

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

Complaint no.	:	1316 of 2019
First date of hearing:		30.09.2019
Date of decision	:	24.03.2023

Sohan Lal Singh Address: - Village & P.O- Gijarodh, Distt- Jhajjar-124103, Haryana.	Complainant
Versus	
1. M/s Kashish Developers Pvt. Ltd. 2. Vinman Constructions Pvt. Ltd. 3. Elite Villas 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 S.P Singh (Proxy Counsel)	On behalf of the complainant
None	On behalf of the respondents

ORDER

1. The present complaint dated 01.04.2019 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.

2. The respondent-builder in the present complaint has not filed any reply or written submission. On the proceedings dated 10.10.2022 AR of the respondent-promoter appeared and was allowed two weeks' time to file the reply along with cost of Rs. 10,000/-to be paid to the complainant. The authority specifically directed if the reply has not been filed the defense of the respondent shall be struck off. Since, till today no reply has been submitted and none has appeared on behalf of respondent-builder. Therefore, the authority assumes/ observes that the respondent-builder has nothing to say in the present matter. Thus, the authority is proceeding as per the pleadings and documents on the record.

A. Unit and project related details

3. 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	16.09.2014 (page no. 12 of the complaint)
8.	Date of apartment buyers' agreement	10.11.2014 (page no. 14 of complaint)
9.	Unit no.	B5-5C, 5 th Floor, Tower B5 (page no. 18 of complaint)
10.	Unit area admeasuring	1455 sq. ft. (page no. 18 of complaint)
11.	Due date of possession	10.05.2018 (calculated from the date of execution of agreement) Note: Grace period is allowed being unqualified.
12.	Possession clause	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



		<p>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.</p> <p>(Emphasis supplied)</p>
13.	Total sale consideration	Rs. 74,71,030/- (as per payment plan on page no. 13 of complaint)
14.	Amount paid by the complainant	Rs. 57,25,495/- (as per page 4 of complaint)
15.	Occupation certificate	Not Obtained
16.	Offer of Possession	Not Offered

B. Facts of the complaint

4. That, the property in question i.e., apartment no. B5-SC on 5th floor admeasuring 1455 sq. ft. in the project of the respondent i.e., M/s Kashish Developers Limited, known as "Manor One" situated at sector-111, Vill. Chauma and Dist. Gurugram, Haryana, was booked by the complainant in the year 2012.



5. That, the total cost of the floor is Rs. 74,71,030/- and since it was a construction linked plan, hence the payment was to be made on the basis of schedule of payment, provided by the respondent-builder.
6. That, thereafter, on 10.11.2014, the complainant entered into a builder buyer's agreement with the respondent-builder, by virtue of which the respondent-builder allotted apartment no. B5-5C on 5th Floor admeasuring 1455 sq. ft., in the project of the respondent-builder.
7. That, the complainant was greatly influenced by the fancy brochure which depicted that the project will be developed and constructed as state of the art and one of its kinds with all modern amenities and facilities, which led to the purchase of the property in question, by the complainant.
8. That, it was represented to the complainant, by the respondent-builder, by way of various advertisements, that the project in question shall be constructed, developed and designed by a team of ace architects and structural designers to meet world class infrastructure quality and standards. The complainant was induced by the representations of the respondent/promoter and thereby purchased the property in question.
9. That the complainant till date, had made the total payment of Rs.57,25,495/- from his own sources, through cheques.
10. That, in the said buyer's agreement dated 10.11.2014 the respondent-builder had categorically stated that the possession of the said apartment would be handed over to the complainant within 30 months from the date of signing of the builder buyer's agreement, with a further grace period of another 6 Months.



11. That, the said buyer's agreement is totally one sided, which impose completely biased terms and conditions upon the complainant, thereby tilting the balance of power in favour of the respondent-builder, which is further manifest from the fact that the delay in handing over the possession by the respondent-builder would attract only a meagre penalty of Rs. 10/-per sq. ft. on the super area of the apartment, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs 10/- per sq. ft. and 24% penal interest on the unpaid amount of instalment due to the respondent-builder.
12. That, in all these years, the complainant also visited at the site and observed that there was just a barren land, and no construction has been started by respondent-builder.
13. That, the respondent-builder has sold the project stating that it will be next landmark in luxury housing and will redefine the meaning of luxury, but the respondent-builder has converted the project into a barren land. There are no visible signs of alleged luxuries.
14. That the respondent-builder has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The complainant, therefore, seeks direction to the respondent-builder to refund all the amount made by the complainant to the respondent-builder along with interest @ 24 % p.a.

C. Relief sought by the complainant:

15. The complainant has sought the following relief:



- Direct the respondent-builder to refund the amount paid by the complainant along with interest.
- Direct the respondent-builder to pay interest @ 24% p.a. as compensation towards delay in handing over the property as per Act.
- Direct the respondent-builder to pay a sum of Rs. 5 lakhs to the complainant towards undue hardship and injury, both physical and mental caused to due to the cats of omissions and commissions on the part of respondent-builder.
- Direct the respondent-builder to pay a sum of Rs. 50,000/- to the complainant towards the cost of the litigation.

16. 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.

E. Jurisdiction of authority

17. 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

18. 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

19. 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.

20. 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 complainant.

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

- i. Direct the respondent-builder to refund the amount paid by the complainant along with interest.
- ii. Direct the respondent-builder to pay interest @ 24% p.a. as compensation towards delay in handing over the property as per Act.



21. 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)

22. 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.

23. The complainant booked a unit in the project of the respondent's detail above for a total sale consideration of Rs. 74,71,030/- and the buyer's agreement was executed between the complainant and respondent-builder on 10.11.2014.
24. 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 10.05.2018.
25. 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....."

26. 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."

27. 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.
28. 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.

29. 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 respondent 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.”

30. 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.
31. 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%.
32. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 57,25,495/- 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.

iii. Direct the respondent-builder to pay a sum of Rs. 5 lakhs to the complainant towards undue hardship and injury, both physical and mental caused to due to the cats of omissions and commissions on the part of respondent-builder.

iv. Direct the respondent-builder to pay a sum of Rs. 50,000/- to the complainant towards the cost of the litigation.

33. The complainant in the aforesaid relief is also seeking relief w.r.t compensation. Hon'ble Supreme Court of India in case 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 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure

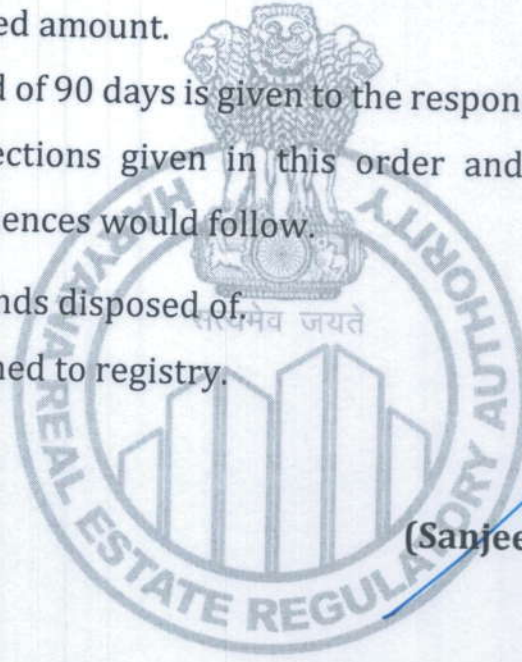


compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- 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.
- 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.

35. Complaint stands disposed of.

36. File be consigned to registry.



(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.03.2023

HARERA
GURUGRAM