

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

<b>Complaint no.</b>	:	<b>713 of 2022</b>
<b>First date of hearing:</b>		<b>17.05.2022</b>
<b>Date of decision</b>	:	<b>19.01.2024</b>

Suresh Kumar Aggarwal and Meena Aggarwal <b>Both r/o:</b> - C-017, 1 <sup>st</sup> floor, Maurya Enclave, Pitampura Delhi - 110034 and Presently at M-39, First Floor, Soth City -1, Gurugram, Haryana	<b>Complainants</b>
Versus	
1. Kashish Developers Ltd. 2. M/s Vinman Constructions Pvt. Ltd. 3. M/s Elite Villas Pvt. Ltd. <b>All having Regd. Office</b> at - Vatika Business Park, 5 <sup>th</sup> floor, Block - 2, Sector - 49, Gurugram, Haryana	<b>Respondents</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>

<b>APPEARANCE:</b>	
Mr. Kanish Bangia	Advocate for the complainant
Mr. Gaurav Rawat	Advocate of the respondent no. 1)

**ORDER**

1. The present complaint dated 07.03.2022 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 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 and location 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 or not	<b>Registered</b> Vide 58 of 2019 dated 24.09.2019 Valid Upto 31.12.2021 <b>Further extended vide 58 of 2019/7(3)/2022/11 - valid upto 30.06.2027</b>
7.	Allotment Letter	27.09.2012 (page no. 19 of reply)
8.	Date of apartment buyers' agreement	19.08.2013 (page no. 20 of reply)
9.	Unit No.	C-2/14-A, 14 <sup>th</sup> Floor, Tower C2 (page no. 24 of reply)



10.	Unit area admeasuring	2325 sq. ft. (page no. 24 of reply)
11.	Possession clause	<b>3(a) Possession</b> 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 <b>within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this agreement.</b> 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.
12.	Due date of possession	19.02.2017

		(Calculated from the date execution of agreement) Note: Grace period is allowed as being unqualified.
13.	Total consideration sale	Rs. 1,48,66,075/- (as per payment schedule on page no. 72 of compliant)
14.	Amount paid by the complainants	Rs. 91,92,913/- (as per payment receipts from page 71-76 of reply)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

#### B. Facts of the complaint

3. That Suresh Kumar Agarwal and his wife, Meena Agarwal (Complainants) bought unit no. C2-14A on 14th Floor in Residential Project "Manor-One" from the original allottees. That the original allottees on 06.08.2012 applied for a unit in the project of the respondents called "MANOR ONE" situated at Sector 111, Gurgaon. That relying upon the assurances and representations of the respondents, the original allottees got provisionally allotted C2-14A on 14th floor measuring 2325 sq. ft. in the above said project on 27.09.2012. That on 19.08.2013, original allottees entered into an agreement to sell on 01.08.2013 with the complainants for an amount of Rs. 35,40,550/- for the buying rights and title of the original allottees. That the apartment buyer's agreement for unit no. C2-14A was executed between the original allottees and respondents after a considerable delay of 1 year for a total sale price of Rs. 1,48,66,075/-. According to clause 3(a)

of the agreement, the possession was required to be delivered within 36 months from the date of execution of the agreement with an additional grace period of 6 months, i.e., on or before 19.02.2017.

4. The respondents received an amount more than 10% of the sale consideration of Rs. 1,48,66,075/- before entering into an agreement for sale in violation of Section 13(1) of RERA 2016. The complainants in order to fund their investment in the above said apartment had to borrow an amount of Rs. 1,00,00,000/- as loan from Axis Bank and entered into tripartite agreements with Axis Bank and the Respondents. That on 29.10.2013, the original allottees endorsed the apartment buyer's agreement for the above-mentioned unit dated 19.08.2013 in favour of the present complainants.
5. However, despite several assurances, the respondents failed/neglected to deliver the possession of the apartment in time. They have paid a substantial sum of Rs. 91,92,913/- being more than 60% of the total sale price. The respondents are well aware that the project is over delayed and hence are liable to pay interest as per the provisions of the RERA 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. According to Sections 18(1) and 19(7) of RERA 2016 read with Rule 15, the respondents are liable to pay the allottee interest for delaying the possession in violation of the terms of the apartment buyer's agreement. It is stated that the present complaint is within the prescribed period of limitation.

