

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

Complaint no.	:	6449 of 2022
Date of filing	:	11.10.2022
Date of decision	:	24.11.2023
RajKumari R/o: 904, Sector-13, Hisar, Haryana		Complainant
Versus		
M/s Vipul Ltd. Office: Vipul Tech Square, Golf Course Road, Sector-43, Gurugram- 122009, Haryana.		Respondent
CORAM:		
Shri Sanjeev Kumar Arora		Member
APPEARANCE:		
Ms. Shweta Yadav		Complainant
Sh. Nishant Jain		Respondent

ORDER

1. The present complaint 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 provisions of the Act or the Rules and regulations made there under or to the allottees 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. No.	Heads	Information
1.	Name and location of the project	"Vipul Lavanya", Sector-81, Gurugram
2.	Project area	10.512 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	26 of 2010 dated 18.03.2010 valid up to 17.03.2020
5.	Name of the Licensee	Graphic Research Consultant India and others
6.	RERA registered/ not registered and validity status	Registered Out of total are of 10.512 acres only 2.282 acres is registered Valid upto 31.08.2019 Lapsed
7.	Date of Allotment	25.09.2010 (Page 24 of complaint) In favour of original allottee
8.	Unit no.	201, Tower – 03, 2 nd floor (Page 35 of complaint)
9.	Unit admeasuring	1780 sq. ft. (Page 35 of complaint)
10.	Date of flat buyer's agreement	08.10.2012 (Page 34 of complaint)

11.	Date of endorsement	Vide application dated 26.09.2012 and stamped on 06.10.2012 in favour of present complainant
12.	Total consideration	Rs. 57,83,569/- (Page 21 and 54 of the complaint)
13.	Total amount paid by the complainant	Rs. 55,26,843/- (As per receipts from page 66-86 of the complaint) <i>(Inadvertently Rs. 57,83,569/- has been mentioned as paid amount instead of the above-mentioned amount in the proceeding dated 24.11.2023)</i>
14.	Possession clause	8(a) <i>..within a period of thirty-six (36) months from signing of the agreement..</i>
15.	Due date of delivery of possession	08.10.2015 (Calculated from the date of signing of agreement)
16.	Occupation certificate	Not Obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions:
4. That the complainant had purchased the said flat from the original allottee- Mr Pawan Kumar and anr., later entered into flat buyer's agreement with the respondent the respondent company had entered into an agreement on 08.10.2012 with the complainant towards allotment bearing no. 1401,

Tower no. 3 on 14th floor having super area 1780 sq ft(165.37 sq meters) vide flat buyer's agreement dated 08/10/2012 at 'Vipul Lavanya' project situated at Sector 81 Gurgaon, Haryana. The respondent company had allotted this said unit to the complainant under the flat- buyer agreement. The complainant have never ever defaulter in making payment to the respondent company and all the installment were paid timely.

5. That main grievance of the complainant in the present complaint is delay in delivery/ possession of the said flat in question, flat bearing no. 1401, Tower no.3 on 14th Floor having super area 1780 sq ft(165.37 sq meters). The complainant having entered into the flat buyer's agreement dated 08.10.2012 with the respondent for a consideration of Rs. 57,83,569/-, the entire sum being paid, were entitled to delivery and possession of the said flat after the lapse of 36 months on 08.10.2015, however the respondent has miserably failed to honor their commitment as till date , i.e. 2022, there is no intention or intimation of delivering the possession of the said flat on part of the respondent.
6. Herein a case that the developer has failed to deliver the possession of the said flat to the complainant & obtain occupancy certificate and, in such scenarios, it is prayed that this Hon'ble Court may be pleased to direct the respondent to adequately compensate for the delay in getting the possession of the said flat of the complainant and the OC and till such time the registered conveyance deed is to be executed in favour of the buyer/complainant.
7. That the complainant has been diligent throughout, be it means of paying all of their installments in time, following up with the opposite party earlier regarding construction status visiting sight, Approvals and OC & CC, Proof of all be presented during the course of hearing. That the complainant has not filed any other similar petition before any court of law.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s).
- i. Direct the respondent to give possession of the apartment as soon as possible.
 - ii. Direct the respondent to pay interest for every month of delay at prevailing rate of interest.

D. Reply by the Respondent:

9. That the companies namely M/s Graphic Research Consultants (India) Pvt. Ltd, M/s Vinneta Trading Pvt. Ltd. and M/s Abhipra Trading Pvt. Ltd. had acquired and purchased the land admeasuring 10.512 acres situated within the revenue estate of Village Nawada Fatehpur, Sector - 81, Gurgaon with the intention to promote and develop on that land a group housing colony over the same. The owner companies have obtained license, from the Director, Town and Country Planning, Haryana, for setting up a group housing colony over the aforesaid land.
10. That pursuant to the aforesaid inter se agreement, M/s Vipul Ltd. launched the group housing project by the name of "Vipul Lavanya". It is a matter of record that some third parties had filed litigation titled as Vardhman Kaushik V/s Union of India & Ors. wherein the Hon'ble NGT while considering the degradation of environment was pleased to restrain the construction or stop the construction activity in the region of Delhi and NCR. It is pertinent to mention here that Govt. of Haryana was a party and is well aware of the entire litigation who passed certain directions to all the developers to stop the construction work. The company through letters, individually to all its allottees including

the complainant, informed about the stoppage of work of the aforesaid project. But when the restrain order got vacated the company again started construction of the project and successfully completed the project and thereafter applied for the occupation certificate from the Competent Authority vide its letter dated 03.04.2018. The grant of the occupation certificate as on date is under consideration at the office of the Competent Authority and the company is hopeful that it will soon get the certificate of occupation from the Competent Authority.

