

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

**Complaint no. : 1911 of 2021**  
**First date of hearing: 09.07.2021**  
**Date of decision : 20.04.2022**

1. Shalabh Jain
2. Aditi Mittal

Both R/O: - H. no. WZ-224B, Ram Chowk,  
Sadh Nagar, Palam Colony

**Complainants**

Versus

1. ILD Millennium Private Limited  
**Regd. Office at:** - B-148, New Friends  
Colony, New Delhi-110065
2. Housing Development Finance Corporation  
Limited  
**Office at:** Ramon House, HT Parekh Marg,  
169, Backbay Reclamation, Churchgate,  
Mumbai, Maharashtra.

**Respondents**

**CORAM:**

Shri KK Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Karan Govel  
Shri Gunjan Kumar  
Shri Dharmender Sehrawat

Advocate for the complainants  
Advocate for the Respondent 1  
Advocate for the Respondent 2

**ORDER**

1. The present complaint dated 09.04.2021 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 allottee 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 Jubilant 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.	615,6 <sup>th</sup> Floor, Tower 2 [page no. 22 of complaint]
8.	Unit measuring	1753 sq. ft. of super area [page no. 22 of complaint]
9.	Date of application	03.11.2008



		[page no. 22 of complaint]
10.	Date of builder buyer's agreement	20.08.2014 [page no. 21 of complaint]
11.	Date of tripartite agreement	17.03.2016 [page no. 61 of complaint]
12.	Total consideration	Rs. 55,14,259/- [as per the agreement on page no. 24 of complaint]
13.	Total amount paid by the complainants	Rs. 49,77,297/- [as per the receipts on page no. 73-79 of complaint]
14.	Due date of delivery of possession	20.08.2017 [as per possession clause] <b>Note:</b> Grace period is not allowed.
15.	Possession clause	<b>10.1 POSSESSION</b> "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 <b>within three years from the date of execution of this agreement, with grace period of six month, unless there shall delay</b> on account of non-receipt of any approval or any reason beyond the control of the developer 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	4 years, 08 months

**B. Facts of the complaint**

3. That the complainants are residing at house no. WZ - 224B, ram chowk, sadh nagar, palam colony, new Delhi. 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 buyers of the flat, bearing no. 0615 on 06th Floor of tower 2A (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. 55,14,259/- with open parking space and club membership charges.
6. That a buyer's agreement was also signed between original buyer and the respondent no. 1 on 20.08.2014, wherein the respondent no. 1 had clearly mentioned that the developer shall complete the construction of the said building /unit within three years from the date of execution of the BBA.
  7. That the main grievance of the complainants in the present complaint is that in spite of complainants paid more than the 80% of the actual amount of the flat and willing to pay the remaining amount, the respondent no. 1 has failed to deliver the possession of the flat on promised time.
  8. The complainants also signed a tripartite agreement dated 16.03.2016 with the respondents for taking loan of Rs. 60,00,000/-.
  9. That the complainants have also visited several times to the office of respondents for the speedy construction and possession but of no use. All the time fake promises had been made.
  10. That till date the respondent no. 1 has not received the OC from the concerned authorities, and it is pertinent to mention here that the respondent no. 1 has taken an amount of Rs. 50,00,000/- approx. from the complainants. That the complainants have time and again requested the respondent no. 1 to provide the account statement of the said unit but the respondent no. 1 did not pay any heed to the said request.

11. That the complainants, thereafter, had tried their level best to reach the representatives of respondent no. 1 to seek a satisfactory reply in respect of the said dwelling unit but all in vain. The complainants had also informed the respondent no. 1 about his financial hardship of paying monthly rent and extra interest on his home loan due to delay in getting possession of the said unit.

**C. Relief sought by the complainants:**

12. The complainants have sought the following relief:

- (i) Direct the respondent no. 1 to pay the delayed possession charges @ 10.75% per annum.
- (ii) Declare the default of non-payment by respondent no. 1 under the TPA as a breach of terms and indemnify the complainants in lieu of the same.

13. On the date of hearing, the authority explained to the respondents/promoters 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 no. 1.**

14. 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.

15. 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.
16. That the complainants have intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement.
17. 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. Reply by the respondent no. 2.**

18. That the subject matter of the present complaint has arisen due to the alleged default on part of the respondent no. 1 in timely construction and handover the possession. However, the complainants have wrongly impleaded HDFC as respondent no. 2.
19. That the present complaint is liable to be dismissed on account of mis joinder of parties. The domain of services provided by the respondent no. 2 is completely separate and independent of respondent no. 1 and hence the complaint should be dismissed on account of lack of jurisdiction.
20. That the respondent no. 2 i.e., HDFC Ltd. is no way concerned with the present complaint except that it has sanctioned and disbursed the home loan in terms and conditions of the home loan agreement and tripartite agreement dated 31.03.2016.

**F. Jurisdiction of the authority**

21. The respondents have 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.

**F.1 Territorial jurisdiction**

22. 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.

**F. II Subject matter jurisdiction**

23. 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.*

24. 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.

**G. Findings on the objections raised by the respondents.**

**G.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 20.08.2014 as per the possession clause of the agreement the possession of the said unit was to be delivered within 3 years from the date of execution of agreement 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 no. 1 to pay the delayed possession charges @ 10.75% per annum.**

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 **within three years from the date of execution of this agreement, with grace period of six month, unless there shall delay on account of non-receipt of any approval or any reason beyond the control of the developer 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. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and

conditions of this agreement and the complainants not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

29. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, 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 buyer/allottee 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 within 3 years from the date of execution of this agreement 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 20.08.2017.
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 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 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 no. 1 under the TPA as a breach of terms and indemnify the complainants in lieu of the same.**

36. The above-mentioned relief sought by the complainants were 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 intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

37. 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 20.08.2014, the possession of the subject apartment was to



be delivered within 3 years from the date of execution of this agreement which comes out to be 20.08.2017. 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 20.08.2017. 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.

38. 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., 20.08.2017 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**

39. 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., 20.08.2017 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 on or before the 10<sup>th</sup> 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.
40. Complaint stands disposed of.
41. File be consigned to registry.

V.I - 3  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 20.04.2022