

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

Complaint no.: 2020 of 2019
First date of hearing: 28.08.2019
Date of decision: 09.01.2020

1. Mr. Vivek Khurana
R/o C-6A/63C, Janakpuri, New Delhi-
110058

Complainant

Versus

1. M/s Orchid Infrastructure Developers
Pvt. Ltd.
Registered Office at: N-2, South
Extension, Part-1, New Delhi-110049.

Respondent

CORAM:

Dr. K.K.Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Rishabh Gupta
Shri Ishaan Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 06.05.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

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.No.	Heads	Details
1.	Project name and location	Orchid Petals, sector 49, Gurugram
2.	Project area	22.744 and 14.162 acres
3.	Nature of project	Group housing complex
4.	RERA registered/ not registered	Not registered
6.	License No. & validity status	133-146 all dated 10.11.2004 valid up to 09.11.2019
7.	Name of licensee	For License No.133-140 of 2004: Sh. Virender Singh, Sh. Payara Ram, Sh. Tek Chand, Sh. Darshan, Sh. Dharam Pal, Sh. Phool Singh, Sh. Surender Singh, Sh. Surender Singh For License No.141-146 of 2004: Sh. Vasdev, Sh. Hari Chand, Sh. Chander Bhan, Ms. Usha Rani, Sh. Tej Singh and Sh. Ram Meher.
8.	Unit no., Tower no.	Flat no. 1102, tower 06, 11 th floor
9.	Super area	1964 sq. ft. 2061 sq. ft. (as per possession letter dated 03.03.2009, page 75 of complaint)
10.	Date of execution of agreement	05.04.2006
12.	Total sale	Rs. 38,36,837/- (previous area i.e. 1964

	consideration	sq. ft.) Rs. 40,16,457/- (revised area i.e. 2061 sq. ft.) As per SOA pg. 77 of the complaint.
13.	Total amount paid by the complainant	Total consideration paid as possession has been taken by complainant and as is mentioned in the clearance certificate.
14.	Due date of delivery of possession as per agreement (as per clause 28(a): within 36 months from the date of signing of flat buyers' agreement + 90 days grace period)	05.07.2009
15.	Date of offer of possession	28.08.2009
16.	Period of delay in handing over possession till date	1 month and 23 days
17.	Specific relief sought	<ul style="list-style-type: none"> To direct the respondent to execute and register the conveyance deed.

1. As per clause clause 28(a) of the agreement, the possession was to be delivered within a period of 36 months plus 90 days grace period from the date of agreement i.e. 05.04.2006 which comes out to be 05.07.2009. Clause 28(a) of the flat buyers agreement is reproduced below:

"28. POSSESSION

(a) Time of handing over the possession

That subject to the terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and

conditions of this agreement and not being in default under any of the provisions of this agreement and not being in default under any of the provisions of this Agreement and complied with all the provisions, formalities, documentation, etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the flat within a period of thirty six (36) months from the date of signing of this agreement. the FLAT ALLOTTEE(S) agrees and understands that the DEVELOPER shall be entitled to a grace period of 90 days, after the expiry of thirty six (36) months, for applying and obtaining the Occupation Certificate in respect of the GROUP HOUSING COMPLEX."

2. The respondent has offered possession vide letter dated 28.08.2009 which has been annexed in the complaint. The respondent has utterly failed in executing and registering the conveyance deed pertaining to the said unit in favour of the complainant. Hence, this complaint.
3. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a), (b) **read with section 17 of the Act** to plead guilty or not to plead guilty.
4. The respondent submitted that it submitted two irrevocable General Power of Attorney both dated 06.01.2004 bearing vasika no. 569 and 571 respectively had been executed by Hari Chand, Roshan Lal, Jagdish Kumar and Kishan Chand in favour of the respondent, M/s Vipul Infrastructure Developers Pvt. Ltd., Mr. Punit Beriwal and Mr. Ajay Goel. It is pertinent to mention that the above-mentioned Sh. Hari Chand, Roshan Lal, Jagdish Kumar and Kishan Chand are the

land owners of part of the land over which the said project has been developed by the respondent.

5. The respondent submitted that the abovementioned land owners despite having received their share of units as had been mentioned in the aforesaid collaboration agreements proceeded to unilaterally, illegally and without any plausible reason cancelled the two General Power of Attorney both dated 06.01.2004 bearing vasika no. 597 and 598 respectively. The aforesaid two general power of attorneys were unilaterally cancelled vide Cancellation Deeds both dated 20.11.2015 and bearing vasika no. 10173 and 10174 respectively.
6. The respondent submitted that Hari Chand, Roshan Lal, Jagdish Kumar and Kishan Chand filed an application dated 02.12.2015 before the sub registrar, Gurugram to stay/put on hold the execution and registration of conveyance deeds of all the units situated in the said project.
7. The respondent submitted that the land owners had filed two frivolous civil suits seeking declaration and mandatory injunction against the respondent and M/s Vipul Ltd. Bearing no. CS/4364/2015 and CS/4365/2015 respectively. It is pertinent to mention that suit bearing no. CS/4364/2015 had been filed by Sh. Hari Chand, Roshan Lal, Jagdish Kumar and Kishan Chand. It is further submitted that suit bearing no. CS/4365/2015 had been filed by Sh. Hari Chand, Roshan Lal,

Jagdish Kumar. The aforesaid suits had been filed on 07.12.2015.

8. The respondent submitted that the respondent is unable to initiate the process of registration and execution of conveyance deeds in favour of the allottees in the said project inspite of offering them possession of their respective units almost 8-9 years back. It is respectfully submitted that in case this hon'ble authority directs the respondent to commence with the process of registration and execution of conveyance deeds in favours of the allottees in the said project, in that event the respondent shall dutifully abide by the orders of this hon'ble authority.
9. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
10. Arguments heard.
11. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.

12. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and based on the findings of the authority the respondent is directed to get the conveyance deed executed in favour of the complainant within a period of 60 days from the date of this order.
13. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- The respondent is directed to get the conveyance deed executed in favour of the complainant within a period of 60 days from the date of this order.

Complaint stands disposed of.

File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 09.01.2020

Judgment uploaded on 10.02.2020


(Subhash Chander Kush)

Member