

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

Complaint no. : 3989 of 2021
Date of filing complaint: 30.09.2021
Date of Decision: 02.05.2025

1. Shalini Mehra
2. Ajay Mehra
R/o: - C1/50, SDA, Delhi-110016

Complainants

Versus

M/s Kashish Developers Limited
Regd. Office at: 87, Old A.G. Colony, Kadru,
Ranchi, Jharkhand - 834002

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sh. Ajay Mehra (Complainant in Person)
Sh. Anshul Sharma (Advocate)
Sh. Om Prakash Singh (Advocate)

**Complainants
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 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 complainants, 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	Registered Vide 58 of 2019 dated 24.09.2019 Valid Upto 31.12.2021
7.	Allotment Letter	02.01.2013 (page no. 21 of complaint)
8.	Date of apartment buyers' agreement	08.01.2014 (page no. 23 of complaint)
9.	Unit No.	A-5H, 5 th Floor, Tower A (page no. 27 of complaint)
10.	Unit area admeasuring	895 sq. ft. (page no. 27 of complaint)
11.	Due date of possession	08.07.2017 (Calculated from the date of agreement) Note: Grace period is allowed being unqualified.



12.	Possession clause	3(a) Possession 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 within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this agreement. 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.
13.	Total sale consideration	Rs. 72,68,950/- (as per payment schedule on page no. 62 of compliant)
14.	Amount paid by the complainants	Rs. 42,50,000/- (as alleged by complainant)
15.	Completion certificate	Not obtained

16.	Offer of possession	Not offered
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B. Facts of the complaint

3. The complainants have made the following submissions: -
 - I. That the complainants booked a unit bearing no. A-54, 5th floor, tower A in the project of the respondent and paid a booking amount of Rs. 5,00,000/- for the said unit.
 - II. That respondent issued an allotment letter dated 02.01.2013 confirming the allotment of the unit A-54, 5th floor, tower A, of project named as "manor one", situated at Sector - 111, Gurgaon.
 - III. That in furtherance of the allotment the apartment buyer agreement was executed between the parties on 08.01.2014. As per clause 3(a) of the apartment buyer agreement, the possession of the said unit was to be delivered within 36 months from the date of execution of the agreement.
 - IV. That pursuant to the agreement dated 08.01.2014, the complainants paid a sum of Rs. 42,50,000/- out of Rs. 72,68,950/- towards the payment of consideration of the said unit to the respondent.
 - V. However, after a period of few months from the date of execution of the agreement, the construction at the site of the unit was stopped and there was no progress, still acting on the representation and warranties of the respondent, complainants duly paid all the dues raised by the respondent.
 - VI. That the complainants went from pillar to post for redressal of their grievances. The complainants also made personal visit to the office of the respondent but unfortunately, the respondent has shown its'

indifference with an intention to misappropriate the hard-earned money of the complainants.

- VII. That the indifferent acts of the respondent is causing financial strain, physical and mental harassment. The complainants approached several times to the respondent to honour its commitments, but the respondent had not responded to the complainants.

C. Relief sought by the complainants:

4. The complainants on 27.09.2023 have filed an application for amendment in relief sought. By the way of said application complainants have sought following relief(s).
- Direct the respondent to complete the construction of the project and obtain the occupation certificate.
 - Direct the respondent to legally offer possession and handover the possession of the unit in the project in question.
 - Direct the respondent to pay delayed possession charges as per RERA from due date of possession till actual handing over of possession to the complainants.
 - Direct the respondent for litigation expenses to the tune of Rs. 55,000/-.
5. On the date of hearing the authority explained to the respondents/promoters about the contravention 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. 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 in to force. The parties while entering into the said transactions could not have possibly taken into account the provisions of the Act and as such cannot be burdened with the obligations created therein. In the present case also the apartment buyer agreement was

executed much prior to the date when the RERA Act came into force and as such section 18 of the RERA Act cannot be made applicable to the present case.

7. That the complainants approached the respondent to book a residential apartment and was subsequently allotted unit no. A-54 on 5th floor, area admeasuring 895 Sq. ft. in the project "MANOR ONE", Sector 111, Gurugram by way of endorsement/transfer from the previous allottee. Promoter received the environment clearance in 2013 and registered the project in RERA on dated 24.09.2019. As per the apartment buyer agreement, the due date of possession was 36 months from the date of execution of the ABA, subject to force majeure circumstances and timely payments by the buyer/complainants.
8. That the respondent was doing its best to complete the project on time and the construction was also going on in full swing, however, the bank loan of the respondent was cancelled, which was the major source of funding for the project. This hampered the construction work to a great extent as the major source of funding was lost creating circumstances beyond the reasonable control of the respondent. Further, the complainants were diligently trying to arrange for the funding's when the whole world was struck with the outbreak of Covid-19 pandemic and the Hon'ble Authority granted the grace period of 6 months by invoking 'force majeure' clause vide Order No.9/3-2020 HARERA/GGM(Admn.) dated 26.05.2020). Thereafter, the project was financial stress project but the respondent secured funding from the swamih investment funds, vide sanction letter dated 29.01.2022 to complete the construction work. 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 30th June, 2024 after obtaining occupancy certificate.

