

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

Complaint no. : 1874 of 2024
Date of filling of complaint: 14.05.2024
Order reserved on: 10.01.2024
Pronounced on: 04.04.2024

1. Sudhir Kumar
2. Deepali Dhupar
3. Sunita Dhoopar

Address: A2/284, Janakpuri, New Delhi

Complainants

Versus

M/s Vipul Limited

Address: - Vipul Tech Square Golf Course Road
Sector-43, Gurugram

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Parminder Singh (Advocate)

Complainants

Shri Rishabh Gupta (Advocate)

Respondent

ORDER

1. The present complaint dated 14.05.2024 has been filed by the complainants 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 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, 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 Lavanya, sector-81, Gurugram, Haryana
2.	Project area	10.512 acres
3.	Nature of the project	Group Housing complex
4.	DTCP License No.	26 of 2010 dated 18.03.2010 valid upto 17.03.2020
5.	Name of the licensee	Graphic Research Consultant India and others
6.	RERA Registered/ not registered	Registered - GGM/283/2018/15 dated 11.09.2018 valid upto 31.08.2019 Out of total area of 10.512 acres only 2.282 acres is registered
7.	Date of booking	21.10.2011 [Page 43 of complaint]
8.	Unit no.	102, tower-03 [page 74 of complaint]
9.	Unit area admeasuring	1670 sq. ft. [page 74 of complaint]
10.	Date of allotment	21.10.2011
11.	Date of Flat Builder Agreement	24.10.2011 [Page 42 of complaint]



12.	Possession clause	<p>8. POSSESSION</p> <p>8.1 Time of handing over the Possession</p> <p><i>"...the VENDOE proposes to handover the possession of the Flat within a period of 36 (Thirty-Six) months from the date of signing of this 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></p> <p>[Page 49 of complaint]</p>
13.	Due date of possession	<p>24.01.2015</p> <p>(Calculated from the date of execution of agreement plus grace period of 90 days allowed)</p>
14.	Total sale consideration	<p>Rs.66,66,433/-</p> <p>[As per SOA dt. 02.04.2024 at page 74 of complaint]</p>
15.	Amount paid by the complainants	<p>Rs.61,27,453/-</p> <p>[As alleged by complainant at page 11 of complaint]</p>
16.	Occupation certificate /Completion certificate	Not obtained
17.	Notice of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- That having the complainant booked the apartment in Project Vipul Lavanya, sector-81, Gurugram, Haryana. That the complainants were



got Builder buyers agreement and payment schedule dated 24.10.2011 in which mentioned allotted unit 102, 1st floor, tower no. 3 tentatively super area admeasuring 1670 Sq. fit. & Total sale value of flat was about Rs. 65,65,981/-.

- ii. That the complainant had already paid the amount of Rs. 61,27,453/. The complainants paid the amount as per the payment plan mentioned in the BBA.
- iii. That as per clause 8.1 of the BBA the respondent undertook to complete the construction work of the tower in which the unit of the complainants are situated within the period of 3 years from the date of execution of agreement and thereafter 6-month grace period for applying OC in respect of the group housing complex.
- iv. That one-sided development agreement has been one of the core concerns of home buyers. The terms of the agreement are non-negotiable and a buyer even if he does not agree to a term, there is no option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by the builder, whereby the builder imposes unfair and discriminatory terms and conditions.
- v. That the respondent till date been at default in granting the possession of the said premises and the construction of the project is not yet completed. The respondent had not even obtained OC of the said tower no. 3. That as per the floor buyers agreement the stipulated date of delivery was 21.01.2015 and a period of 5 years had gone by and the respondent has not been able to fulfil their promise to deliver the possession counter to this the respondent

has taken 100% payment towards the sale consideration of the said floor.

C. The complainants are seeking the following relief:

4. The complainants have sought following relief(s):
 - a. Direct the respondent to deliver the physical possession of the unit along with delay possession charges.

D. Reply filed by the respondent.

5. The respondent had contested the complaint on the following grounds:
 - a. That the present complaint is baseless, misconceived, mala-fide and the same deserves to be dismissed with costs for the following, among other, preliminary objections, which are without prejudice to each other.
 - b. 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 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 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 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. Though, the permissive possession has been handed over to the complainant upon his acknowledgment and acceptance.

