

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

Complaint no.	5447 of 2023
Date of filing	12.12.2023
Date of first hearing	20.03.2024
Order pronounced on	28.08.2024

1.Mr. Naman Jain
2.Ms. Anita Jain

Both R/o: House no. 72/8/5, Chandra Bhawan,
Charbagh, Opposite Hotel Kaveri, Lucknow, Uttar
Pradesh- 226004

Complainants

Versus

M/s Vipul Limited

Registered office: Regus Rectangle, Level 4,
Rectangle 1, D4, Commercial Complex, Saket, New
Delhi- 110017

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Manish Shukla (Advocate)

Complainants

Shri Nishant Jain (Advocate)

Respondent

ORDER

1. The present complaint 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 provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.



A. Project and unit related details

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

Sr. No.	Heads	Information
1.	Name 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 4 others
6.	RERA registered/ not registered and validity status	Registered 15 of 2018 dated 11.09.2018 Valid upto 31.08.2019 Out of total area of 10.512 acres, only an area of 2.282 acres is registered
7.	Date of Allotment	10.02.2016 (Page 64 of complaint)
8.	Unit no.	701, Tower - 02, 7 th floor (Page 64 of complaint)
9.	Unit area admeasuring	1780 sq. ft. (Super Area) (Page 18 of complaint)
10.	Date of execution of builder agreement	10.02.2016 (Page 24 of complaint)
	Date of execution of tri-partite agreement	11.02.2016 (Page 68 of complaint)
11.	Basic sale price	Rs.67,64,000/- (BBA at page 26 of complaint)
12.	Total sale consideration	Rs.84,13,668/- (As per SOA dated 15.02.2021 annexed at page 32 of reply)
13.	Total amount paid by the complainants	Rs.38,93,651/- (As per SOA dated 15.02.2021 annexed at page 32 of reply)
14.	Possession clause	Clause 8.1(a) "Subject to terms of this clause and subject to the VENDEE(s) having complied with all the



		<p><i>terms and conditions of this agreement and not being in default under any provisions of this agreement and complied with all provisions, formalities, documentation, etc., as prescribed by the VENDOR, the VENDOR proposes to handover the possession of the Flat within a period of thirty-six (36) months from signing of the agreement. The vendee(s) agrees and understands that the vendor shall be entitled to a grace period of 90 days, after the expiry of 36 (Thirty Six) months, for applying and obtaining the occupation certificate in respect of the group housing complex.”</i> <i>(Emphasis supplied)</i> (BBA at page 24 of complaint)</p>
15.	Due date of delivery of possession	10.05.2019 (Calculated from the date of execution of agreement plus grace period of 90 days)
16.	Occupation certificate	Applied on 03.04.2018 (As alleged by respondent at page 8 of reply- Copy of same annexed at page 17 of reply)

B. Facts of the complaint

3. The complainants have made following submissions in the complaint:
- That the complainants are the buyers and having a unit the project “Vipul Lavanya” at Sector-81, Gurugram, Haryana being developed by the respondent-builder, but the respondent has failed to offer actual possession of the said unit due to its willful negligence.
 - That the complainants had purchased the flat from the respondent. A builder buyer agreement dated 10.02.2016 was executed between the parties towards allotment of unit number 701, 7th floor, admeasuring 1780 sq. ft., tower 2 at ‘Vipul Lavanya’ project situated at Sector-81 Gurgaon, Haryana. The total sale consideration of said unit was Rs.77,96,214.50/- including all other charges.
 - That the buyers-agreement contain detailed terms and condition of allotment and other clauses about the right and title of the unit. The complainants had paid a total sum of Rs.38,93,651/- and the flat was



supposed to be delivered by February 2019 but till date possession has not been given to the complainants. The complainants never defaulted in making payment to the respondent. The payment details are as under:

