



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	69 of 2022
Date of filing:	25.01.2022
Date of first hearing:	15.03.2022
Date of decision:	11.07.2024

1. Sh. Madan Lal, S/o late Sh. Dal Chand,
R/o H. No. E-IIInd Dr. Ambedkar Nagar, Society IV,
(Madangiri), New Delhi- 110062
2. Shri Vijay Kumar Meena, S/o Sh. Ayodheya Prasad Meena,
R/o Flat no. B-896, 1st floor, Gate no. 4, Green Field Colony,
Faridabad- 121010

....COMPLAINANTS

VERSUS

Ritwiz Builder & Developers Pvt. Ltd.
URR Construction and Housing Pvt. Ltd.
At Vipul TechSquare Golf Course Road,
Sector-43 Gurugram- 122009 Haryana.

....RESPONDENT

CORAM:

**Parneet S Sachdev
Nadim Akhtar
Chander Shekhar**

**Chairman
Member
Member**

Present: Adv. Sandeep Gehlawat, counsel for complainant, through VC.
Adv. Vineet Sehgal, counsel for respondent, through VC.

ORDER (PARNEET S SACHDEV- CHAIRMAN)

1. Present complaint dated 25.01.2022 has been filed by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name of the project	Vipul Plaza, Sector- 81, Faridabad (Commercial Complex)
2.	RERA registered/not registered	Registered- HRERA-PKL-FBD-49-2018
3.	Unit no.	C-22
4.	Unit area	52.95 sq meters (570 sq. ft)

5.	Date of Agreement	27.07.2010
6.	Due date of possession	28.07.2013 (As per clause 15, the possession was to be delivered by the Vendor to the Vendees within a period of 36 months from the date of this Agreement or approval of building plans whichever is later)
7.	Basic sales consideration	₹28,50,000/-
8.	Amount paid by complainants	₹32,45,228/-
9.	Offer of possession	03.07.2020
10.	Possession Certificate	10.07.2020

B. FACTS OF THE COMPLAINT

The complainants have submitted as under:

3. That the complainants applied for a flat in respondent's Commercial Complex namely, "Vipul Plaza", Sector-76, Faridabad, Haryana on 28.11.2009. They paid an amount of Rs.7,50,000/- on 14.05.2010, towards booking of the unit in the said project and subsequently were allotted unit no. C-022 admeasuring 570 sq. ft. (52.95 sq. meters) in the respondent's commercial complex.

4. That the builder buyer agreement was executed on 27.07.2010 between the complainants and respondent as per which, the total consideration of said flat was fixed at Rs. 29,86,800/-. A clause viz. clause 15 was inserted in the agreement, which casted an obligation upon respondent to deliver possession of the allotted unit within a period of 36 months from the date of execution of the agreement or approval of building plans whichever is later. However, complainant failed to mention the date of approval of building plans. Therefore, as per version of complainant, the prescribed time to deliver the possession in consonance with the term of contract stands on 28.07.2013.
5. That in utter disregard to the terms agreed upon by the contract, possession was offered only on 07.12.2019 wherein last installment of Rs.2,83,961/- was demanded. Thereafter complainants paid the last installment of Rs.2,83,961/- on 19.03.2020. Thus, a total amount of Rs. 32,45,228/- was paid against the total sale consideration of Rs. 29,86,800/-.
6. That cause of action arose when respondent failed to issue offer of possession after completion of 36 months from the date of execution of the agreement i.e. on 28.07.2013. That possession was offered on 03.07.2020 and complainants took the physical possession of the unit on 10.07.2020, which is after a delay of approximately 7 years. The terms of the contract mutually agreed upon were flouted by respondent with apparent dishonest intentions to cheat and defraud them. Thereafter complainants sent



numerous communications and representations to the respondent demanding delay interest, for delay in delivery of possession as per the terms agreed upon in the agreement.

Hence, present complaint has been filed seeking reliefs as being prayed for.

C. RELIEF SOUGHT

7. The complainants in their complaint have sought following reliefs:
 - a. That the necessary directions must be given to the respondent to grant the compensation at the rate of 9.30% as established by the precedents. As there is a total delay of around 10 years 3 ½ months, the same can be compensated in accordance with the law. Total interest amounting to Rs. 23,03,479/- calculated vide table annexed with the complaint book.
 - b. That the complainants may be granted with the interest as per Rule 15 of HRERA Rules 2017 for the same period as mentioned above.
 - c. That the respondent shall be reprimanded for such conduct and losses incurred by the complainants.
 - d. To award compensation of Rs. 1,50,000 /- (Rupees One Lakh Fifty Thousand only) to the complainants under the head of cost of litigation (Rs.50,000/-) and for mental harassment (Rs.1,00,000/-).



e. To recommend criminal action against respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of IPC.

f. Any other relief as this Hon'ble Authority may deem fit and appropriate in view of facts and circumstances of this complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Ld. Counsel for respondent filed reply on 14.03.2022 pleading therein:

