

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

Complaint no. : 1927 of 2021  
Date of filing of : 06.04.2021  
complaint:  
Date of decision : 17.10.2023

Vipul Greens Residents Welfare Association R/o: Vipul Greens, Sohna Road, Sector-48, Gurgaon, Haryana-122001.	<b>Complainant</b>
Versus	
M/s Maxworth Marketing Private Limited M/s Vipul Limited <b>Office:</b> Unit No. 201, C-50, Malviya Nagar, New Delhi-110017.	<b>Respondents</b>
<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Anuj Malhotra	<b>Counsel for the complainant</b>
Sh. Nishant Jain and Manu Jain	<b>Counsels for the Respondent</b>

**ORDER**

- The present complaint dated 06.04.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

#### A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details	
1.	Name of the project	"Vipul Greens Complex", Sector- 48, Gurugram	
2.	Nature of project	Residential group Housing Colony	
3.	<b>RERA registered/not registered</b>	Not registered	
4.	Building plan	23.11.2000	
5.	Revised building plan	20.07.2014	
6.	Total no. of units as per approved building plan	Tower- 1-23(644 units) EWS Block (127 units) Shops (14) Community centre Nursery school	
7.	Occupation certificates	Dates	Towers
		04.07.2007	6-12
		04.03.2008	14-20



		22.06.2010	3,5, 22
		14.01.2011	1,2,4 & 21
		29.12.2012	EWS Block (127 units), Shops (14), Community centre.
		15.05.2013	23
8	Application for grant of completion certificate	20.05.2013	
9	Rejection of application for grant of completion certificate	10.01.2018 (As per page no. 79 of complaint)	
10	Occupation certificate for nursery school	Not obtained	
11	Completion certificate	Not obtained	

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the members of the complainant association are the owners and residents of various apartments in the project.
- II. That the present complaint emanates from the non-registration of the project by the respondents under RERA Act.
- III. That the complainant has preferred the present complaint through its authorised representative Mr. Vipin Kapoor, who is fully conversant with the facts and circumstances of the present complaint and is able and authorised to engage advocates and tender evidence (oral or

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documentary) and as such is competent to enter into compromise on behalf of the complainant RWA.

- IV. The respondents entered into development agreement dated 22.10.2003 under which the respondent no.1 purchased FAR of 13,10,241 sq. ft. and obtained rights to develop the project.
- V. That the building plans of the project were approved vide memo no. 17171 dated 23.11.2000 by DTCP in favour of respondent no.1. Further, the building plans of the project were revised and the same were approved vide memo no. 10413 dated 20.17.2004.
- VI. That as per the approved building plans and brochure of the project, the project consists of 23 Residential towers having a total of 644 units, EWS block having 127 units, club (community centre), shops, and nursery school.
- VII. That the respondent no. 2 undertook development on the land in a phased manner and constructed the group housing colony namely Vipul greens at Sector 48, Sohna Road, Gurugram, Haryana 122001 on the said land. The respondent no. 2 constructed various buildings/blocks numbering towers 1 to 23 (644 Units), EWS Block (127 units), shops (14 numbers), and community centre.
- VIII. That after completion of towers 1 to 23(644 Units), EWS Block (127 Units), Shops (14 Numbers) and community centre by the respondent no.2, the respondent no.1 being the licence holder applied for their respective occupancy certificates and DTCP issued occupancy certificates, on various dates for the aforementioned buildings/blocks. details of the same are as under:

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Occupancy Certificate No.	Date	Towers
17202	04.07.2007	6-12
5285	04.03.2008	14-20
7937	22.06.2010	3,5 & 22
474	14.01.2011	1,2,4, & 21
27195	29.12.2012	EWS Block (127 Units), Shops (14 Numbers), and Community Centre.
39595	15.05.2013	23

- IX. That the respondents after obtaining the abovementioned 6(six) occupancy certificates, vide letter dated 20.05.2013 applied for grant of completion certificate of the Project with DTCP.
- X. That the license no. 1 of 1998 expired on 11.03.2014 and whereas license no. 61 of 1996 dated 02.05.1996, license no. 62 of 1996 of the project expired on 01.05.2015.
- XI. That the DTCP raised certain objections and shortcomings in the application dated 20.05.2013 of the respondent no.1 and directed the respondent no.1 to file its response to the objections.