**C. Relief Sought**

6. This Authority may direct the respondent as follows:

- Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of ABA.
- Direct the respondent to pay the interest on the total amount paid by them at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainants by the respondent in spite of the fact that the complainants desires to take the possession.
- Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance Deed/ sale deed.
- Direct the respondent not to force the complainants to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
- Direct the respondent not to charge anything which not the part of the payment plan as agreed upon.
- Direct the respondent to provide the exact lay out plan of the said unit.

**D. Reply by respondent no. 1**

7. No reply has been received from respondent no.2 and 3 with regard to the present complaint despite multiple opportunities already granted. Therefore, the respondent no.2 and 3 are being proceeded ex-parte and the complaint will be decided as per the documents available on record as well as submissions made by the parties.
8. That the original allottees were accepted and vide allotment letter dated 27.09.2012, was allotted a residential unit. Thereafter, the present allottee/complainants, were introduced to respondent in year 2013, at the time of endorsement of unit from previous allottees. After being fully acquainted about the project, the apartment buyer agreement (herein referred as 'ABA') was executed between the respondent and the original allottees on 19.08.2013. That they opted a construction-link payment plan and was supposed to make payments as and when demands were raised by the respondent. It is pertinent to mention here that as per the records maintained by the respondent, the complainants have not fulfilled his obligation and has not paid the installments on time, total cost of apartment is Rs. 1,48,66,075/- exclusive of taxes additional govt charges and possession charges out of that complainants were paid only amount of Rs. 91,92,913/-. The present complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter "RERA Act") is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act.

9. As per rule 28 (1) (a) of RERA Rules, a complaint under section 31 of RERA Act can be filed for any alleged violation or contravention of the provisions of the RERA Act after such violation and/or contravention has been established after an enquiry made by the Authority under Section 35 of RERA Act. In the present case no violation and/or contravention has been established by the Authority under Section 35 of RERA Act and as such the complaint is liable to be dismissed. The complainants have sought reliefs under section 18 of the RERA Act but the said section is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. It is submitted that the operation of Section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came into force.
10. That the expression "Agreement for Sale" occurring in Section 18 (1) (a) of the RERA Act covers within its folds only those agreements for sale that have been executed after RERA Act came into force and the ABA executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force. That the ABA executed in the present case did not provide any definite date or time frame for handing over of possession of the apartment to the complainants and on this ground alone the refund and/or compensation and/or interest cannot be sought under RERA Act. Even the clause 3 (a) of the ABA merely provided a tentative/estimated period for completion of construction of the apartment, subject to force majeure and circumstances beyond the reasonable control of the respondent.



11. They while alleging that the respondent has delayed the project chose selective reading of the clauses of the ABA. Clause 3 read with clause 13 of the ABA evince the timelines for the possession whereby it has been agreed by them that the respondent proposes to handover possession within 36 months, subject to force majeure circumstances and that the complainants are not in default, as defined in clause 13 of the ABA. It is submitted that delivery of possession by a specified date was not essence of the ABA and the complainants were aware that the delay in completion of construction beyond the tentative time given in the contract was possible.
12. It is submitted without prejudice that the alleged delay in delivery of possession, even if assumed to have occurred, cannot entitle the complaint to rescind the ABA under the contractual terms or in law. The delivery of possession by a specified date was not essence of the ABA and the complainants were aware that the delay in completion of construction beyond the tentative time given in the contract was possible. It is submitted that issue of grant of interest/compensation for the loss occasioned due to breaches committed by one party of the contract is squarely governed by the provisions of section 73 and 74 of the Contract Act, 1872 and no compensation can be granted de-hors the said sections on any ground whatsoever. A combined reading of the said sections makes it amply clear that if the compensation is provided in the contract itself, then the party complaining the breach is entitled to recover from the defaulting party only a reasonable compensation not exceeding the compensation prescribed in the

contract and that too upon proving the actual loss and injury due to such breach/default. On this ground the compensation, if at all to be granted to the complainant, cannot exceed the compensation provided in the contract itself. The funds have been realised and construction of project has been going on in full swing and new committed date for possession is on or before 30<sup>th</sup> June 2024 after obtaining occupancy certificate.

