BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1469 of 2021
First date of hearing: 22.04.2021
Date of decision : 20.04.2022

1. Rajan Soni
2. Seema Soni

R/O: - 91L, Flat no. 203, 3Rd Floor, New Colony, Gurugram **Complainants**

Versus

ILD Millennium Private Limited
Regd. Office at: - B-148, New Friends Colony,New Delhi-110065 **Respondent**

CORAM:
Shri KK Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Shri Karan Govel Advocate for the complainants
Shri Venket Rao Advocate for the Respondent

ORDER

1. The present complaint dated 19.03.2021 has been filed by the complainants/allottees 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 under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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.	Name and location of the project	"ILD Spire Greens" at sector 37 C, Gurugram, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	15.4829 acres
4.	DTCP license no.	13 of 2008 dated 31.01.2008
5.	Name of Licensee	M/s Jubiliant Malls Pvt. Ltd. and 3 others
6.	RERA Registered/ not registered	Registered vide no. 60 of 2017 issued on 17.08.2017 up to 16.08.2018
7.	Apartment no.	1417,14th Floor, Tower 2, Block no. 17 [annexure P2 on page no. 50 of complaint]
8.	Unit measuring	1603 sq. ft. of super area [annexure P2 on page no. 50 of complaint]
9.	Date of allotment	13.02.2009 [annexure P1 on page no. 20 of complaint]

10.	Date of indemnity bond	28.12.2010 [page no. 37 of complaint]
11.	Date of builder buyer's agreement	11.03.2011 [annexure P2 on page no. 48 of complaint]
12.	Total consideration	Rs. 48,85,876/- [as per the statement of account on page no.95 of complaint]
13.	Total amount paid by the complainants	Rs. 43,70,105/- [as per the statement of account on page no.95 of complaint]
14.	Due date of delivery of possession	30.06.2013 [as per possession clause] **Note:** Grace period is not allowed.
15.	Possession clause	**10.1 POSSESSION** "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 30th June 2013 with grace period of six month, unless there shall 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 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 the Allottee(s) to abide by all or any of the terms or conditions of this Agreement.
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Delay in handing over of possession till the date of decision i.e., 20.04.2022	8 years, 9 months, 21 days

B. Facts of the complaint

3. That the complainants are residing at house no. 911, flat no. 203, 3rd floor, New Colony, Gurugram, Haryana. That the complainants are law-abiding citizens having complete faith in the judicial system.

4. That the respondent no. 1, ILD millennium private limited, is a company incorporated under the company's act, 1956 having registered office at B - 418, new friends' colony, new Delhi - 110025, corporate office: ILD trade Centre, 9th floor, sohna road, Gurugram, 122018, and the project in question is ILD Spire Greens at sector 37C, Gurugram, Haryana.

5. That the complainants are the second buyer of the flat, bearing no. 1417 on 14th Floor of tower 2 (3 bedrooms, 1 Drawing/dining, 1 Kitchen, 3 toilets area measuring 1753 sq ft) in the project that is ILD Spire Greens, Sector 37C, Gurugram constructed by the respondent for the sale consideration of Rs. 48,85,876/- with open parking space and club membership charges.

6. That the complainants came into a sale agreement vide an indemnity bond and undertaking affidavit with the first buyer regarding an apartment of a project of the Respondent bearing flat no. 1417, 14th floor, tower – 2, admeasuring approx. 1600 sq. ft. and the Complainants paid a sum of Rs. 8,46,288/- (Rupees Eight Lacs forty-six thousand two hundred eightyeight Only) as demanded vide cheque no. 120420 dated 28.12.2010 drawn on PNB Ltd.
7. That the complainants further paid Rs. 634856/- vide cheque no. 712354 dated 04.03.2011 drawn on PNB Ltd. as instalment of the said unit.
8. That a buyer's agreement was also signed between the parties on 11.03.2011, wherein the respondent had clearly mentioned the possession date as on 30th June 2013 in clause 10.1 of the said agreement.
9. That the main grievance of the complainants in the present complaint is that in spite of complainants paid more than the 95% of the actual amount of the flat and willing to pay the remaining amount, the respondent has failed to deliver the possession of the flat on promised time.
10. That the complainants had purchased the flat with the intention that after the purchase he'll be able to stay in a safe and better environment. Moreover, 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 complainants as soon as construction completes

i.e., 8 months as per flat buyer agreement which is 30 June 2013.

