

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No. 3099-2023
Date of Decision: 13.02.2026

Ajay Jain S/o Sh. Rajesh Kumar Jain, R/o 59, 3rd Floor, Kiran Vihar, Delhi-110092.

.....Complainant

Versus

Vipul Ltd., Corporate Office: Vipul Tech Square, Golf Course Road, Sector 43, Gurugram- 122009, Haryana.

.....Respondent

APPEARANCE

For Complainant:
For Respondent:

Mr. Kuldeep Kumar Kohli, Advocate.
Mr. Pankaj Chandola, Advocate.

ORDER

1. This is a complaint filed by Mr. Ajay Jain (allottee), under section 18 (3) and 19 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against Vipul Limited (promoter) as per section 2(zk) of Act 2016.

2. According to complainant, in August 2010 he booked a 3BHK Unit of 1530 Sq. Ft. in the Project being developed by the respondent, "Vipul Lavanya" Sector 81A, Gurgaon. BBA was executed between him and

the respondent in December, 2010. Said flat was booked under construction linked plan (CLP). He booked said unit after paying a cheque of Rs.4,50,000/- in August 2010. Respondent took more than 50% of sale consideration before start of construction.

3. In August 2014, he received a letter offering possession, dated 14.08.2014. The respondent had levied some additional charges including charges of increased flat super area from 1410 Sq. Ft. to 1421 Sq. Ft. Despite issuing letter of offer of possession, the unit was not complete, finishing work like final white wash, bath tub installation in bathroom and some sanitary work was still pending. He paid visit to the spot and found many changes in structure of booked unit. Apart from same, there were some small changes like size of window, size of room, size and location of cabinet/window etc. In study room, beam of approx. 2.5ft. to 3ft. depth was raised in almost 80% of the area and in rest 20% area, one pillar and parallel beam was constructed. These structural changes reduced the height of the study room from 10ft. approx. to 6.5ft. – 7ft. Moreover, pillar had divided study room in two parts. Study room was supposed to have two windows but in actual delivered unit same had only one small window.

4. That he (complainant) immediately raised concern with respondent highlighting all these issues and additional charges. The

respondent did not give any heed to his request and denied to resolve the issue. Despite all this, he (complainant) handed over a cheque of Rs.2,00,000/- to the respondent against any pending payment though with objections.

5. That without resolving the aforesaid issues, the respondent kept on charging holding charges and maintenance charges from him. Aggrieved in this manner, he (complainant) filed a complaint before Haryana Real Estate Regulatory Authority, Gurugram (the Authority) in March, 2019 i.e. complaint no. 1005/2019. The Authority appointed a Local Commissioner to verify his objections about defect in structure. The Local Commissioner submitted his report and endorsed his objections. The partial claim of him was approved by the Authority vide order dated 10.02.2023.

6. Contending all this and on following reasons, the complainant approached this forum (A.O.) seeking compensation from the respondent:-

A. Because the complainant is bona fide purchaser for consideration of the units in the aforesaid project developed by the respondent, who have paid his full dues as per BBA and ought not to be made to suffer due to the omissions and commissions of the respondents.

B. Because the complainant ought not to be deprived of his hard-earned money invested by him with the respondent in the aforesaid project by the illegal acts of the respondents, the

respondent should not be allowed to take advantage of the present situation.

C. Because the complainant ought not to be deprived of his fundamental right of peaceful living in his premises/flat/accommodation due to no fault of his side.

D. Because the respondent not justified its act of charging money for waste area of project and for misrepresenting the facts to cheat complainant for its own commercials/financial benefits.

E. Because the respondent offered possession without any occupancy certificate or completion certificate in hand, made false representations to the complainant and cheated him to extract more money.

F. Because the respondent had acted in contravention to various rules and regulations governing the project.

G. Because this Court has the necessary jurisdiction to pass an appropriate direction and suit is within limitations.

7. The complainant has prayed for following compensations: -

- (i) To direct the respondent to send legal valid offer of possession and undertake all the necessary further steps to facilitate the handing over of the possession to the complainant of his respective flat after completion of pending work including the execution of transfer deeds before the office of registrar;
- (ii). To direct the respondent to refund/compensate the money of 171 Sq. Ft. waste area which respondent charged from complainant in the name of Study Room including interest till the date of refund;
- (iii). To direct the respondent to pay legal expense in the tune of Rs. 5 lakhs.

