

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

Complaint no. :	1969/2022
Date of filing complaint:	06.05.2022
First date of hearing:	22.07.2022
Date of decision :	16.02.2023

1. Sh. Saurabh Sharma S/O Pramod Kumar Sharma 2. Smt. Mrs Kushal Sharma W/O Pramod Kumar Sharma R/O: 804 Tower No 2 Vipul Lavanya Sector 81 Gurugram	Complainants
Versus	
Vipul Limited R/o: Vipul Tech Square, Golf Course Road, Sector-43, Gurugram -122009	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Manish Shukla (Advocate)	Complainant
Sh. Nishant Jain (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 provisions 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name of the project	"Vipul Lavanya", Sector 81, Gurgaon
2.	Area	10.512 acres
3.	Nature of the project	Group Housing Complex
4.	DTCP License no.	26 of 2010 dated 18.03.2010 valid upto 17.03.2020
5.	Name of Licensee	Vijay Luxmi INDS and 4 others
6.	RERA Registered / not registered	Registered vide 15 of 2018 dated 11.09.2018
7.	RERA Registration valid upto	31.08.2019
8.	Date of execution of flat buyer agreement	07.09.2019 (As per on page 25 of the complaint)
9.	Unit no.	804, 8 th floor, Tower no. 02 (As per on page 41 of complaint)
10.	Unit admeasuring	1780 sq. ft. (super area) (As per on page 41 of complaint)
11.	Possession clause	8.1 Possession The vendor proposes to hand over the possession of the flat by August 2020 unless extended by the Authority in accordance with

		the Act and Rules made thereunder subject to the receipt of requisite other approvals & permissions from the concerned authorities. <i>(The term of grace period is not mentioned.)</i>
12.	Due date of possession	31.08.2020 (As per possession clause)
13.	Total sale consideration	Rs.68,83,162/- (Page 42 of the complaint)
14.	Amount paid by the complainants	Rs 73,53,703/- (As per page 22 of complaint and alleged by the complainants)
15.	Occupation certificate /Completion certificate	The OC placed on the file is not for the tower in which the subject unit is located
16.	Offer of possession	09.03.2020 (As per on page 67 of complaint)

B. Facts of the complaint:

3. That a project in the name of "Vipul Lavanya" at sector 81, Gurugram-122004, Haryana was being developed by the respondent - builder. The complainant coming to know about the same, booked one unit in the project of the respondent.
4. That the allotment of a unit was made by the respondent- builder to the complainant and allotted unit no. 1102 11th floor, in tower 2 of group housing colony.
5. That the total sale consideration of the unit is Rs. 68,83,162/- and out of which, the complainants have paid a sum of Rs. 73,53,703/- till date. The buyer's agreement was executed between the parties on 07.09.2019. As per clause 8.1 of the buyer's agreement the unit

was to be delivered by August 2019 hence, the due date comes out to be 31.08.2019.

6. That the complainants had paid all the charges including cover area and maintenance of the said booked flat and nothing is pending. The complainants have never ever defaulter in making payment to the respondent company and all the instalments were paid timely.
7. That the complainants are the owner of their respective flats but not a legal owner of the said property unless the occupancy certificate and conveyance deed registered or issued by the relevant authorities in favor of the complainants. The occupancy certificate shows and proof that the building has been completed as per the sanction plan. The respondent company had offered the said flats without an occupancy certificate and assured all the complainant that the occupancy certificate for relevant towers have been applied and it may take some time. The complainants were offered possession on 11.07.2019.
8. That it is extremely important to require the occupation certificate and getting the conveyance deed registered from the respondent - builder as the hard-earned money is involved in the said units by the complainants otherwise irreparable loss would be occurred to the complainants .
9. That further on account of delay in getting occupancy certificate for the aforesaid tower's conveyance deed/ registration of respective complainants' unit is also getting delay day by day.
10. That the respondent - developer failed to obtain occupancy certificate and, in such scenarios, it is prayed that this Hon'ble Court may be pleased to direct the respondent to adequately compensate

for the delay in getting the OC and till such time the registered conveyance deed is to be executed in favour of the complainant.

11. That this Hon'ble Court has also ruled that the developers cannot use the force majeure clause for lack of approvals, financial crises and any insolvency proceedings and directed the builders to obtain the occupancy certificate for the building or pay an interest amount to residents of the building.
12. That the complainants have diligently follow up with the respondent - builder regarding the aforesaid occupation certificate /conveyance deed approvals but every time the opposite party enjoyed and certificates at the stake of welfare of the complainants. It is pertinent to note that the respondent - builder has caused huge harassment, mental torture and agony to the complainant due to non-fulfilment of terms and condition mentioned in the allotment letter establishing their egregious unfair trade practices.
13. That the respondent - builder kept on delaying the occupancy certificate and completion certificate of the project/relevant towers on one or other pretext and fail to give occupancy certificate of the said unit on the agreed terms and conditions. The complainants also sent various representation and request in this regard, but the respondent has neither responded nor sought occupancy certificate from the concerned authorities till date. Hence the respondent - builder is liable to pay the interest on delay on actual possession.

C. Relief sought by the complainants:

14. The complainants have sought the following relief(s):

- i. Direct the respondent - builder to give actual physical possession of flat and direct the respondent to get the occupation certificate / cc from the concerned authority and register the conveyance deed in favour of the complainant.
- ii. Direct the respondent - builder to pay delay interest penalty.
- iii. Direct the respondent - builder to pay litigation cost.

D. Reply by respondent:

The answering respondent by way of written reply made the following submissions:

15. That the complainant - allottee have booked a unit in the project of the respondent - builder namely "Vipul Lavanya" situated at Sector 81, Gurugram. . The buyer's agreement was executed on 07.09.2019 and according to clause 8.1 the due date comes out to be 31.08.2020. Till date the complainant - allottee have paid an amount of Rs 73,53,703/-
16. That the building has been completed as per the sanction plan. The complainants - allottees were intimated at the time of permissive possession to carry out the interior work / fit out and about the pendency of Occupation Certificate with the concerned authority. It was also intimated that the respondent has applied for Occupation Certificate vide letter dated 03.04.2018. The complainants - allottees with malafide are misleading this Hon'ble Authority and are trying to pressurize the respondent company to succumb to their illegal demands and to extort huge amounts towards their illegal demands. The complainants have already taken physical possession of the unit and were aware about the status of the occupation certificate.

17. That the complainants – allottees have already taken possession on 09.03.2020 and are staying in the flat allotted to them and the complainants had full knowledge about the said fact at the time of taking possession of the flat in question. The complainant is not entitled to any relief. There is no fault on the part of the respondent.
18. The respondent had offered permissive possession to carry out interior works and for fit out at the unit whereas the complainants have taken physical possession of the unit on 09.03.2020. This Hon'ble Authority vide its order dated 12.01.2022 in Complaint bearing No. 1042 of 2021 titled as 'Pooja Jai krishna & anr. Versus M/s ADTV Communication Pvt. Ltd.' has held that the complainant is only entitled to delay possession charges till the time he has taken possession of the unit. The respondent cannot issue occupation certificate. The occupation certificate is issued by Government Authority and the respondent has already applied for the same.
19. That the complainant require OC to claim income tax benefits or that it is very difficult to find a buyer in case a complainant wishes to sell his flat as alleged.
20. That the complainants have follow up with the respondent regarding OC / conveyance deed or that the respondent enjoyed or taking long extensions for approvals and certificates at the stake or the welfare of the complainant as alleged.
21. However, it is pertinent to submit that the complainants have to pay the charges that will be incurred at the time of registration of the conveyance deed.