11. It is respectfully submitted that the complainant is aware that the project has been completed and company has also applied for the occupation certificate from the concerned Competent Authority and upon grant of such occupation certificate the conveyance deed shall be executed, but still the complainant with malafide intention chose the Hon'ble Authority to agitate their frivolous claim.
12. That the present complaint is not maintainable and the Hon'ble Regulatory Authority has no jurisdiction whatsoever to decide the present complaint. That the complainant is stopped from filing the present complaint by their own acts, conduct, admissions, commissions, omissions, acquiescence and latches.
13. All the averments in the complaint are denied in toto.
14. 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 those undisputed documents and submissions oral as well as written (filed by the complainant) made by the parties.

E. Jurisdiction of the authority

15. 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, 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

17. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

18. 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. Admissibility of delay possession charges at prescribed rate of interest:

19. The complainant is 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.

20. 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.
21. 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., 24.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

22. 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;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

24. 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 8(a) of the agreement executed between the parties on 08.10.2012, the possession of the subject apartment

was to be delivered within stipulated time i.e., by 08.10.2015. As far as grace period is concerned, the same is not allowed as the grace period clause is conditional and the respondent has failed to comply with that condition. 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., 08.10.2015 till date of offer of possession plus two months or handing over of possession whichever is earlier at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

25. The subject unit was endorsed in the favour of the complainant in October 2012 i.e., before the due date of handing over of the possession of the unit. As decided in ***complainant no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited***, the authority is of the considered view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

26. Vide proceeding dated 24.11.2023, the counsel for the respondent stated that they had made an offer of possession of the unit for fit outs on 09.02.2023 which was not accompanied with occupation certificate as they have not yet obtained the occupation certificate although they have applied for the occupation certificate. Further stated that the occupation certificate is expected to be received from the competent authority within a month. It is observed that although the offer of possession has been made but the same is for fit out

Validity of offer of possession

It is necessary to clarify this concept because after valid and lawful offer of possession, the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority is of considered view that a valid offer of possession must have following components:

- i. **Possession must be offered after obtaining occupation certificate;**
- ii. The subject unit should be in a habitable condition;
- iii. The possession should not be accompanied by unreasonable additional demands.

In the present matter, the respondent has offered the possession (fit-outs) of the allotted unit on 09.02.2023 i.e., before obtaining occupation certificate from the concerned department. Therefore, no doubt that the

offer of possession has been sent to the complainant but the same is for fit outs. Thus, the offer of possession is an invalid offer of possession as it triggers (i) component of the above-mentioned definition.

G. Directions of the authority

27. 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 offer the possession of the allotted unit within 60 days after obtaining OC from the concerned authority.
- ii.** The respondent is directed pay to the complainant 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., 10.75 %p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 08.10.2015 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 complainant is directed to pay outstanding dues, if any, 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., 10.75% 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.



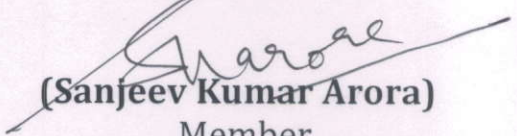
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vi. Separate proceeding to be initiated by the planning department of the Authority for taking an appropriate action against the builder as the registration of the project has been expired.

28. Complaint stands disposed of.

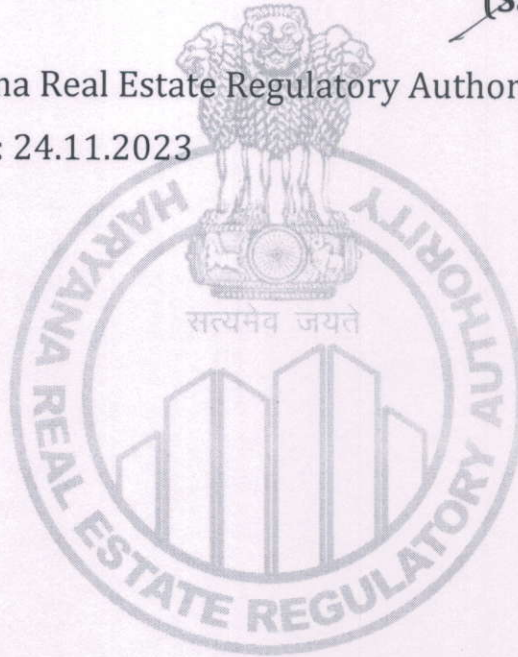
29. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.11.2023



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