8. That the purported complaint filed by the complainants is baseless, misconceived, malafide and not maintainable and the same deserves to be dismissed on the ground of non-joinder of necessary parties. As shop in issue was jointly allotted to the complainant-Madan Lal and one Sh. Vijay Kumar Meena, whereas, the present complaint has been filed by the complainant-Madan Lal only and not by the other co-allottee. Even in the complaint it has nowhere been mentioned that whether the complainant-Madan Lal alone is authorized to file the present complaint against respondents on behalf of a property which is jointly owned by two allottees. Therefore, on this short ground alone, the present complaint is liable to be dismissed.
9. That the complaint needs to be dismissed for concealing the material/vital facts from this Hon'ble Authority. The communications sent to the complainants by the respondent thereby informing them with regard to stoppage of construction work due to the orders passed by the



Administrative/Judicial Authorities at different intervals of time and even demand raised from the complainant against the outstanding allotment amount does not find a mention in the present complaint. Thus the same amounts to clear concealment and misrepresentation. Therefore, the complainant is not entitled for any relief in any manner whatsoever.

10. That from the bare perusal of the entire complaint as well as from the perusal of the relief sought no clarity whatsoever can be made out that under what provision the present complaint has been filed and what relief has been sought by the complainants by filing the present complaint. Thus, the present complaint even as per the parameters of the RERA Act is not maintainable and is liable to be dismissed.
11. That further it is submitted that the Occupation Certificate was applied by the respondent with the DTCP, Haryana on 03.06.2016 and the same was also issued vide letter dated 15.03.2017, thus the present complaint is liable to be dismissed on this short ground alone.
12. That further as per builder buyer agreement vide clause no.15, the complainants agreed that the possession of the commercial unit shall be made by the company to the complainants within 36 months from the date of agreement. Clause 15 is reiterated as under:

"that the possession of the said Premises is proposed to be delivered by the VENDOR to the VENDEE(s) within 36 months from the date of this Agreement or Approval of building plans by



the competent Authority, whichever is later. If the completion of the said Building is delayed by reason of non-availability of steel and /or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the VENDOR, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non- delivery of possession is as a result of any act, notice, order, rule or notification of the Government and / or any other public or competent authority or due to delay in action of building/ zoning plans / grant of completion/occupation certificate by any Competent Authority or for any other reason beyond the control of the VENDOR, the VENDOR shall be entitled to extension of time for delivery of possession of the said premises. The VENDOR, as a result of such a contingency arising, reserves the right of alter or vary the terms and condition of this Agreement or if the circumstances beyond the control of the VENDOR so warrant, the VENDOR may suspend the scheme for such period as it might consider expedient.”

Therefore, it was very much clear to the complainants that possession of the said commercial unit would depend also upon making timely payments by them but as complainants have failed to perform their part of obligations as agreed, thus the present complaint is liable to be dismissed. The said fact is evident from the details of the payment attached by complainants themselves along with the complaint which clearly shows that beginning from 14.05.2010, the last payment against the allotment of commercial space was made by the complainant on 19.03.2020. Therefore,



the claim put-forth by the complainant is false, misconceived and is liable to be dismissed.

13. That no cause of action whatsoever has ever arisen in favour of the complainants or against the respondents as from the bare perusal of the contents of the complaint, it is clear that the consideration amount against the allotted commercial space was paid by the complainant to the respondents up till 19.03.2020 that too on the specific repeated demands made by the respondents. Therefore, no right whatsoever had accrued in favour of the complainants on account of which any compensation can be demanded by the complainant from the respondents.

14. That the respondent have already delivered the possession of the shop after finishing the development and construction works and has also been granted the Occupation certificate from the Competent Authority of State Government way back on 15.03.2017. Further it is submitted that the present complaint is nothing else but misstatement of facts with malafide motive to harass the answering-respondent and to cover up the lapses committed by the complainant himself.

Thus, the same being devoid of merits deserves to be dismissed with exemplary costs.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

15. During oral arguments, learned counsel for complainants reiterated the arguments as mentioned at Para 3-8 of this order and submitted that the facts in the complaint may be taken on record as his submissions. In the previous hearings and particularly vide order dated 25.04.2023, Authority had directed complainants to place on record all the receipts of the payments made by them to the respondent. However, even after 4 hearings since the date of that order, complainants' counsel has failed to place on record receipts of all the payments made by them.
16. Further learned counsel for respondent reiterated the facts mentioned in para 8-15 of this order. He submitted that the facts that are stated in his written submissions vide reply dated 14.03.2022, may be taken as his oral submissions.

F. ISSUES FOR ADJUDICATION

17. Whether complainants are entitled to relief of delay interest of commercial unit booked by them for delay in delivery of possession from the date of payment till delivery of physical and vacant possession of said plot?

G. FINDINGS OF AUTHORITY:

18. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments

made by both parties, Authority observes that there is no dispute regarding the fact that commercial space bearing no. C-022 was allotted to Mr. Madan Lal and Mr. Vijay Kumar Meena in the project namely "Vipul Projects, Faridabad". However it is pertinent to note that initially complaint was filed only by Mr. Madan Lal, complainant no.1; however vide application dated 31.10.2023, an amended memo of parties was filed, and Mr. Vijay Kumar Meena who is a co-allottee was also added as a party to the complaint.