22. That the respondent has already obtained occupation certificates regarding 8 towers of the project and occupation certificates of only 2 towers remains to be issued by the concerned authority. The respondent as already applied for occupation certificate for remaining 2 towers on 03.04.2018. There is no fault on the part of the respondent.
23. That the complainants had already taken possession of their unit within the prescribed period mentioned in the agreement and they are not entitled to claim any interest on delayed possession.
24. All other averments made in the complaint were denied in toto.
25. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

26. 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.1 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 complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

27. 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.

28. 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 complainant at a later stage.

F. Findings on the relief sought by the complainants

F.I Direct the respondent to give actual physical possession of flat and direct the respondent to get the occupation

certificate / cc from the concerned authority and register the conveyance deed in favour of the complainant.

F. II Direct the respondent to pay delay interest penalty.

29. In the present complaint, the complainants intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."*

30. The apartment buyer's agreement was executed between the parties and as per the possession clause 8.1 the possession of the unit was to be handed over by August 2019. The clause 8.1 of the buyer's agreement is produced as below:

8.1 Possession

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 by August 2020 unless extended by the Authority in accordance with the Act and Rules made thereunder subject to the receipt of requisite other approvals & permissions from the concerned authorities, Force Majeure Conditions (defined in clause 8.1 b) ii) and subject to fulfilment of the terms and conditions of this Agreement including but not limited to timely payments by the VENDEE(S), in terms hereof.

31. **Admissibility of grace period:** As per clause 8.1 of buyer's agreement dated 07.09.2019, the respondent promoter has proposed to handover the possession of the flat by August 2020. The due date comes out to be 31.08.2020.
32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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.*
- The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.
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., 16.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
34. The definition of term 'interest' as defined under section 2(z a) 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. 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. The aforesaid relief no. 1 and II being interconnected are being taken up together. The complainants – allottees have booked a unit no. 804 8th floor, in tower 2 of group housing colony was allotted vide allotment letter.
36. That the total sale consideration of the unit is Rs. 68,83,162/- and out of which, the complainants have paid a sum of Rs 73,53,703/- till date. The buyer's agreement was executed between the parties on 07.09.2019. As per clause 8.1 of the buyer's agreement the unit was to be delivered by August 2020 hence, the due date comes out to be 31.08.2020.
37. The respondent – builder has offered the possession to the complainants – allottees on 09.03.2020 without obtaining occupation certificate and the same is invalid. Even though the respondent stated that the complainants – allottees have already taken the possession.
38. The counsel for the complainants stated at bar that they have received the permissive possession and the respondent has not

received the occupation certificate and hence the possession is invalid Whereas the counsel for the respondent stated at bar that the offer of possession was made while relying in CR. No. 1042 of 2021 in case titled as Pooja Jai Krishna vs ADTV Communication Pvt. Ltd. . However, in that order it is clearly mentioned that respondent is directed to obtain occupation certificate from the competent authority and then make a valid and lawful offer post that execution of conveyance deed can be done.

39. In the present case the offer of possession was not lawful as it was done on 09.03.2020 without obtaining the occupation certificate. The respondent - builder offered the possession to the complainants- allottees on 09.03.2020 without obtaining the occupation certificate and the same is held to be invalid. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 31.08.2020 till actual handing over of possession.
40. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the 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 is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e. 31.08.2020 till actual handing over of possession at the prescribed rate i.e., 10.60 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.III Compensation

41. The complainant is seeking above mentioned relief w.r.t. compensation. 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. (supra)*, 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.

G. Directions issued the Authority:

42. 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/promoter is directed to pay interest at the prescribed rate of 10.60% p.a for every month of delay from the due date i.e 31.08.2020 till the actual handing over of possession .
- ii. The respondent is directed to obtain occupation certificate from the competent authority and then make a valid and lawful offer of possession post that execution of conveyance deed be done within 3 months from the

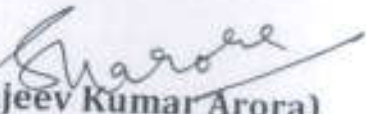
valid offer of possession as per provisions of Section 17 of the Act, 2016.

- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

43. Complaint stands disposed of.

44. File be consigned to the Registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.02.2023