdraw from the project. As per proviso to section 18(1) of the Act, if the complainant does not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession.

13. 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.

14. Thus, the Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development)

*Corrected vide order dated 13.03.2019.*



Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent is duty bound to hand over the possession of the flat in question to the complainant on or before ~~16.08.2018~~ as per HRERA Registration Certificate. **15.08.2019**
- (ii) The respondent shall pay prescribed rate of interest for every month of delay i.e. from due date of possession, 30.12.2013 till the handing over of possession as per Rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 which states that interest payable shall be the State Bank of India highest marginal cost of lending rate plus two percent i.e. 10.45% p.a.

15. The order is pronounced.

16. Case file be consigned to the registry.



(Samir Kumar)  
Member



(Dr. K.K. Khandelwal)  
Chairman

(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram





**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 18.7.2018
Complaint No.	299/2018 case titled as Mr. Himanshu Goyal & another versus M/s ILD Millenium Pvt. Ltd
Complainant	Mr. Himanshu Goyal & another
Represented through	Complainant in person with Shri Puneet Nahar, Advocate
Respondent	M/s ILD Millenium Pvt. Ltd
Respondent Represented through	Shri Shrikant Kumar, Advocate for the respondent

**Proceedings**

The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation & Development) Act, 2016.


Shri Shrikant Kumar, Advocate has appeared on behalf of the respondent and filed memo of appearance. Reply not filed by the learned counsel for the respondent. Arguments heard. Both the parties have appeared. The allottee does not want to withdraw from the project. As per the provisions of Section 18 (3) of the Real Estate (Regulation & Development) Act, 2016, the builder is on the obligation :

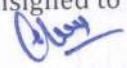
- (i) to deliver the possession timely
- (ii) If he will not get the possession in time, the respondent will have to pay the delay charges at the rate of **10.15%** from the due date of delivery of possession as committed as per agreement.

It was brought to the notice of the authority that the Project is registerable but so far it has not been registered which is violation of Section 3 (1) of the Real Estate (Regulation & Development) Act 2016. The learned counsel for the respondent asked to advise the respondent to do needful at the earliest and this be treated as the notice as to why penal proceedings shall not be initiated against the respondent under section 59 for violation of Section 3 (1) of the Act ibid, the penalty amount may increase upto 10% of the Project cost.

The order is pronounced. Detailed order will follow. File be consigned to the Registry.

Samir Kumar  
(Member)

  
Dr. K.K. Khandelwal  
(Chairman)  
18.7.2018

  
Subhash Chander Kush  
(Member)

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण  
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16

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**APPEARANCE:**

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		per annum for the period such amounts were lying with the developer and the developer shall not be liable to pay other compensation.
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3. As per the details provided above, which have been checked as per record available in the case file. A builder buyer agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered to the complainants by 30<sup>th</sup> December 2013. The respondent company has not delivered the possession till 18.07.2018. Neither they have delivered the possession of the said unit as on date to the purchaser nor have terminated the said agreement, whereupon the developers liability shall be limited to the refund of the amounts paid by the allottee with simple interest @ 9% per annum for the period such amounts were lying with the developer and the developer shall not be liable to pay other compensation or not to terminate the Agreement and pay compensation @ Rs.5/- per sq. ft. per month of the super area of the said unit as per Clause 11.4 of builder buyer agreement dated 21.05.2011.







4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 18.07.2018. The reply has been filed on behalf of the respondent on 04.07.2018 which has been perused.
5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The complainants submitted that the respondent has miserably failed to hand over the possession of the said unit within the stipulated time.

The respondent contended that the parties are bound by the terms and conditions of the Builder Buyer Agreement and in case of delay in handing over possession, necessary provisions for payment of compensation to allottee has been incorporated therein and any relief beyond the terms and conditions of BBA are unjustified. Further, the learned counsel for the respondent has stated that construction of the project is at advance stage and will be delivered soon to the complainants. The respondent also submitted that the complainants were regularly informed about the progress of the construction work and further were available at all times to answer relating the same.





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*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 by 30<sup>th</sup> June 2013 with grace period of 6 months, unless there shall be 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 the 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 allottee(s) to abide by all or any of the terms or conditions of this agreement."*

7. Accordingly, the due date of possession was 30<sup>th</sup> December 2013. As per Clause 11.4 of the Builder Buyer Agreement the developer can exercise his discretion either to terminate the this Agreement whereby the developer will return the amount paid by the allottee with simple interest @ 9% per annum for the period such amounts were lying with the Developer or not to terminate the Agreement and pay compensation @ Rs.5/- per sq. ft. per month of the super area of the said unit as per Clause 11.4 of the Builder Buyer





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 ors. (W.P 2737 of 2017), whereby the Bombay HC bench held that:

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8. As the possession of the flat was to be delivered by 30<sup>th</sup> December 2013 as per the clause referred above, the authority is of the view that the promoter has miserably failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

*"11.4 The promoter shall—*

*(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:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."*

9. The complainant makes 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.*

The complainants 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:

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10. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for





every month of delay till the handing over of possession.

Section 18(1) is reproduced below:

*"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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.*

The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

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12. However, keeping in view the present status of the project and intervening circumstances, the Authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. Also, the date declared by the respondent in HRERA Registration is 16.08.2018 and the promoter is duty bound to handover the possession by that date otherwise penal consequences will follow. The refund of deposited amount will also have adverse effect on the other allottees. Therefore, the complainants do not intend to withdraw from the project. As per proviso to section 18(1) of the Act, if the complainant does not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession.

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14. Thus, the Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development)





Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent is duty bound to hand over the possession of the flat in question to the complainant on or before 16.08.2018 as per HRERA Registration Certificate.
- (ii) The respondent shall pay prescribed rate of interest for every month of delay i.e. from due date of possession, 30.12.2013 till the handing over of possession as per Rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 which states that interest payable shall be the State Bank of India highest marginal cost of lending rate plus two percent i.e. 10.45% p.a.

15. The order is pronounced.

16. Case file be consigned to the registry.



(Samir Kumar)  
Member



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**GURUGRAM**

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Haryana Real Estate Regulatory Authority, Gurugram