Date	Details of Cheque/NEFT	Amount in Rs.
10.02.2016	NEFT-YESBH16040005967	Rs. 8,00,000/- + 1100/-
17.02.2016	918926368 (Cheque no.)	Rs. 8,50,000/-
16.02.2016	YESBH16046010080	Rs. 2,00,000/-
16.02.2016	IMPS/P2A/6046224164279/919918030103	Rs. 2000/-
17.02.2016	918623453 (Cheque no.)	Rs. 9,02,000/-
05.03.2016	Paid through HDFC Loan	Rs. 11,00,000/-
	Total paid till date without TDS	Rs. 38,55,100/-
TDS	17-Feb TDS-02786	Rs. 27551/-
TDS	5-Mar TDS-09645	Rs. 11000/-
	Total paid till date including TDS	Rs. 38,93,651/-

- iv. That the complainants are the owners of the respective flat but not a legal owner of the said property unless the actual possession given by the respondent, the occupancy certificate (OC) and conveyance deed registered or issued by the relevant authorities in favor of the complainants. The receipt of occupancy certificate proves that the building has been completed as per the sanctioned plan.
- v. That as per clause 8.1(a) of the buyer's agreement, the unit was to be delivered by 36 months from the date of the agreement, however, even after a lapse of 13 years, the respondent has not handed over actual possession as well as occupation certificate of the unit to the complainants.
- vi. That on account of delay in getting possession, the complainants were overburdened with loan, rental, other daily expenses and EMIs owing to which the complainants are suffering from mental agony and depression.
- vii. That this Hon'ble Court may be pleased to direct the respondent to pay delay penalty till the time registered conveyance deed is executed in favor



of the complainants. Even if the complainants wish to sell their ready properties, without obtaining OC and without getting the conveyance deed registered, they can't proceed with the same. Also, if their prospective buyer is applying for a loan, banks too require certain documents and reject the loan in absence of OC/ conveyance deed.

viii. That the Hon'ble Court has also ruled that the developers cannot use the force majeure clause for lack of approvals, financial crisis and any insolvency proceedings further directing the builders to obtain the occupation certificate for the building or pay interest for delay to the allottees.

C. Relief sought by the complainants

4. The complainants have sought the following relief(s):

- I. Direct the respondent to give possession with interest till the registration of conveyance deed in favour of the complainants.
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 is contesting the complaint on the following grounds:

- i. That the companies namely M/s Graphic Research Consultants 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 a group housing colony over the same. The owner companies have obtained license from the DTCP for setting up a group housing colony over the aforesaid land.
- ii. That M/s Vipul Ltd. had inter-se entered into agreement with the owner companies in terms of which the M/s Vipul Ltd. is entitled to develop a group housing colony on the land admeasuring 10.512 acres situated in



Sector-81, Gurugram, Haryana. Pursuant to the aforesaid inter se agreement, M/s Vipul Ltd. launched the group housing project by the name of "Vipul Lavanya".

- iii. That it is 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 or stop the construction activity in the region of Delhi and NCR. It is pertinent to mention here that Government of Haryana was a party and is well aware of the entire litigation and certain directions to all the developers to stop the construction work. The company through letters, individually to all its allottees including the complainants, 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 thereafter applied for occupation certificate from the competent authority vide its letter dated 03.04.2018 and the respondent is hopeful that it will soon get the certificate for occupation from the competent authority. Upon the grant of the occupation certificate, the conveyance deed shall be executed.
- iv. That the project of the respondent is not an ongoing project as per Rule 2(o) and the statement of objects and reasons of the Act inter-alia is an attempt to balance the interests of consumers and promoters by imposing certain responsibilities on both. It is submitted that the complainants have never been at all aggrieved and do not fall under the definition of aggrieved person, but still by filling such false, frivolous and vexatious complaint, the complainants are not only harassing the respondent company to succumb to their illegal demand, but by filing such false complaint, they are misleading the Hon'ble Authority.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

9. 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.

D.II Subject matter jurisdiction

10. 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."



