

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

Complaint No. : 868 of 2018
First date of hearing : 21.02.2019
Date of Decision : 13.03.2019

Mr. Ranjeet Singh Walia
R/o P 163 DLF New Town Heights, Sector-
90, Gurugram, Haryana

Complainants

Vipul Ltd. through
Mr. Punit Beriwal (promoter and managing
director)
Vipul Tech square, Golf Course Road, Sector
43, Gurugram 122009

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Ranjeet Singh Walia
None for the respondent

Complainant in person
Advocate for the respondent

ORDER

1. A complaint dated 18.09.2018 under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Ranjeet Singh Walia against the promoter Mr. Punit Beriwal (promoter and managing director) on account of violation of





clause 8.1(a) of the flat buyer's agreement dated 02.12.2010 for flat no. 401, 4th floor in tower 3 located at Sector 81, Gurugram, in the project "Vipul Lavanya" on account of not delivering the possession of the flat by due date i.e. by 02.03.2014 and not fulfilling the obligation under section 11(4) of the Act.

2. Since the flat buyer's agreement for subject flat was executed on 02.12.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Therefore the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of promoter under section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Vipul Lavanya", Sector 81, Gurugram, Haryana.
2.	Nature of real estate project	Group housing complex
3.	Project area	10.512 acres
4.	RERA registered/ unregistered	Registered vide no. 15 of 2018 dated 11.09.2018
5.	Revised date of registration as per registration certificate	31.08.2019
6.	DTCP license no.	26 of 2010
7.	Allotted flat no.	401, 4 th floor, tower 03
8.	Admeasuring area of the unit	1780 sq. ft.





9.	Date of execution of flat buyer's agreement (Annx C)	02.12.2010
10.	Total consideration	Rs. 57,60,661/- (as per Statement of account) Rs. 59,45,747.50/- (as per rejoinder filed by complainant)
11.	Total amount paid by the complainant	Rs. 56,65,348/- (as per statement of account) Rs. 57,80,661/- (as per rejoinder filed by complainant)
12.	Payment plan	Construction linked payment plan
13.	Date of delivery of possession. [Clause 8.1 (a): - 36 months + 90 days grace period from the date of signing of agreement]	02.03.2014
14.	Period of delay in delivery of possession	4 years and 10 months (approx.)
15.	Penalty clause as per flat buyer's agreement	Clause 8.1 (iv) of the agreement i.e. - Rs. 5/- per sq. ft. per month of the super area for the delay.

4. As per the details provided above, which have been checked as per record of the case file. A flat buyer's agreement dated 02.12.2010 is available on record for flat no. 401, 4th floor, tower 3 of the project, according to which the possession of the aforesaid flat was to be delivered by 02.03.2014 but the respondent by failing to fulfil its commitment has violated clause 8.1 of the flat buyer's agreement dated 02.12.2010.





5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came for hearing on 13.03.2019. The reply has been filed on behalf of the respondent on 04.12.2018 which has been perused by the authority.

Facts of the complaint: -

6. The complainant submitted that he booked a flat "flat no. 401, tower-3, Vipul Lavanya, Sector -81, Gurgaon" sold by Vipul Limited. The booking made through payment of booking amount of Rs.5,00,000/- paid on 13th August 2010.
7. The complainant submitted that flat buyer agreement (BBA) was signed on 2nd December 2010. As per the flat buyer agreement, the builder was obligated to provide possession in 36 months, which ended on 1st December 2013. The builder has failed to deliver the possession until today as on 10th September 2018.
8. The complainant submitted that total delay as on 10th September 2018 is 58 months i.e. approximately 5 years after the due date of possession passed. Builder collected 90% of the flat cost within 36 months of booking and subsequently



slowed down and stopped the construction. This unwarranted delay caused significant financial and emotional loss to the complainant.

9. The complainant submitted that he is approaching Hon'ble Haryana RERA authorities to help complainant in getting delayed penalty from the builder @15% per annum of the payments made by the complainant under section 31 of RERA.
10. The complainant submitted that the total delayed penalty @15% as on 10th September 2018 is Rs. 40,23,137/-

Issues raised by the complainant: -

- I. Whether the respondent has violated the terms and conditions of the flat buyer's agreement.

Reliefs sought: -

1. Direct the respondent to pay delayed interest of Rs. 40,23,137/- on 10th September 2018 from the builder towards delay of 58 months in handing over of possession. The amount is calculated @15% per annum on the payments made to the builder.