9. That the projected timelines for possession under affordable Housing policy are based on date of statutory approvals. 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. It is submitted that vide its order NGT placed sudden ban on the entry of diesel trucks which were older than ten years and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. 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.
10. 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.
11. Thereafter, the Hon'ble Supreme Court of India on 04/11/2019, while deciding the matter of "M.C. Mehta v. Union of India" banned all the construction activities. The said ban was partially lifted by the Hon'ble Supreme Court on 09/12/2019 whereby relaxation was accorded to the builders for continuing the construction activities from 6:00 am to 6:00 pm. Thereafter, the complete ban was lifted by the Hon'ble Apex Court on 14/02/2020.
12. 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.

13. That the respondent had diligently applied for registration of the project in question, i.e., "MANOR ONE" located at Sector-111, Gurugram, before Hon'ble RERA Authority and accordingly, registration certificate dated 24.09.2019 was issued by Hon'ble RERA Authority, Gurugram.
14. That as per Haryana RERA notification dated 5.12.2018, the Hon'ble Authority has clarified that in case the buyer wishes to withdraw from the project, and the respondent is entitled to forfeiture of earnest money which shall not exceed 10% of the total sale consideration.
15. 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.
16. 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 submissions made by the complainants.

E. Jurisdiction of the authority

17. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

18. 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

19. 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.

20. 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.

F.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

21. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

22. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt.*

Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017 and which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

23. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

24. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under



various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.



F.II Objection regarding force majeure conditions:

25. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by environment pollution (Prevention and Control) Authority, NGT, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. Further, the authority has gone through the possession clause and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 36 months from the date of execution of agreement. Further there shall be grace period of 6 months. In the present case, the date of execution of agreement is 08.01.2014 so, the due date of subject unit comes out to be 08.07.2017 including grace period of 6 months as it is unqualified. The events such as various orders by environment pollution (Prevention and Control) Authority and NGT were for a shorter duration of time and were not continuous as there is a delay of more than seven years. Even today no occupation certificate has been received by the respondent. Therefore, said plea of the respondent is null and void. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown 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.

G. Findings on the relief sought by the complainants.

- i. Direct the respondent to complete the construction of the project and obtain the occupation certificate.
- ii. Direct the respondent to legally offer possession and handover the possession of the unit in the project in question.
- iii. Direct the respondent to pay delayed possession charges as per RERA from due date of possession till actual handing over of possession to the complainants.

26. The complainants intends 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."

27. Clause 3(a) of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"31

3(a) Possession

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 **within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this agreement.** 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.."*

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges in terms of proviso to section 18 of the Act which provides that where an allottee does not intend to withdraw from the project, they 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.

29. 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.



30. 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., 02.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
31. 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;"*
32. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
33. On consideration of the documents available on record and submissions made by the parties, 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 buyer's agreement executed between the parties. It is a matter of fact that buyer's agreement was executed between the parties on 08.01.2014. As per the clause 3 of the buyer's agreement dated 08.01.2014, the possession of



the booked unit was to be delivered within a period of 36 months from the date of execution of agreement. Further there shall be grace period of 6 months. In the present case, the date of execution of agreement is 08.01.2014 so, the due date of subject unit comes out to be 08.07.2017 including grace period of 6 months as it is unqualified. Furthermore, the respondent's request for a grace period based on force majeure is hereby denied, as the reasons for such denial have been outlined above. Till date no occupation certificate has been obtained by the respondent. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period.

34. Accordingly, 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 complainants are entitled to delay possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by complainants to the respondent from the due date of possession i.e., 08.07.2017 till the valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

35. The respondent is also directed to handover possession of the subject unit allotted to the complainants within a period of 60 days after obtaining valid occupation certificate.

iv. Direct the respondent for litigation expenses to the tune of Rs. 55,000/- .

36. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority

37. 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 pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainants from the due date of possession i.e., 08.07.2017 till valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the

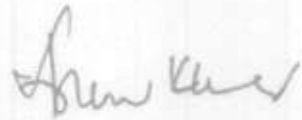
rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

- iii. The respondent is directed to handover possession of the unit allotted to the complainants within a period of 60 days after completing the unit in terms of buyer's agreement and obtaining of occupation certificate.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 to 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.
38. Complaint stands disposed of.
39. File be consigned to registry.

Dated: 02.05.2025



HARERA
GURUGRAM



(Arun Kumar)

Chairman

Haryana Real Estate
Regulatory Authority,
Gurugram