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- XII. That the respondent no.1 in consonance with respondent no.2 the replied to the objections raised by DTCP and subsequently DTCP vide Memo No. LC-275-PA(B)-2017/744 dated 10.01.2018 rejected the application for the grant of completion certificate.
- XIII. That in accordance with section 3 of the Real Estate (Regulation and Development) Act, 2016 ('RERA Act') specifically states that any project which are ongoing, and the completion certificate has not been issued, the promoter has to make an application with the Authority as established under the Act for the registration of their project within a period of 3 months from the date of the commencement of the RERA Act.
- XIV. That the RERA Act came in force on 25.03.2016 and the respondents have till date deliberately and intentionally neither have obtained the completion certificate for the project nor have they got themselves registered as under the RERA Act, which is in direct contravention of the provisions of the RERA Act.
- XV. That the respondents without registering the project under RERA are still selling the parking areas to bonafide purchasers/ members of the complainant association, which is completely in violation of section 3 of the RERA Act.
- XVI. It is submitted that the licenses of the project have expired long back on 11.03.2014 and 01.05.2015 respectively and the same has not been renewed till date by the respondents. Further, the occupation certificate for the nursery school has not been obtained by the respondents till date. Therefore, the project falls in the category of pending/incomplete/ongoing projects.
- XVII. That the instant complaint is being filed bonafide and no prejudice would be caused to the respondents. However, irreparable damage, hardship,





and grave prejudice would be caused to the complainant association as thousands of people residing in the project including the allottees of the EWS block as now they may face legal issues arising out of the violations, past and continuing in addition to the expiry of the development licenses by the respondents.

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

4. The complainant has sought following relief(s).

- I. *Direct the respondents for mandatory registration of the project Vipul greens as per section 3 of the RERA Act and adhere to the various compliances as per the various rules and regulations under the RERA Act.*
- II. *Direct the respondents to apply and provide for the occupancy certificate with respect to the nursery school in project Vipul Greens and provide the same to the complainant association.*
- III. *Direct the respondents to apply and provide for the completion certificate with respect to the project Vipul Greens and provide the same to the complainant association.*
- IV. *Grant cost of Litigation of Rs. 100,000/- to the complainant.*

5. On the date of hearing, the authority explained to the respondent/promoter 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**

6. The respondent has contested the complaint on the following grounds.

- a. The project, i.e., "Vipul Greens", Sector 48, Gurugram, Haryana, (hereinafter referred to as the "said Project") is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as the "said Rules") nor is the said Project of the respondent registered with this Hon'ble Regulatory Authority. As per the definition of "ongoing projects" under Rule 2(o) of the said rules, any project for which an application for occupation certificate,

part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of Haryana Real Estate (Regulation & Development) Rules, 2017.

- b. That the complaint of the complainant lacks bonafide and smells smack of malafide who has not approached the Hon'ble Authority with clean hands and has concealed true and material facts hence, the present complaint is liable to be dismissed on this ground alone. The correct facts pertaining to the present project are as under:

- i. That respondent No.1 had been granted licence Nos. 61 & 62 of 1996 dated 02.05.1996 and licence No.1 of 1998 dated 12.03.1998 from the Director, Town & Country Planning, Haryana (DTCP) for the development of a Group Housing Scheme. The aforementioned licenses were subsequently renewed up to 01.05.2004 vide memo No.5DP- 2003/8243 dated 05.06.2003 for licence No. 61 & 62 and licence No.1 of 1998 got renewed up to 11.03.2004 dated 05.06.2003 vide memo No.5DP-2003/8249.
- ii. That the respondent No.1 entered into a development agreement dated 22.10.2003 with respondent no.2. The development agreement dated 22.10.2003 provides for development of 17.188 acres by the respondent no.2 in terms of the licences. As per the development agreement the developer company was entitled to develop the group housing scheme in an area of 13,10,241 sq. ft. which has been calculated @ 1.75 times of the floor area corresponding to 17.188 acres in village Tikri, Tehsil & District Gurgaon. The building plans for the same





had been sanctioned vide memo No. 17171 dated 23.11.2000 by the competent authorities.

iii. Respondents were granted Occupation Certificate vide DTCP memo No. 17202 dated 04.07.2007, 5285 dated 04.03.2008 and 7937 dated 22.06.2010.

c. That the present complaint is bad for misjoinder and non-joinder of parties and hence is liable to be dismissed on this ground alone. The complainant is well aware of the fact that the project "Vipul Greens" comprises of 23 towers, 644 flats, EWS Blocks 127, club, community center, shops and the same has been completed in all aspects by the respondents. The land measuring 0.4031 acres (approx 1951 Sq. Yards) in the group housing colony has been earmarked for the purpose of development and use of school as per the approved layout plan. respondents have given the said site to M/s Shri Educare Pvt. Ltd. for construction of building and running of school. respondents and M/s Shri Educare Private Ltd, entered into a Lease deed dated 30.09.2009 for a period of 95 years. M/s Shri Educare Pvt. Ltd. is a necessary party.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**