2. Direct the respondent to handover the possession of the said unit.

Reply of the respondent: -

11. The respondent submitted that present complaint is baseless, misconceived, mala-fide and the same deserves to be dismissed with costs for the following, among other, preliminary objections, which are without prejudice to each other.

12. The respondent submitted that M/s Vipul Ltd. a company registered under the Companies Act, 1956 having its registered office at regus rectangle, level 4, rectangle 1, d4, commercial complex, saket, New Delhi 110017 and corporate office at Vipul Techsquare, Golf Course Road, sector-43, Gurgaon, is filing its reply to the complaint through Shri Rakesh Sharma, an authorized representative of the respondent.

13. The respondent submitted that at the very outset the contents of the complaint under reply are denied in its entirety save and except to the extent as are strictly matter of record or are specifically admitted. All the allegations



levelled against the company are vehemently denied as false, frivolous, unwarranted and uncalled for.

14. The respondent submitted that the complainant has himself admitted that the builder buyer agreement was executed but just for the sake of proving his alleged point of delay, the complainant is placing reliance only on two – three clauses of the agreement instead of reading the agreement in full. Therefore, the present complaint deserves to be dismissed at threshold because the same has been filed with half and distorted facts with only intention to mislead the court and causing wrongful loss to the respondent company.

15. The respondent submitted that it is not out of place to mention here that license was granted to the respondent company by the Director, Town and Country Planning, Haryana, for development of group housing colony on the land admeasuring 10.512 acres situated in village Nawada, Fatehpur, Sector 81, Tehsil and District, Gurugram. The company thereafter launched the group housing project by the name of “Vipul Lavanya”.

16. The respondent submitted that some third parties had filed





litigation titled as Vardhman Kaushik V/s Union of India & Ors. Wherein the Hon'ble NGT while considering the degradation of environment was pleased to restrain or stop the construction activity in the region of Delhi and NCR. It is pertinent to mention here that Govt. of Haryana was a party and is well aware of the entire litigation who passed certain directions to all the developers to stop the construction work. The company through letters, individually to all its allottees, informed about the stoppage of work of the aforesaid project. But when the restrain order got vacated the company again started construction of the project and successfully completed the project and thereafter applied for the occupation certificate from the competent authority vide letter dated 03.04.2018 The grant of the occupation certificate as on date is under consideration at the office of the competent authority and the company is hopeful that it will soon get the certificate of possession from the competent authority, the letter dated 03.04.2018 written to Director General, Town & Country Planning, Haryana seeking grant of Occupation Certificate is annexed herewith





as annexure – 'c'.

17. It is respectfully submitted that the applicant knows that the project has been completed and company has also applied for the occupation certificate from the concerned competent authority and upon grant of such occupation certificate the possession could be offered to him and to other bonafide allottees, but still the complainant with malafide intention chose this forum to agitate his frivolous claim.
18. It is submitted that the company shall not be held responsible or liable for the alleged delay occurred in completion of the project and handing over of the possession to the complainant. It is very surprising that the complainant waited for 5 years to raise the issue of delay in possession, when the company is about to give the possession. It is highly inconceivable that the complainant remained silent for 5 long years i.e. after 2013. It is not the case of the complainant that he was not informed about the progress of the construction or project. The complainant knew about the aforesaid difficulty being faced by the company while constructing the project and the complainant was/is having



complete knowledge of the same.

19. It is submitted that the complainant has approached this hon'ble authority with unclean hands and has not disclosed the true and correct facts. The complainant is guilty of suppression of facts inasmuch as the complainant has concealed the material fact that the complainant somewhere in October 2017 had requested the company to include the name of his wife i.e. Mrs. Anupriya Walia as a co-allottee in the aforesaid flat. It is worthwhile to mention here that the complainant has taken the financial assistance (housing loan) from the DHFL and as such DHFL is having first charge over the said flat, and the status in respect of title over the property/flat, cannot be changed unless the complainant gets the NOC or consent from DHFL, but It is very strange that the complainant without informing and without getting NOC from DHFL, which was mandatory on his part to seek such permission or consent and keeping the respondent company in dark about such consent or no objection vide deed of adherence dated 13.11.2017 got the name of his wife included in the said flat. The copy of the deed of adherence