11. That the respondent party had failed to complete the construction in stipulated time. It is also pertinent to mention here that the said apartment has mortgaged with BFC and the complainants belongs to a middle-class family. They stay in a rented accommodation, and he pays a rent of amount Rs. 15,000/- and also pays an amount of Rs. 7000/- as EMI of the said flat.

12. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainants and others is prima facie clear on the part of the respondent party which makes them liable to answer this Hon'ble authority.

13. That the complainants has also visited several times to the office of respondent for the speedy construction and possession but of no use. All the time fake promises had been made

14. That 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 allotees. The cause of action further arose on many occasions when the respondent party failed to handover the possession of the flat as per the buyer agreement. When the protest was lodged with the opposite party about its failure to deliver the project and assurances given by it that the

possession would deliver by the certain time. The cause of action is alive and will continue to subsist till such time as this Hon'ble authority restraints the respondent party by an order of injunction and that or passes the necessary orders.

15. That till date the respondent has not received the OC from the concerned authorities, and it is pertinent to mention here that the respondent has taken an amount of Rs. 46,00,000/- from the complainants. That the complainants have time and again requested the respondent to provide the account statement of the said unit, but the respondent did not pay any heed to the said request.

16. That since the date of booking, the complainants have been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.

17. That the complainants tried his level best to resolve the issue of the delayed possession, but the respondent did not pay any heed to the said requests of the complainants. On the contrary the respondent kept on asking for illegal demand of payment to the complainants by adding delayed payment interest and other illegal charges like maintenance etc.

18. That the respondent by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainants to

deposit his hard earned money in their so called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in this process the respondent gained wrongfully , which is purely a criminal act.

19. That the complainants are also concerned about the construction quality as when they had checked the internal walls plaster of said allotted unit, its sand came to the hand, and it seems that it was not mixed with the right proportion of cement. As the complainants are not from the construction background and did a very basic test but this plaster material itself shows that the intention of respondent is not on quality, but it is just to collect money and spend as low as possible on the construction.

20. That the complainants hereby requests that some concerned authority who issued license to the builder, should be accountable and have some mechanism to check the basic construction quality at this stage at least. In case, there is no such mechanism at present, they should add it immediately at least when buyers want to check this, otherwise there will be a risk of life for more than 400 families (approx. 1600 lives) who will start living there. The complainants further request to please keep a check on its basic construction quality that he has built till now and for further remaining important work like electrification, lifts, fire safety etc. that is still pending as Respondent will try to use / deploy cheapest and lowest category material in absence of any such checks from

the civic authority. This is the utmost factor of the Complaint as this is not related to hard earned money / financial losses of the buyer but it is directly related to the life of buyer and his family so they request the entire Honourable RERA committee to please record this fact and should impose some quality check mechanism which is also reachable to buyers for their satisfaction.

21. That since the respondent had not delivered the possession of the apartment, of which the complainants are suffering from economic loss as well as mental agony, pain and harassment by the act and conduct of the respondent and thus, the complainants are entitled to a compensation. Furthermore, the complainants has been constrained by the respondent to live in a rented accommodation and pay extra interest on his home loan due to this delay.

22. The complainants had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

C. Relief sought by the complainants:

23. The complainants have sought the following relief:

(i) Direct the respondent to pay the delayed possession charges.

(ii) Declare the default of non-payment by respondent under the tripartite agreement as a breach of terms and indemnify the complainants in lieu of the same.

(iii) Direct the builder to provide date of possession.

24. 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.

D. Reply by the respondent.

25. That at the outset each and every averment, statement, allegation, contention of the complainants which is contrary and inconsistent with the reply submitted by them is hereby denied and no averment, statement, allegation, contention of the complainants shall deem to be admitted save those specifically admitted being true and correct. It is respectfully submitted that the same be treated as a specific denial of the complaint. They are leading real estate company aiming to provide the state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.