13. It was not in the contemplation of the respondent that the force majeure would occur and the construction was also affected on account of the loss of major source of funding further NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent. Furthermore, the Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR issued press note vide which the construction activities were banned within the Delhi-NCR region. The ban commenced from 31/10/2018 and was initially subsisted till 10/11/2018 whereas the same was further extended till 12/11/2018. It is imperative to mention herein that the construction of the project was going on in full swing, however, the changed norms for water usage, not permitting construction after sunset, not allowing sand quarrying, shortage of labour and construction material, liquidity etc., were the reasons for

delay in construction. Furthermore, the construction of the unit was going on in full swing and the respondent was confident to hand over the possession of unit before due date. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), from past 2 years construction came to a halt and it took some time to get the labour mobilized at the site.

14. That vide present complaint under reply the complainants sought the possession of the unit in question along with the compensation and interest thereon on the pretext that the respondent failed to complete construction. Since the ABA constitutes the foremost basis of relationship between the parties, both the parties are bound by the terms and conditions of the same and the clause of the same shall read as whole and no clause shall be read in isolation. The complainants while alleging that the respondent has delayed the project chose selective reading of the clauses of the ABA. Clause 3 read with clause 13 of the ABA evince the timelines for the possession whereby it has been agreed by the complainants that the respondent proposes to handover possession within 36 months from the date of execution of the ABA, subject to force majeure, as defined in Clause 13 of the ABA.
15. Copies of all the relevant documents have been duly filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

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

**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**

16. 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**

The 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

17. 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 objections raised by the respondent no.1**

#### **F.I Objection regarding force majeure conditions**

18. The respondent no. 1 has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account and orders passed by National Green Tribunal (hereinafter, referred as NGT). The authority put reliance on the judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

19. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 19.02.2017. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over

of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession. Also, the event such as various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous whereas there is a delay of more than three years even after due date of handing over of possession.

20. **Admissibility of grace period:** The respondent no. 1 has proposed to complete the construction of the said building/ unit by 19.08.2016. In the present case, the promoter is seeking 6 months' time as grace period. The said period of 6 months is allowed to the promoter being unconditional. Therefore, the due date of possession comes out to be 19.02.2017.
21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate, 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.*

22. 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.
23. 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., 19.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
24. 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. 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;"*

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
26. On consideration of the documents available on record and submissions made by both the parties 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 3(a) of the agreement executed between the parties on 19.08.2013, the possession of the subject apartment was to be delivered within stipulated time i.e., by 19.02.2017. As far as grace period is concerned, the same is allowed being unconditional as per para 20 of this order. The respondent has not obtained occupation certificate till date and subsequently delayed in offering the possession and the same has not been offered till date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the 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., 19.02.2017 till date of offer of possession plus two months or handing over



of possession whichever is earlier at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

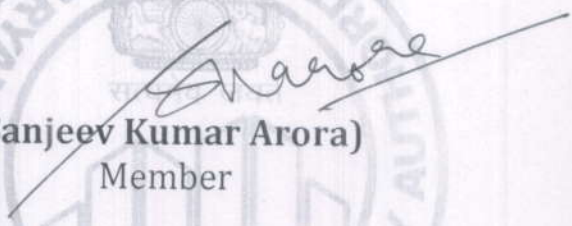
27. As far as relief w.r.t. not to force the complainants to sign any indemnity cum undertaking is concerned the same cannot be deliberated upon as neither the complainants pressed upon this relief in the court nor they filed any document/evidence to that effect. So, no direction to this effect is effectuated.

#### **G. Directions of the authority**

28. 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 no. 1 is directed to offer the possession of the allotted unit within 30 days after obtaining OC from the concerned authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- ii. The respondent no. 1 is directed pay to the complainants the delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.85 %p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 19.02.2017 till date of offer of possession plus two months or handing over of possession whichever is earlier
- iii. The promoter shall not charge anything which is not a part of the BBA.

- iv. The complainants are directed to pay outstanding dues after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.
29. Complaint stands disposed of.
30. File be consigned to registry.



**(Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
**Dated: 19.01.2024**

**HARERA**  
**GURUGRAM**