dated 13.11.2017 is annexed herewith as annexure – e. The same clearly shows the malafide conduct of the complainant. Though as a matter of record DHFL granted its no objection but the same was granted ten days later i.e. on 23.11.2017 when the act was already done. The copy of the letter dated 23.11.2017 is annexed herewith as annexure – ‘f’. The said consent or no-objection from DHFL of the work which was already performed has no sanctity in the eyes of law. However, be that it may be, getting the name of his wife included in the said flat as co-allottee clearly demonstrate that the complainant was not at all aggrieved as prior to filling of the alleged complaint the complainant had never raised any hue and cry about the alleged delay in project, rather feeling satisfied with the project he wanted the name of his wife to be included as a co-allottee in the property bearing flat no. 401, Tower 3, Vipul Lavanya, Sector – 81, Gurugram. Therefore, the present complainant is liable to be rejected out rightly on the ground of concealment and suppression of true and correct facts.

20. The respondent submitted that the complaint is bad for



misjoinder and non-joinder of the parties and for improper pleadings on the part of complainant himself. The complainant has not made his wife as a co-complainant in the present complaint. Therefore, the present complaint is liable to be out rightly dismissed on this ground alone.

Determination of issues: -

21. Regarding the **sole issues** raised by the complainant, the respondent by not delivering the possession of the allotted unit within the timeframe as per the terms flat buyer's agreement dated 02.12.2010 has violated the terms of agreement and breached the trust of complainant. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case the refund is allowed in the present complaint, then it shall hamper the completion of the project and will adversely affect the rights of other allottees who wish to continue with the project. Otherwise also, as per the submissions of the respondent and the records of the office of the authority, the phase in which the unit allotted to the complainant lies is registered by the interim HRERA, Gurugram vide registration no. RC/REP/HARERA/GGM/2018/15 dated 11.09.2018 and the respondent has completed the project and applied for



occupation certificate in April, 2018 which shows the clear intent of the respondent to deliver the possession. Hence, the refund cannot be allowed at this stage, however, the complainants are entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% as per section 18(1) of the Act *ibid*.

Findings of the authority: -

22. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka v. M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
23. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observe that as per clause 8.1(a) of the builder buyer agreement dated 02.12.2010 for unit no. 401, tower 03 in project Vipul Lavanya, sector 81, Gurugram possession was to be handed over to the complainant within



a period of 36 months from the date of execution of flat buyer agreement + 90 days grace period which comes out to be 02.03.2014. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.56,65,348/- to the respondent against a total sale consideration of Rs. 59,45,747/-.

Decisions and Directions of the Authority: -

24. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents in the interest of justice: -

i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 03.03.2014 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of



possession shall be paid before 10th of subsequent month.

25. The order is pronounced.

26. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 13.03.2019

Corrected Judgement uploaded on 21.12.2020



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17. It is respectfully submitted that the applicant knows that the project has been completed and company has also applied for the occupation certificate from the concerned competent authority and upon grant of such occupation certificate the possession could be offered to him and to other bonafide allottees, but still the complainant with malafide intention chose this forum to agitate his frivolous claim.
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Determination of issues: -

21. Regarding the **sole issues** raised by the complainant, the respondent by not delivering the possession of the allotted unit within the timeframe as per the terms flat buyer's agreement dated 02.12.2010 has violated the terms of agreement and breached the trust of complainant. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case the refund is allowed in the present complaint, then it shall hamper the completion of the project and will adversely affect the rights of other allottees who wish to continue with the project. Otherwise also, as per the submissions of the respondent and the records of the office of the authority, the phase in which the unit allotted to the complainant lies is registered by the interim HRERA, Gurugram vide registration no. RC/REP/HARERA/GGM/2018/15 dated 11.09.2018 and the respondent has completed the project and applied for



occupation certificate in April, 2018 which shows the clear intent of the respondent to deliver the possession. Hence, the refund cannot be allowed at this stage, however, the complainants are entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% as per section 18(1) of the Act *ibid*.

Findings of the authority: -

22. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka v. M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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a period of 36 months from the date of execution of flat buyer agreement + 90 days grace period which comes out to be 02.03.2014. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.56,65,348/- to the respondent against a total sale consideration of Rs. 59,45,747/-.

Decisions and Directions of the Authority: -

24. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents in the interest of justice: -

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 03.03.2014 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of



possession shall be paid before 10th of subsequent month.

25. The order is pronounced.

26. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 13.03.2019

Judgement uploaded on 28.03.2019



HARERA
GURUGRAM