26. That the project of the promoter got delayed due to reasons beyond their control. That major reason for delay for the construction and possession of project is lack of infrastructure in this area. The twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, promoter faced many hurdles to complete the

project. For completion of road, the promoter was totally dependent upon the Govt. Department/machinery and the problem is beyond the control of the promoter/builder.

27. That the complainants have intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement.

28. That the project was not completed within time due to the reasons beyond their control, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.

E. Jurisdiction of the authority

29. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

30. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.

E. II Subject matter jurisdiction

31. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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; The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

Section 34-Functions of the Authority:

> *34(f) of the Act provides 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.*

32. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.I Objection regarding delay due to force majeure.

25. The respondent-promoter raised the contention that the construction of the project was delayed due to interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016 but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 11.03.2011 as per the possession clause of the agreement the possession of the said unit was to be delivered by 30th June 2013 with grace period of 6 months. The authority is of the view that the events taking place do not have any impact on the project being developed by the promoter/builder. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

H. Findings on the relief sought by the complainants.

Relief sought by the complainants: The complainants had sought following relief(s):

i. Direct the respondent to pay the delayed possession charges.

26. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as

provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *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."*

27. Clause 10 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

10.1 POSSESSION

> *"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 **30th June 2013 with grace period of six month, unless there shall 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 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 the Allottee(s) to abide by all or any of the terms or conditions of this Agreement.."*

28. The authority has gone through the possession clause of the agreement and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of

apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

29. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the

promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

30. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 30.06.2013 further grace period of 6 months is also sought by the respondent/builder for force majeure and other reasons as mentioned in clause 11.1, 11.2, 11.3 and clause 41 of the agreement. As a matter of fact, that the events taking place do not have any impact on the project being developed by the respondent/promoter as the promoter has to offer possession on 30.06.2013.

31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, proviso to section 18 provides that where an allottees 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

32. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

33. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.04.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% per annum.

34. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

35. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

ii. Declare the default of non-payment by respondent under the tripartite agreement as a breach of terms and indemnify the complainants in lieu of the same.

36. The complainants have not placed on record the alleged tripartite agreement to support his contention. Even the above-mentioned relief sought by the complainants was not pressed by the complainant's counsel during the arguments in the passage of hearing. The authority is of the view that the complainants counsel does not intends to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

iii. **Direct the builder to provide date of possession.**

37. As per the contention of the builder/respondent no. 1, he has already applied for the occupation certificate however, no document to such effect has been placed on record by the builder/respondent no. 1. Consequently, the respondent has failed to obtain the OC till now and has failed to offer the possession to the complainants. Therefore, the respondent is directed to offer possession to the complainants after the receipt of valid occupation certificate as per section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act of 2016.The project is registered vide registration no.

60 of 2017 by Interim RERA Panchkula which was valid upto 16.08.2018. The promoter further failed to complete the project during the revised time period after coming into force of RERA. The builder has attracted penal proceedings. A copy of this order be sent to planning coordinator of the authority for initiating penal proceedings for not completing the project in time if such proceedings have not been initiated earlier or the promoter has been granted extension or the registration certificate has been allowed to remain in force under section 7(3) of the Act, 2016.

38. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent/promoter is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10.1 of the agreement executed between the parties on 11.03.2011, the possession of the subject apartment was to be delivered by 30.06.2013. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.06.2013. The respondent/promoter has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

39. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent/promoter is established. As such complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainants to the respondent/promoter from the due date of possession i.e., 30.06.2013 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

I. Directions of the authority

40. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent/promoter is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 30.06.2013 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

ii. The respondent/promoter is directed to pay arrears of interest accrued within 90 days from the date of order

and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid to the allottees on or before the 10th of each succeeding month.

iii. The complainants are also directed to pay the outstanding dues, if any.

iv. The respondent/promoter shall not charge anything from the complainants which is not part of the builder buyer agreement.

41. Complaint stands disposed of.

42. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.04.2022