

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

Complaint no. : 5481 of 2019
First date of hearing : 13.12.2019
Date of decision : 13.02.2020

1. Shri. Pankaj Gandhi
 2. Smt. Reena Gandhi
- Resident of:-** 378, Bhera Enclave,
Pashchim Vihar, Delhi-110087

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. Vijender Parmar
Shri. Saurabh Yadav

Advocate for the complainants
Advocate for the respondent

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 Complex
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.	503, 5 th Floor, Tower-2
9.	Unit measuring (super area)	1780 sq. ft.
10.	Date of execution of flat buyer's agreement	10.07.2012
11.	Total sales consideration	Rs. 96,05,035.20/- (as per SOA dated 31.10.2013 on pg. 52 of the complaint)
12.	Total amount paid by the complainants	Rs. 88,56,942/-

		(as per SOA dated 31.10.2013 on pg. 52 and receipts attached on pg. 53-61 of the complaint)
13.	Due date of delivery of possession as per clause 8.1(a)- <u>within 36 months from the date of signing of this agreement along with a grace period of 90 days</u>	10.10.2015
14.	Offer of possession to the complainants	Possession has not been offered till now.
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 10.07.2012 along with a grace period of 90 days which comes out to be 10.10.2015. 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 date. 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. Also, the respondent have not filed reply to the complainants despite being represented through advocate and service of notice in this respect.
6. Notices w.r.t. filing of reply were issued to the respondent for making his appearance. However, despite due and proper service of notices, the respondent failed to filed the reply before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainants in his complaint.
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 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 10.07.2012, 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 10.10.2015. Accordingly, it is the

failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 10.07.2012 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. As such the complainants are entitled for delayed possession charges @10.20% p.a. w.e.f. 10.10.2015 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.

12. 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. 10.10.2015 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 every 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.

13. Complaint stands disposed of.

14. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 13.02.2020

Judgement uploaded on 19.02.2020


HARERA
GURUGRAM