- (iv). To direct the respondent to pay compensation of Rs. 5 Lakh for all the harassment complainant has to face during all this period and amortizations of flat rates because of old construction without using the flat for a single day.
- (v). To direct the respondent to compensate the complainant @ Rs. 15 thousand per month for the opportunity value of flat from 1.12.2013 till actual handing over the possession with registration of unit with interest on this amount.
- (vi) To direct the respondent to compensate complainant for any maintenance charges any other charges levied on complainant during the period of August 2014 till date of handing over possession including the interest thereon;
- (vii). To direct the respondent to compensate the claimant for depreciation of construction life value of flat;
- (viii). To pass any such other and further orders which this Court may deem fit and proper.

8. The respondent contested the complaint by filing a written reply. The respondent denied each and every averment made, contentions raised, projection sought to be given by the complainant to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made in its reply except and in so far as that which is specifically admitted by it.

9. It is also claimed that the present complaint is not maintainable in the present form and the Hon'ble Adjudicating Officer has no jurisdiction whatsoever to decide present complaint. It is further pleaded that the complainant is aware that the project has been completed

and Company (respondent) has obtained Occupation Certificate. The latter (respondent) requested for registration of conveyance deed but it was the complainant who has not turned up till date to execute and register the sale deed.

10. That the complainant has already obtained order dated 10.2.2023 passed by the Hon'ble Authority for delayed possession charges and the same has also been claimed in the present suit which is completely barred under order 2 Rule 2 CPC. The complainant with malafide intention chose the Hon'ble Authority to agitate their frivolous claim.

11. That the project of the respondent is not an ongoing project as per Rule 2 (O) of said Rules. The complainant has been already offered physical possession on 14.08.2014 and the reminder to execute sale deed was sent to the complainant.

12. Stating all this, respondent prayed for dismissal of complaint.

13. Both of the parties filed affidavits in support of their claims.

14. I have heard learned counsels appearing for both of parties and perused the record.

15. Admittedly, present complainant had filed a complaint before the Authority seeking delay possession compensation (DPC) alleging delay in handing over possession. Said complaint has been allowed by the Authority vide order dated 10.02.2023. The respondent has been directed

to pay interest at the prescribed rate i.e. 10.60% per annum for every month of delay on the amount paid by the complainant from the due date i.e. 01.12.2013 till the date of receipt of occupation certificate plus two months i.e., 25.05.2015 plus two months i.e., up to 25.07.2015.

16. It is contended by learned counsel for complainant that his client has suffered more loss and award of interest, as allowed by the Authority is not sufficient to compensate him.

17. On the other hand, according to learned counsel for respondent, when complainant has already been allowed interest by the Authority, due to delay in handing over of the possession, same is not entitled to any compensation on this ground.

18. According to Section 18 (1) of The Real Estate (Regulation and Development) Act 2016, if the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein or-----,

(b) -----.

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building,

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as the case may be, with interest-----, **including compensation, in the manner as provided under this Act.**

Proviso added to this Section makes it clear 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.

19. A bare perusal of this provision makes it clear that when an allottee does not intend to withdraw from the project, same is entitled for interest for every month of delay till handing over of possession, if he makes demand in this regard. Unlike an allottee, who withdraws from the project. Such (latter category of) allottee is entitled for refund of the amount, along with interest as well as compensation, in the manner as provided under this Act.

20. It is worth mentioning here that complainant did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed.

21. Following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **“Greater Noida Industrial Development Authority vs. Ranjan Misra” Appeal No. 70 of 2023 decided on 20.04.2023-----;**

AO

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

Act No. 16 of 2016 Passed by the Parliament of India

भू-संपदा (विनियमन और विकास) अधिनियम 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण

भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16

"13.9. If were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

22. Considering all this, no reason to allow compensation in the name of appreciation in value of flat till actual handing over of the possession. Trite it to say that complainant has prayed for Rs.15,000/- per month for appreciation in value. Moreover, even if there is appreciation in value of unit in question, it is still owned by complainant, why the respondent be made to compensate him (complainant) for appreciation of its price.

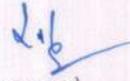
23. So far as prayer for direction to respondent to send legal valid offer of the possession or to refund of the amount is concerned, apparently this Forum has no jurisdiction to entertain ~~compensation~~⁶ this prayer. Although complainant has sought compensation for levying maintenance charges and other charges upon him during period of August 2014 till date

of handing over of the possession. Complainant failed to ^{adduce} ~~reduce~~ any evidence to substantiate his plea in this regard. So far a request of complainant to allow legal expenses is concerned, when complainant is not able to establish his case, no reason to allow any legal expenses. Request in this regard is thus declined.

24. When complainant has already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession. Complaint in hands is thus dismissed.

25. File be consigned to record room.

Announced in open court today i.e. on **13.02.2026**.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory
Authority, Gurugram.