

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

Complaint no.	:	6815 of 2019
First date of hearing:		14.01.2020
Date of decision	:	24.03.2023

Sanjeev Bhardwaj Address: - H.no. 1903, Sector-4, Gurugram, Haryana	Complainant
Versus	
1. M/s Kashish Developers Pvt. Ltd. 2. Elite Villas Pvt. Ltd. 3. Vinman Constructions Pvt. Ltd. Office at: - Manor One, Sector-111, Dwarka Expressway, Gurugram, Haryana-122017 Also At: 87, Old A.G Colony Kadru, Ranchi Jharkhand-834002	Respondents
CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Shri Gaurav Rawat (Advocate)	On behalf of the complainant
None	On behalf of the respondents

ORDER

1. The present complaint dated 08.01.2020 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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Manor One" situated at Sector-111 Gurgaon.
2.	Nature of the project	Group Housing Colony
3.	Project area	14.843 acres
4.	DTCP license no. and validity status	110 of 2011 dated 16.12.2011 valid upto 13.12.2019
5.	Name of licensee	M/s Vinman Construction Pvt. Ltd. and 4 others
6.	RERA Registered/ not registered	Registered Vide 58 of 2019 dated 24.09.2019 Valid Upto 31.12.2021
7.	Allotment Letter	02.01.2013 (page no. 16 of the complaint)
8.	Date of apartment buyers' agreement	15.05.2013 (page no. 19 of complaint)
9.	Unit no.	C2-11A, 11 th Floor, Tower C2 (page no. 23 of complaint)
10.	Unit area admeasuring	2325 sq. ft. (page no. 23 of complaint)
11.	Due date of possession	15.11.2016 (calculated from the date of execution of agreement)



		Note: Grace period is allowed being unqualified.
12.	Possession clause	<p>3(a) Possession</p> <p>That subject to terms of this clause and subject to the apartment allottee having complied with all the terms and conditions of this agreement and not being in default under any of the provision of this agreement and further subject to compliance with all the provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developers by the apartment allottee(s) under this agreement, as prescribed by the Developer, the Developer proposes to hand over the possession of said apartment within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this agreement. It is however understood between the parties that the possession of various Block/Towers comprised in the complex and also the various common facilities planned therein shall be ready and completed in phases wise and will be handed over to the allottees of different Blocks/Tower as and when the</p>



		same will be completed and in a phased manner. (Emphasis supplied)
13.	Total sale consideration	Rs. 1,63,49,425/- (as per payment plan on page no. 17 of complaint)
14.	Amount paid by the complainant	Rs. 1,12,74,349/- (as per page 5 of complaint and 1 of reply)
15.	Occupation certificate	Not obtained

B. Facts of the complaint

3. That the complainant approached the respondent no. 1 for booking a flat in the project namely, "Manor One" situated at sector-111, Gurugram. The initial booking amount of Rs 20,00,000/- was paid through cheques dated 08.08.2012 complainant again paid amount of Rs 1,86,173/- dated 03.09.2012.
4. That the complainant got allotment letter and payment schedule dated 09.08.2012 in which unit C2-11A on eleventh Floor, block-C2 tentatively area admeasuring 2325 sq. ft. was allotted.
5. That the respondents to dupe the complainant in their nefarious net even executed apartment buyer agreement signed between complainant and M/s Kashish Developers Limited, M/s Elite Villas Pvt. Ltd. & Vinman Constructions Pvt. Ltd. on 15th May 2013, just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.



6. That the total cost of the said flat is Rs 1,63,49,425/- inclusive BSP, EDC IDC, IFMS, PLC, club membership charges & one parking. The complainant has paid a sum of Rs 1,12,74,349 /- inclusive taxes.
7. That as per clause no. 3 (a) the respondents are in obligation to hand over the vacant physical possession of the said unit before 14.11.2016 but till date builder has not completed structure and project was abandoned from last 4 years.
8. That the respondents miserably failed to complete the construction of work of the project within assured time limit, thereby grossly violating the terms and conditions of the printed agreement as entered between the complainant and respondents and has not met their obligations.
9. That in such circumstances the complainant is demanding the return of the amount paid along with interest at prescribed rate as per the Act of 2016.

C. Relief sought by the complainant:

10. The complainant has sought the following relief:

- Direct the respondents to refund a sum of Rs. 1,12,74,349/- paid by him along with prescribed rate of interest.

