

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

Complaint no. : 1351 of 2019
First date of hearing : 30.07.2019
Date of decision : 13.02.2020

1. Shri. Rohit Oberoi
 2. Smt. Ritu Girotra
- Both R/O:-** G-147, Kalkaji,
New Delhi-110019

Complainants

Versus

M/s Vipul Ltd.
Regd. Office:- Vipul Tech Square,
Golf Course Road, Sector-43,
Gurugram-122009

Respondent

CORAM:

Shri. Samir Kumar
Shri. Subhash Chander Kush

Member
Member

APPEARANCE:

Shri. Rohit Oberoi Complainant in person
None present on behalf of Advocate for the respondent
respondent

EX-PARTE ORDER

1. The present complaint has been filed by the complainants/allottees in 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 allottees as per the flat buyer's agreement executed inter-se them.

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 tabular form:

S. No.	Heads	Information
1.	Project name and location	"Vipul Lavanya Apartments", Sector-81, Gurugram
2.	Project area	10.512 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	26 of 2010 dated 18.03.2010 valid upto 17.03.2020
5.	Name of licensee	Vijay Luxmi Inds. & 4 others
6.	RERA Registered/ not registered	Tower-2 & 3, Registered vide licence no. 283 of 2018 dated 11.09.2018 (only 2.282 acres)
7.	HRERA registration valid up to	31.08.2019
8.	Unit no.	802, 8 th floor, tower-03
9.	Unit measuring (super area)	1780 sq. ft.
10.	Date of execution of flat buyer's agreement	05.12.2010
11.	Total sales consideration	Rs. 65,26,070/- (as per schedule of payments on pg. 44 of the complaint)
12.	Total amount paid by the complainants	Rs. 60,96,122/- (as per SOA dated 15.03.2019 on pg. 16 of the reply)

13.	Due date of delivery of possession <u>as per clause 8.1(a)- within 36 months from the date of signing of this agreement along with a grace period of 90 days</u>	05.03.2014
14.	Offer of possession to the complainants	Valid possession has not been offered as occupation certificate has not been received till date. Note:- Possession for fit outs has been offered to the complainant on 15.03.2019 vide letter annexed on pg. 15 of the reply.
15.	Specific reliefs sought	<ul style="list-style-type: none"> i. Direct the respondent to deliver possession of the subject property. ii. Direct the respondent to pay interest at the rate as deemed fit by this Hon'ble authority.

3. As per clause 8.1(a) of the flat buyer's agreement, the possession was to be handed over within a period of 36 months from the date of execution of this flat buyer's agreement dated 05.12.2010 along with a grace period of 90 days which comes out to be 05.03.2014. Clause 8.1(a) of the flat buyer's agreement is reproduced herein below:

"8.1 Time of handing over the Possession

(a)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....."

4. The possession of the subject apartment has not been offered by the respondent till now. The complainants seeks delay interest as per section 18 of the Act. The complainants reserves their right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainants. Hence, this complaint for the reliefs as stated above.
5. 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) of the Act to plead guilty or not to plead guilty.
6. The submission made by the respondent, in brief, is as under:-
 - i. The respondent submitted that the present complaint is barred by law of limitation. It is submitted that the flat buyer's agreement was executed by the erstwhile allottees i.e. Mr. Pradeep Seth and Mrs. Punam Seth on 05.12.2010. As per said agreement the possession though was to be handed over within period of 36 months + 90 days grace period from the date of flat buyer's agreement i.e. on 05.03.2014, subject to the complainants having complied with all the terms and conditions of the agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. Accordingly the complainants could

have agitated their issue for enforcement of the agreement within a period of limitation of 3 years which also end by January 2017. Therefore, the present complaint is barred by limitation and deserves to be rejected out rightly.

- ii. The respondent submitted that the complainants in the present complaint by keeping the Ld. Authority in dark is seeking possession of the unit to the complainants. It is submitted that respondent company vide its letter dated 15.03.2019 i.e. prior to filing of the present complaint has already offered the possession of the unit to the complainants but the complainants for the reason best known to them have concealed the said fact of offering of possession by the respondent company to the complainants from this Hon'ble Authority. It is very strange that the complainants instead of taking possession of the flat allotted to them have filed the false and frivolous complaint under reply.
- iii. The respondent submitted that the promoter company has already given possession of respective units to all its allottees who have paid their dues as agreed, but in this case though the complainants have made the part payments against the unit allotted to them but despite reminders the complainants have deliberately failed to pay the entire amount as demanded by the respondent company as was agreed by them, which could make

them entitled for the possession of the unit. Without giving the entire amount as agreed and demanded by the respondent company, how the complainant can become entitled to seek possession, but still the respondent company has already offered the permissive possession of the unit to the complainant subject to payment of the amount as demanded by the respondent company.

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 on the basis of these undisputed documents and submissions of the parties during hearing.
8. The Authority on the basis of information, explanation, other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
9. Arguments have been heard.
10. The Authority is of the view that the Act is to protect the rights of the stake-holders i.e. the promoter, allottees 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.

11. On consideration of the circumstances, the evidence and other record submissions made by the complainants and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 8.1(a) of the flat buyer's agreement executed between the parties on 05.12.2010, possession of the booked unit was to be delivered within a period of 36 months from the date of execution of flat buyer's agreement along with a grace period of 90 days. As such the due date of delivery of possession comes out to be 05.03.2014. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 05.12.2010 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established.
12. Copy of subsequent agreement executed between the parties is placed on record. In view of this subsequent agreement, the complainants has stepped into the shoes of the original allottee. Definitely, there is a delay w.r.t. delivery of possession. The offer of possession with regard to fit out is not a valid offer in the eyes of law as the respondent has not obtained the occupation certificate from the appropriate authorities till date.
13. As such the complainants are entitled for delayed possession charges @10.20% p.a. w.e.f. 05.03.2014 till the physical offer

of possession of the allotted unit after receipt of occupation certificate as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

14. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act:

- i. The respondent shall pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 05.03.2014 till the physical offer of possession of the allotted unit after receipt of occupation certificate within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of each subsequent month.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainants which is not part of the flat buyer's agreement.

15. Complaint stands disposed of.

16. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.02.2020