- c. 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 complainants with malafide intention chose the authority to agitate their frivolous claim.
- d. That the present complaint is not maintainable and the Regulatory Authority has no jurisdiction whatsoever to decide the present complaint. That no cause of action has ever accrued in favour of the complainants to file the present complaint before the Regulatory Authority. The complaint being without any cause of action is liable to be dismissed on this ground alone.
- e. It may not be out of place to submit that the statement of objects and reasons of the RERA 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 filing 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 Authority.

6. 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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act 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.

10. So, in view of the provisions of the Act of 2016 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 objections raised by the respondents:

F.I Objection regarding delay in completion of construction of project due to force majeure conditions.

11. The respondents raised the contention that the construction of the project was delayed due to force majeure conditions such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution Control Board, but all the pleas advanced in this regard are devoid of merit.
12. A builder buyer's agreement for unit no. 102, tower-03, was issued by respondent to complainants and the same was executed on 24.10.2011. Therefore, the due date of handing over of possession is taken from the clause of the agreement and the delivery date stipulated from the delivery period in the agreement comes out to be 24.01.2015. The events such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution Control Board, Hon'ble Supreme Court prohibiting construction in and around Delhi among others were for a shorter duration of time and were not continuous as there is a delay of more than ten years and even happening after due date of

handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Thus, the promoter-respondent cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondent to deliver the physical possession of the unit along with delay possession charges.

13. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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."*

14. Clause 8 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

8.1 Time of handing over the Possession

"...the VENDOR proposes to handover the possession of the Flat within a period of 36 (Thirty-Six) months from the date of signing of this 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.

(Emphasis Supplied)



15. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within a period of 36 months from the date of signing of this Agreement and further provided in agreement that promoter shall be entitled to a period of 90 days ("Grace Period") after the expiry of 36 (Thirty-Six) months, for applying and obtaining the occupation certificate in respect of the group housing complex. The period of 36 months expired on 24.10.2014 (calculating from the date of execution of buyer's agreement i.e., 24.10.2011).
16. The Authority put reliance on the judgement dated 08.05.2023 of Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari*** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace



period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

17. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 24.01.2015 including grace period of 90 days.
18. **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.

19. The legislature in its wisdom in the subordinate legislation under 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.



20. 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., 04.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

21. **Rate of interest to be paid by the complainants in case of delay in making payments-** 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;"*

22. Therefore, interest on the delay payments from the complainant 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.

23. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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. By virtue of clause 8 of the buyer's agreement executed between the



parties on 24.10.2011, the possession of the subject flat was to be delivered within a period of 36 months from the date of signing of this Agreement. For the reason above, the due date of possession is to be calculated from the date of execution of buyer's agreement 24.10.2011 and it is further provided in agreement that promoter is entitled for a grace period of 90 days. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 24.01.2015. However, the respondent has failed to handover possession of the subject apartment to the complainant till the 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. The authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

24. 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., 24.01.2015 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority

25. Hence, the authority hereby passes this order and issue 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):

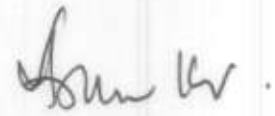
- i. The respondent shall handover possession of the unit to the complainants as agreed by the respondent in terms of the builder buyer's agreement dated 24.10.2011 executed inter se parties in terms of section 19(10) of the Act and is further directed not to create any third party right against the said unit.
- ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest @11.10% p.a. for every month of delay from the due date of possession i.e., 24.01.2015 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of the unit, whichever is earlier, as per section 18(1) of the Act of 2016 read with under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- iii. The arrears of such interest accrued from 24.01.2015 till the date of order by the authority shall be paid by the promoter to the allottee(s) 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(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The

complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- v. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - vi. The respondent is also directed not to charge anything which is not part of builder buyer's agreement.
26. Complaint as well as applications, if any stand disposed of accordingly.
27. File be consigned to registry.



Haryana Real Estate Regulatory Authority, Gurugram


(Arun Kumar)
Chairman

Dated: 04.04.2025

HARERA
GURUGRAM