9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

### **E.I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

11. 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.*

12. 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 respondents for mandatory registration of the project Vipul greens as per section 3 of the RERA Act and adhere to the various compliances as per the various rules and regulations under the RERA Act.**

**F.II Direct the respondents to apply and provide for the occupancy certificate with respect to the nursery school in project Vipul Greens and provide the same to the complainant association.**

**F.III Direct the respondents to apply and provide for the completion certificate with respect to the project Vipul Greens and provide the same to the complainant association.**

Since all these issues are inter-connected, so the same are being taken together

13. The complainant took a plea that in accordance with section 3 of the Act, 2016 specifically states that any project which are ongoing and completion has not been issued, it is the duty of the builder to get it registered with the authority. Even respondent builder did not obtain any occupation certificate w.r.t. the nursery school and completion certificate of the project, which is direct contravention of the provisions of the Act, 2016.
14. On the contrary, the respondent-builder states that as per the definition of 'ongoing projects' under rule 2(o) of the said rules, any project for which an application for occupation certificate, part thereof or completion certificate or part completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of Haryana Real Estate (Regulation & Development) Rules, 2017. So, it is not necessary for it to apply for registration of project. The respondent-builder further states that the respondent has given the said

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site to M/s Shri Educare Pvt. Ltd. for construction of building and running of school. The respondent and M/s Shri Educare Pvt. Ltd entered into a lease deed dated 30.09.2009 for a period of 95 years, so, M/s Shri Educare is the necessary party to obtain occupation certificate for nursery school. On 20.05.2013, the respondent moved an application for grant of completion certificate but it was rejected in year 2018 as the occupation certificate of the nursery school was not received.

15. After consideration of the facts and circumstances, the authority is of view that even if the definition of ongoing project as given under rule 2(1)(0) of the Haryana Real Estate (Regulation and Development) Rules, 2017 is accepted, then also in that case that any project for which part completion/completion/occupancy certificate or part thereof has been granted or before publication of these rules is not included in the definition of ongoing project. Accordingly, projects which do not have occupation certificate or part occupation certificate on the date of publication of the Haryana Real Estate (Regulation Development) Rules, 2017 i.e. 28.07.2017 are not exempted from the definition of the ongoing project and are thus registerable. Keeping in view the fact that the Haryana Real Estate (Regulation and Development) Rules, 2017 were published on 28.07.2017 and the project in question required registration as no completion certificate was issued to the promoter by the competent authority on or before the commencement of the Act and therefore the project in question falls within the purview of the 'ongoing project'.

16. The respondent contended that it has given the said site to M/s Shri Educare Pvt. Ltd. for construction of building and running of school vide lease deed dated 30.09.2009 for a period of 95 years. So, M/s Shri Educare is the necessary party to obtain occupation certificate for nursery school.

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However, as per section 11(4)(b) of the Act, 2016, the respondent builder is obligated to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the competent authority and to make it available to the allottees individually or to the association of allottees. The failure of the respondent to obtain occupation certificate or completion certificate is a deficiency in service for which respondent is liable. Section 11(4)(b) of the Act, 2016 is reproduced as under:

*"(11)(4)(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;"*

17. After going through the documents available on record as well as submissions made by the parties. The Authority is of view that even after a lapse of considerable period of time, the promoter is not in possession of the occupation certificate for the nursery school or completion certificate of the project in question. Further, as per 1<sup>st</sup> proviso to Section 3(1) of the Act, the respondent/promoter was obligated to make an application for registration of the project within 3 months from the date of commencement of the Act. However, no application w.r.t. the same has been received from the respondent till date and has thus, violated the provisions as provided under section 3(1) of the Act. Therefore, the respondent is directed to apply for registration of the project with the Authority within a period of 3 months from the date of this order.
18. The respondent builder is further directed to apply for the completion certificate after obtaining the occupation certificate of the nursery school and make it available to the allottees individually or to the association of the allottees.



19. The planning branch of the Authority is directed to initiate penal proceedings under Section 59 of the Act of 2016 for violation of the provisions as provided under Section 3 of the Act.

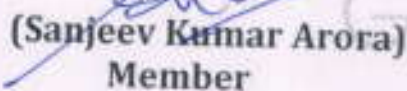
**20. G. Directions of the authority**


21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to register the project within 3 months as per the provisions of law and apply for the completion certificate after obtaining the occupation certificate of the nursery school from the competent authority and make it available to the allottees individually or to the association of the allottees.
- ii. The planning branch of the Authority is directed to initiate penal proceedings under Section 59 of the Act of 2016 for violation of the provisions as provided under Section 3 of the Act.

22. Complaint stands disposed of.

23. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**  
**Dated: 17.10.2023**