19. The buyer agreement was executed on 27.07.2010 and the complainants have paid ₹32,45,228/- against the basic sale price of ₹28,50,000/-. In relation to the total amount paid by complainants, a statement of account has been annexed at page no. 35 of the complaint book along-with demand letter dated 07.12.2019, which indicates that total amount of Rs.28,87,075/- stands paid till 07.12.2019. Further, upon perusal of file, it is observed that complainant has annexed a table detailing the amounts paid by them along-with the interest that they seek from respondent. It is clearly mentioned that an amount of Rs.32,45,228/- has been paid by complainants which the respondent has never objected to in his written submissions. Whereas, he himself admits that further amount of Rs.2,83,963/- as last demanded vide demand letter dated 07.12.2019 stands paid on 19.03.2020. Therefore, it is an admitted fact that total amount of Rs.32,45,228/- stands paid by complainants. Further, Authority admits the



table annexed at page no. 9 of the complaint book and the statement of account annexed long-with the demand letter at page no. 35-36 as sufficient proof of the payments made by complainants to respondent.

20. Furthermore, as per clause 15 of the buyer agreement dated 27.07.2010, possession of said premises were proposed to be delivered by the respondent within 36 months from the date of signing of agreement or approval of building plans by competent Authority, whichever is later. As per the documents available on record, both the parties have failed to mention the date of approval of building plans. Therefore, Authority deems it appropriate to reckon deemed date of possession from the date of signing of this agreement. Therefore, the due date of possession comes out to be 28.07.2013.
21. It is an admitted fact that Occupation certificate was received on 15.03.2017 and actual physical possession was delivered on 10.07.2020. The offer of possession was made on 03.07.2020. Therefore, delay in the part of handing over possession is patently clear in this case and Authority is of the view that complainants are entitled to delay interest from the due date of possession. Vide order dated 11.10.2022, the respondent was asked to submit proof if valid offer of possession was made any time after receipt of occupation certificate dated 15.03.2017. However, respondent failed to give reply to the same. Therefore, in absence of existence of any other date of offer of possession before 03.07.2020, Authority deems it appropriate to



consider 10.07.2020 as the date of actual delivery of possession and observes that complainants are entitled to delay interest from the deemed date of possession i.e. 28.03.2013 till the date of actual handing over of possession i.e. 10.07.2020.

22. In view of the above observations and reasons, Authority is of the considered view that complainants are well within their right to claim the delay interest from respondent for the amount paid by them and thus deems fit to allow interest for delay in handing over of possession from the deemed date of possession i.e. 28.03.2013 or the date of payment whichever is later till the date of actual handing over of possession, i.e., till 03.07.2020. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(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;

Such interest shall be calculated at the rate prescribed in Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".

23. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e.01.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.95%.
24. Authority directs respondent to pay an amount of ₹19,69,539 /- at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.95% (8.95% + 2.00%). Authority has got calculated interest at the rate of 10.95% and total amount works out to ₹19,69,539 /- as per detail given below:



Sr. No	Principal Amount	Deemed Date of possession or date of payment whichever is later	Interest Accrued till 11.07.2024
1.	7,50,000/-	28.07.2013	5,71,500/-
2.	2,56,050/-	28.07.2013	1,95,110/-
3.	3,63,660/-	28.07.2013	2,77,109/-
4.	2,19,254/-	28.07.2013	1,67,072/-
5.	2,19,254/-	28.07.2013	1,67,072/-
6.	2,19,254/-	28.07.2013	1,67,072/-
7.	2,21,576/-	15.05.2015	1,25,235/-
8.	100/-	30.06.2015	55/-
9.	2,22,728/-	21.09.2015	1,17,266/-
10.	2,22,728/-	06.08.2016	95,884/-
11.	6,005/-	23.08.2016	2,555/-
12.	21,115/-	22.12.2016	8,216/-
13.	2,39,541/-	09.01.2018	65,682/-
14.	2,83,961/-	19.03.2020	9,711/-
Total	32,45,226/-		19,69,539/-

25. With respect to relief (d), the complainants are seeking compensation for legal costs and on account of mental and physical harassment caused to them for loss and mental agony. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the



learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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 & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

26. Further with respect to clause (e) of relief it is observed that RERA is not the appropriate forum seeking relief of this kind as the object and scope of Real Estate Regulatory Act of 2016 is to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute Redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto. Therefore, it is a quasi judicial body having no authority to initiate criminal actions against the respondent- builders. The appropriate forum for the same is the court having criminal jurisdiction and not this Authority.



H. DIRECTIONS OF THE AUTHORITY

27. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to pay the interest to complainants of ₹19,69,539/- on amount paid.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

28. Disposed of. File be consigned to record room after uploading on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET S SACHDEV
[CHAIRMAN]