11. On the date of hearing, the authority explained to the respondents/promoters about the contraventions 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.

12. That the project namely 'Manor One' is a residential township project being developed by the respondent namely Kashish



Developers Limited and was being financed by DHFL situated at Sector 111 Gurgaon, Haryana.

13. That the said project has all necessary legal approvals including RERA Registration and licences to develop and complete the project. Even the license and statutory fees for the project is paid up in full.
14. That the said project is registered under RERA Gurugram vide GGM/364/96/2019/58 dated 24/09/2019 and the expiry date of the said project is 31/12/2021. However, vide order dated 26/05/2020 issued by HRERA, Gurugram, registration date of all the registered projects under its jurisdiction was extended for a period of six months and therefore, the expiry date of the above-mentioned project is now 30/06/2022.
15. That the construction activity of the said project was going on in full swing. However, in 2015-16 the construction activity of the project started getting disrupted due to adverse market conditions causing mismatch of cash flows.
16. That there has been a major slump in the real estate sector and several projects all over Delhi NCR and even parts of the country have been hardly hit. As a result, constructions have stopped and there have been delays of several years in handing over the possession of flats to its buyers.
17. That the complainant in the present case is a defaulter and has been defaulting on the payments and has not met the demands as per the payment plan and the demands raised by the respondent-builder.
18. That the respondent-builder in bona fide and in its sincere efforts to complete the project arranged for additional funds and loans from Dewan Housing Finance Limited (hereinafter referred as "DHFL"). It



is submitted that the DHFL (now PIRAMAL) also stopped disbursing the sanctioned limit of loan for construction activity due to their own financial trouble which eventually led them under insolvency.

19. That clause 13 of the agreement states that the developer shall not be held responsible for performing any obligation if such a performance is prevented by force majeure.
20. That among other reasons, one of the biggest reasons for the delay in the project has been the defaulting customers. The defaulting customers and their outstanding amount are above Rs 100 crores and the same has adversely affected the project since the said amount would have enabled the developer to complete the project.
21. That the majority of the flat buyers including the complainant did not make the full payment against their respective contractual obligations towards the respondent-builder which was a major cause of delay in the construction of the abovementioned project as well as caused serious financial loss to respondent-builder which directly hindered the progress in the construction work thus causing delay in handing over the possession.
22. That the respondent-builder availed a project loan facility from DHFL and NBFC for a sum of Rs 200 crores for a tenure of 72 months. The said loan facility was availed for the purpose of completing the project. The said finance was required to complete the project in addition to the funds to be raised from the customers. The said loan was extended by the NBFC against the project.
23. That the respondent-builder was finding it difficult to ascertain funds from any other financial institution and loan balance of DHFL grew very high as interest was getting accumulated and added at a



very high rate. However, to fulfil the commitment towards customers, a restructuring arrangement was worked out with DHFL in which Loan of Rs.725 Cr was sanctioned to the Landowning Companies of the Project. It is pertinent to mention here that even though the said loan facility was sanctioned and approved by the lender, still the complete amount was not disbursed by the lender owing to certain financial difficulties faced by the said lender which ultimately went under insolvency itself.

24. That after disbursement of loan, total amount of outstanding External Development Charges (EDC) for the whole project i.e., sold area as well as unsold area was payable to Dept. of Town and Country Planning, Government of Haryana. An amount of Rs.45,63,87,000/- was deposited on 28th March 2018.
25. Thereafter, the work again gained momentum from funds being disbursed by DHFL. Suddenly, IL&FS crisis surrounded the NBFC sector and DHFL which was providing funds for completion of the Project also got into trouble by the month of Sep 2018.
26. That the said project thereafter was stuck/ delayed because DHPL who had financed the project was facing proceedings under Insolvency and Bankruptcy Code and moratorium was ordered against DHFL by NCLT, Mumbai in 2019 and further the management and control of the company was taken away. The project had huge amount of undisbursed funds sanctioned from DHFL which further caused grave hardship to the respondent-builder in order to complete the project.
27. that subsequently in the year 2019 insolvency proceedings were initiated against the respondent company also and subsequently a



Moratorium was ordered against the respondent company in the month of November, 2019.