11. 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 relief sought by the complainants

F.I Direct the respondent to give possession with interest till the registration of conveyance deed in favour of the complainants.

12. In the present complaint, the complainants intend to continue with the project and are seeking possession of the unit along with delay possession charges at prescribed rate of interest on amount already paid by them as provided under proviso to Section 18(1) of the Act which reads as under:-

"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, —

.....

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."

13. Clause 8.1(a) of the buyer's agreement (in short, the agreement) dated 10.02.2016, provides for handing over possession and the same is reproduced below:

"8. POSSESSION

8.1 Time of handing over the Possession

*(a) Subject to terms of this clause and subject to the VENDEE(s) having complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and complied with all provisions, formalities, documentation, etc., as prescribed by the VENDOR, the VENDOR proposes to handover the possession of the Flat **within a period of thirty-six (36) months from signing of the agreement.** The vendee(s) agrees and understands that **the vendor shall be entitled to a grace period of 90 days, after the expiry of 36 (Thirty Six) months, for applying and obtaining the occupation certificate in respect of the group housing complex."***

14. **Due date of handing over possession:** As per clause 8.1(a) of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 36 months from the date of signing of the agreement subject to further grace period of 90 days. Therefore, the due date of handing over possession comes out to be 10.05.2019.
15. **Admissibility of delay possession charges at prescribed rate of interest:** 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, *ibid*. 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.
16. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, 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.
17. 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., 28.08.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

18. 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;"*

19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent-promoter which is the same as is being granted to the complainants in case of delayed possession charges.

20. 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. The possession of the unit was to be delivered by 10.05.2019. However, the respondent has failed to handover possession of the subject apartment/unit till date of this order. 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.

21. The authority observes that the respondent has admitted in its reply that the respondent has although applied for the occupation certificate to the competent authority on 03.04.2018 however, the same has not been



granted to till date. Further, during the proceedings dated 10.07.2024, the counsel for the respondent again clarified that the occupation certificate in respect of the subject unit has not been obtained although the same stands applied to the competent authority but is not yet granted.

22. It is necessary to clarify whether offer of possession made to allottee without receipt of occupation certificate would tantamount to a valid offer of possession or not, because after a valid and lawful offer of possession is being made by the promoter to the allottee, the liability of promoter for delayed possession charges 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 the valid possession. Thus, the authority is of considered view that a valid offer of possession must have following components:

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

23. In the present matter, the respondent has not yet offered the possession to the complainants. 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 complainants are entitled to delay possession charges at the prescribed rate i.e., @11.10% p.a. w.e.f. due date of possession i.e., 10.05.2019 till the date of offer of possession plus two months or actual handover of possession, whichever is earlier, as per Sections 18(1) and 19(10) of the Act read with Rule 15 of the Rules, *ibid*.
24. Further, the authority observes that Section 17 of the Act obligates the promoter to handover the physical possession of the subject plot/unit

complete in all respect as per specifications mentioned in BBA and thereafter, the complainants-allottees are obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act. However, in the present complaint, the occupation certificate has not been obtained by the respondent till date. Therefore, the respondent promoter shall obtain the occupation certificate from the competent authority and handover possession to the complainants within a period of two months of the receipt of the occupation certificate.

G. Directions of the authority

25. 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-promoter is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay w.e.f. due date of possession i.e., 10.05.2019 till the date of offer of possession plus two months or actual handover of possession, whichever is earlier, as per Sections 18(1) and 19(10) of the Act read with Rule 15 of the Rules, *ibid.*
- II. The arrears of such interest accrued from 10.05.2019 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid.*
- III. The respondent is directed to handover the possession of the allotted unit/plot to the complainants complete in all aspects as per



specifications of buyer's agreement within two month from receipt of occupation certificate and after payment of outstanding dues, if any.

- IV. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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.
- V. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
26. The complaint stands disposed of.
27. File be consigned to the registry.

Dated:28.08.2024

HARERA
GURUGRAM

Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram