

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

Complaint no.	:	1005	of
		2019	
Date of filing complaint:		25.03.2019	
First date of hearing:		13.12.2019	
Date of decision	:	10.02.2023	

Ajay Jain R/O: 1/9875 Gali No1 West Gorakh Park Shahdara	Complainant
Versus	
Vipul Limited Regd. office: Vipul Tech Square, Golf Course Road, Sector-43, Gurugram -122009	Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Complainant in person	Complainant
Sh. Nishant Jain (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Vipul Lavanya", Sector- 81, Gurugram
2.	Project Area	10.512 acres
	Registered area	2.282 acres
3.	Nature of the project	Group housing complex
4.	DTCP License no. & validity status	26 of 2010 dated 18.03.2010 valid up to 17.03.2020
5.	Name of licensee	Graphic research consultant private limited and 4 others
6.	RERA registered / not registered	Registered vide no. 15 of 2018 dated 11.09.2018
7.	RERA registration valid up to	31.12.2019
8.	Unit no.	102, 1 st floor, tower- 07 [Page no. 47 of reply]
9.	Unit measuring	1410 sq. ft. [super area]
	Revised area	1421 sq. ft.
	Difference area	11 sq. ft.
10.	Date of execution of flat buyer's agreement	01.12.2010 [page no. 46 of reply]
11.	Date of allotment letter	24.09.2010

		[page no. 26 of the complaint]
12.	Payment plan	Construction payment plan [Page no. 33 of complaint]
13.	Total consideration	Rs.60,40,427/- (including tax) [as per statement of account dated 23.02.2021 page no. 19 of reply]
14.	Total amount paid by the complainant	Rs.48,36,832/- [as per statement of account dated 23.02.2021 page no. 19 of reply]
15.	Due date of delivery of possession as per clause 8.1 (a) of the flat buyer's agreement by 36 months from the signing of this agreement plus grace period of 90 days after expiry of 36 months for applying and obtaining the occupation certificate in respect of the group housing complex. [Page 49 of reply]	01.12.2013 [Note: - 90 days grace period is not allowed]
16.	Offer of possession	14.08.2014 (Inadvertently mentioned in the proceeding of the day as 29.05.2015) [page 24 of reply]
17.	Occupation Certificate	25.05.2015 [page 65 of reply]

B. Facts of the complaint:

3. A project by the name of "Vipul Lavanya" situated in Sector 81, Gurugram, (Haryana) was being developed by the respondent. The complainant paid an amount of Rs.4,50,000/- on 12.08.2010 for pre-launch booking in project of the respondent.

4. That the team of the respondent called for selection of unit in the year September 2010 but did not give any good option.. The complainant was offered another option of 2BHK plus study with drawing and dining room and was convinced by the respondent that this is the best unit of their project.
5. That a unit was allotted to the complainant on 24.09.2010. The buyer's agreement was executed between the parties on 01.12.2010. The respondent sent letter of possession on 14.08.2014 which has some additional charges including charges of increased flat super area from 1410 sq. ft to 1421 sq. ft.
6. That on 07.09.2014, the complainant visited the site of the unit and earlier also many times visited the site location but was not allowed to physically visit it because of the construction work. But later on, when he was able to visit the unit, he found many changes in structure being booked and finally delivered. He immediately raised his concerns with the marketing team of the respondent including issue related to additional charges mentioned in the possession letter. The complainant requested to take this matter internally or arrange a meeting with senior management for the resolution.
7. That on 03.09.2015, the complainant sent a cheque of Rs 2,00,000/- to the respondent to avoid more issues. On 15.09.2014, the complainant sent an email regarding additional charges and structural issues and requested to resolve on urgent basis. On 16.09.2014, an email was received by the respondent's team on issues he raised regarding additional charges, but no reply was received on structure changes of unit and asked to contact marketing team. The complainant kept asking for the layout of unit actually to be delivered to find out the changes but met with no response.

8. That on 15.11.2017, the respondent's team finally reverted back and gave a solution of holding charges waiver and asked to deposit rest of the arbitrary charges. They further told the complainant to go through the clause no. 7. of the buyer's agreement.
9. That after continuous follow ups from the respondent's team for the solution of the matter and layout of unit to be delivered to know all changes, finally on 19.01.2018, the team gave actual unit layout with differences in both layouts. Then the complainant asked for wall-to-wall size of study room with size of pillar erected in between to know all the wastage area, to which the respondent's team never reverted back.
10. That on 20.04.2018 once again the complainant visited the unit and checked whether the respondent has done all the changes. But he found that the study room structure was completely changed, and the same was basically created under a waste area of big beam of the building. In the study room there is a beam of approx. 2 ft. depth in one of the major portion approx. 80% of that room, where through one pillar and another beam created a partition in between the study room itself. The parallel to two windows, it has given only one small window. These changes done except other changes in flat layout like changes of size and layout of bedroom, toilet, dress room, draining room Etc. Because of these changes in study room, this room is completely become a waste area and can't be used as study room anyhow. Even this shows their malafide intention of charging money for wasted area of their property from buyer and cheating buyer for commercial benefits of Vipul Ltd.
11. The complainant has again sent complete details of all issues including structure issue of study room and asked them to resolve this matter. But there is no revert back which he has received from the respondent side except their arbitrary demands of holding charges, maintenance charges

etc. The complainant is continuously requesting the respondent's team to resolve this matter basis of facts of unit they are delivering but they are not ready to give heed on my genuine request and adamant on their demands and stand. The complainant has escalated this matter to the respondent's top management as well but then also there is no revert at all from their side too.

12. That the complainant has many times approached the respondent- builder to know about the changes but the respondent- builder never gave any concrete reply leading to filing this complaint seeking delay possession charges of the deposited amount along with other relief.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s):
 - i. Direct the respondent to withdraw the additional charges respondent has charged in demand letter which includes holding charges, interest, maintenance charges, vat etc. basis of demand raised by the builder dated 21.05.2018.
 - ii. Refund of amount excess paid to the respondent which they charged for wasted area of approx. 171 sq. ft. deliberate misrepresentation on the part of the developers wherein higher covered area was promised whereas lessor covered area has been given with structural issues and taken payment of wasted area in the name of study room of Rs. 6,09,704.
 - iii. Interest on additional amount builder charges for wasted area of approx. 171 sq. ft. deliberate misrepresentation on the part of the developers wherein higher covered area was promised whereas lessor covered area has been given with structural issues and taken payment

of wasted area in the name of study room @24% annually on half yearly compounding of Rs. 12,83,945.

iv. Direct the respondent to pay interest at the prescribed rate for every month of delay till the handing over the possession.

v. Direct the respondent to pay compensation for harassment.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

14. That the complainant approached the respondent and paid a sum of Rs.4,50,000/- on 12.08.2010 for pre-launch booking in project of the respondent. The respondent offered option of 2BHK plus study with drawing and dining room and was convinced by the respondent that this is the best unit of their project
15. That the respondent allotted the complainant a flat vide allotment letter dated 24.09.2010, for the basic sale consideration of Rs.60,40,427/-.
16. That the buyer's agreement was executed between the parties on 01.12.2010. The occupation certificate was obtained on 25.05.2015. The respondent sent letter of possession on 14.08.2014.
17. That the complainant did not take the possession of the unit despite repeated reminders. Clause 8 of the allotment letter has to be read as part of this reply to event which is read as under: "The company shall have the right to effect suitable and necessary alterations modifications additions, deletions or recasting in the layout plan, as and when required which may involve all or any of the changes, such as change in the position/location of the flat, increase /decrease in the area, revised price will be applicable at the original rate at which the flat was booked by the allottees herein. If for any reason the company is not in a position to allot the flat applied for, the

company shall be responsible to consider for an alternate property and in case of failure to do so refund the amount deposited alongwith simple interest @9% per annum. Thereafter the allottee(S) shall have no right claim interest, monetary or otherwise against the company and the company shall not be liable for payment any compensation on this account whatsoever"

18. The respondent denies that there were any issues with the said unit as alleged. It is submitted that all the emails sent by the complainant were replied to by the respondent.
19. That the respondent raised demand for Rs. 5,67,965/- on 14.08.2014 and only a part payment was made by the complainant. As on 23.02.2021 a sum of Rs. 12,03,595/- is due and outstanding against the complainant under various heads such as BSP, PLC, Service tax, VAT under amnesty, deposit against VAT, Holding Charges, Interest, Electricity connection charges, Club charges, IFMSD, Maintenance charges.
20. That the complainant was specifically asked to visit the site for site related queries, however, he never visited the site, nor did he ever spoke to any concerned official. Further, despite several reminders the complainant failed to take possession of the allotted unit and the respondent as per clause 25 of the allotment letter has right to charge the holding charges.
21. That several reminders since August 2014 have been sent to the complainant alongwith statement of account for taking of possession. As on 23.02.2021 a sum of Rs. 12,03,595/- is due and outstanding against the complainant.
22. That the respondent agreed to waive off the holding charges. The respondent denies that there was any wastage of study room area as alleged, and the layout plan had been shared with the complainant.

23. However, it is wrong and denied that there is any wastage as alleged. All the allegations of the complainant are false, baseless and frivolous. It is pertinent to mention herein that except the complainant no other customer has ever raised such false and bogus issue.
24. That the building in which the complainant has booked his unit consists of ground + 14 Floors and the building is erected in columns which run from stilt parking till the top floor of all the flats which is as per the structural drawing which is approved to take load of the building. The columns and beams are provided for the structural stability and support of the building. All the windows and doors have been designed as per approved architectural drawings in all the towers.
25. That the respondent has already offered the possession to the complainant and has been sending reminders for almost 6 years. The respondent is holding the property on behalf of the complainant after the possession has been offered to the complainant and since the complainant has failed to take the possession of the unit, the respondent is charging the holding charges as per clause 9 of the buyer's agreement.
26. All other averments made in the complaint were denied in toto.
27. Copies of all the relevant do have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

28. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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 completed territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

Section 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;

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.