28. That the management of the respondent company was handed over back in late January and the work at the site was started and since the 2nd week of March, 2020 things have been disrupted due to the on-going pandemic. Due to COVID-19 the respondent has not been able to carry on the work on a regular and continuous basis and the labour right now is not fully available. The work has been on going at the site intermittently thereafter since the second lock down was even more devastating and it was difficult to get the labour back at site in full force. Be that as it may, the work is being carried on since the opening up of the lockdown after the second wave and is still being continued at site.
29. That the said project of the respondent-builder will get completed soon and delivered with reasonable compensation for delay in handover of flats. It is imperative to mention here that the work was going on and has got stopped after imposition of lockdown due to non- availability of labour. Further, more than 70% of the project is completed till date and the respondent company is ready to handover the possession of the flats as soon as the work is completed.
30. That the said project of the respondent-builder presently has a total booking of nearly 275 units/ flats/ customers and the large number of these customers are looking to get the possession of their respective units and the same shall be handed over to them upon completion of the project which will be done at the earliest.



31. That more than 70% of the construction is completed till date and the licenses including the payments made is all done by the respondent-builder with the statutory authorities apart from the fact that 5 towers are already constructed at site by the respondent.
32. That the respondent-builder had applied for funds from the SWAMIH fund which has been specifically made for projects which are stalled but can be completed and have already been substantially completed.
33. That the said fund has been approved for the project by the competent authority and there has been endeavoured to complete the project at the earliest in order to keep the interests of the customers including the complainant. The fact that the respondent-builder has received an approval from the swamih fund itself shows that the project of the respondent-builder is completed more than 70% and is viable project and will be completed soon. It is also imperative to state that the swamih fund is a fund created under the umbrella of the Ministry of Finance.

E. Jurisdiction of authority

34. 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

35. 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

36. 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)(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.

37. 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 objections raised by the respondent no. 1.

F.I Objection regarding untimely payments done by the complainant.

38. The respondent no. 1 has contended that the complainant made several defaults in making timely payments as a result thereof, the respondent no.1 cannot complete its project on time. The authority is of view that the respondent no. 1 cannot take advantage of this



objection of timely payments being himself at wrong firstly by still not obtaining the occupation certificate and offering the possession of the unit despite being delay of 6 years, 4 months, 9 days. Therefore, the respondent no. 1 itself failed to complete its contractual and statutory obligations. Moreover, there is no document on file to support the contentions of the respondent no. 1 regarding delay in timely payments.

G. Findings on the relief sought by the complainant.

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

- i. Direct the respondents to refund the amount with interest 24% p.a.

39. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"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.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every



month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

40. Clause 3(a) of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"3(a): Possession

That subject to terms of this clause and subject to the apartment allottee having complied with all the terms and conditions of this agreement and not being in default under any of the provision of this agreement and further subject to compliance with all the provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developers by the apartment allottee(s) under this agreement, as prescribed by the Developer, the Developer proposes to hand over the possession of said apartment within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this agreement. It is however understood between the parties that the possession of various Block/Towers comprised in the complex and also the various common facilities planned therein shall be ready and completed in phases wise and will be handed over to the allottees of different Blocks/Tower as and when the same will be completed and in a phased manner.

41. The complainant booked a unit in the project of the respondent's detail above for a total sale consideration of Rs. 1,63,49,425/- and the buyer's agreement was executed between the complainant and respondents on 15.05.2013.
42. As per the clause 3(a) of the buyer's agreement the possession of the unit was to be handed over within 36 months from the date of the agreement (excluding the grace period of 6 months). The due date for handing over of possession comes out to be 15.11.2016.
43. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents-promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount



towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021.

".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

44. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

45. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and



regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

46. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
47. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondents shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided 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."

48. 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.
49. 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., 24.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
50. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 1,12,74,349/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

H. Directions of the authority

51. 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 respondents/promoters are directed to refund the entire amount paid by the complainant along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.



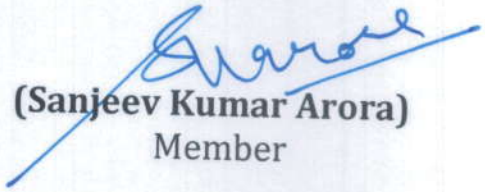
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ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

52. Complaint stands disposed of.

53. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.03.2023



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