30. 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 relief sought by the complainant:

F.1 Direct the respondent to withdraw the additional charges respondent has charged in demand letter which includes holding charges, interest, maintenance charges, vat etc. basis of demand raised by the builder dated 21.05.2018.

31. The holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020. Moreover, the respondent shall not charge anything which is not part of apartment buyer's agreement.
32. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. Therefore, in case of any default by the complainant, it shall be liable to pay interest at the equitable rate as charged by the respondent.
33. The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Clause 10.1 of the buyer agreement provides the clause for maintenance charges.
34. However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.
35. The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT)

under the amnesty scheme. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only. Moreover, if the respondent company has opted for composition levy, then also the incidence of such taxes shall be borne by the respondent only. If for this period any VAT has been charged the same is refundable in case of availing amnesty scheme availed by the promoter.

F.II Direct the respondent to pay interest at the prescribed rate for every month of delay till the handing over the possession.

36. The complainant is admittedly the allottee of respondent - builder of a residential unit on the basis of letter of allotment dated 24.09.2010 for a total sum of Rs. 60,40,427/-. A buyer's agreement was executed between the parties in this regard on 01.12.2010. The due date for completion of the project was fixed as 01.12.2013 So, in this way, the complainant paid a total sum of Rs. 48,36,832/- against the allotted unit. The occupation certificate of the project was received on 25.05.2015 and the possession was offered to the complainant on 14.08.2014 and the same was not taken by the complainant.
37. In the present complaint, the complainant intends 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."

Clause 8.1 (a) of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

8.1 Time of handing over the Possession

(a) Subject to terms of this clause and subject to the VENDEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation etc., as prescribed by the VENDOR, the VENDOR proposes to hand over the possession of the Flat within a period of 36 (Thirty Six months from the date of signing of this Agreement. The VENDEE(S) agrees and understands that the VENDOR shall be entitled to a grace period of 90 days, after the expiry of 36 (Thirty Six) months, for applying and obtaining the occupation certificate in respect of the GROUP HOUSING COMPLEX

38. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, 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.

39. 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.

40. 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., 10.02.2023 is @8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
41. 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;"*
42. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
43. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent 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 8.1(a) of the buyer's agreement the possession of the subject unit was to be delivered within 36 months from the signing of this agreement. The due date of possession is calculated from the date signing of this agreement i.e., 01.12.2010 which comes out to be 01.12.2013.

44. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is obtained on 25.05.2015 and the same was obtained after the due date of possession. The respondent offered the possession of the unit in question to the complainant on 14.08.2014 before obtaining occupation certificate, and the same is held to be invalid.
45. Accordingly, as such the allottee shall be paid, by the promoter, interest for every month of delay on the amount paid by the complainant from the due date i.e., 01.12.2013 till the date of receipt of occupation certificate plus two months i.e., 25.05.2015 plus 2 months i.e., up to 25.07.2015 only.

F.III Refund of amount excess paid to the respondent which they charged for wasted area of approx. 171 sq. ft. deliberate misrepresentation on the part of the developers wherein higher covered area was promised whereas lessor covered area has been given with structural issues and taken payment of wasted area in the name of study room of Rs. 6,09,704.

F.IV Interest on additional amount builder charges for wasted area of approx. 171 sq. ft. deliberate misrepresentation on the part of the developers wherein higher covered area was promised whereas lessor covered area has been given with structural issues and taken payment of wasted area in the name of study room @24% annually on half yearly compounding of Rs. 12,83,945.

F.V Direct the respondent to pay compensation for harassment.

46. The above-mentioned reliefs III, IV and V being interconnected are being taken up together. The complainant sought relief of refund of amount excess paid to the respondent which they charged for wasted area of approx. 171 sq. ft. deliberate misrepresentation on the part of the developers wherein higher covered area was promised whereas lessor covered area has been given with structural issues and taken payment of wasted area in the name of study room of Rs. 6,09,704. To clarify the Local Commission was appointed vide order dated 16.03.2021 and as per the details of a local commissioner report the issue raised by the complainant regarding the changes in study room is genuine. The addition of column in carpet area of the study room an irregular shape of ceiling of the study room makes the room unfit for use as a study room. Hence, the complainant is seeking compensation in the aforesaid reliefs and as decided by Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

G. Directions of the Authority:

47. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 10.60% per annum for every month of delay on the amount paid by the complainant from the due date i.e., 01.12.2013 till the date of receipt of occupation certificate plus two months i.e., 25.05.2015 plus two months i.e., up to 25.07.2015.
- ii. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. Therefore, in case of any default by the complainant, it shall be liable to pay interest at the equitable rate as charged by the respondent.
- iii. The holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020. Moreover, the respondent shall not charge anything which is not part of apartment buyer's agreement.
- iv. The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the

project by the association of the allottees. Clause 10.1 of the buyer agreement provides the clause for maintenance charges.

- v. The respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.

48. Complaint stands disposed of.

49. File be consigned to the registry.



(Ashok Sangwan)
Member



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:10.02.2023