

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

Complaint no. : 4090 of 2020
First date of hearing : 24.12.2020
Date of decision : 23.02.2021

Ms. Namrata Gupta
Resident of:- 704, Tower No. 3, Vipul Lavanya, **Complainant**
Sector-81, Gurugram, Haryana

Versus

M/s Vipul Ltd.
Regd. Office:- Vipul Tech square, Golf Course
Road, Sector-43, Gurugram, Haryana-122009 **Respondent**

CORAM:

Dr. K.K. Khandelwal **Chairman**
Shri. Samir Kumar **Member**

APPEARANCE:

Sh. Manish Shukla Advocate for the complainant
Sh. Manu Jain Advocate for the respondent

ORDER

1. The present complaint dated 24.11.2020 has been filed by the complainant/allottee 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 allottee as per the apartment buyer's agreement 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	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. & 40 others.
6.	HARERA Registration	15 of 2018 dated 11.09.2018 (Tower 2 & 3)
7.	Registration valid up to	31.08.2019
8.	Area registered	2.282 acres
9.	Unit no.	704, Tower-03, 7th floor
10.	Unit measuring (super area)	1780 sq. ft.
11.	Allotment letter	24.09.2010 (Page no. 17 of the complaint)
12.	Date of execution of apartment buyer's agreement	04.12.2010
13.	Endorsement in the name of complainant	26.12.2016 (Page no. 68 of the reply)

14.	Total sale consideration	Rs. 55,81,629/- (As per payment schedule at page no. 55 of the reply)
15.	Total amount paid by the complainant	Cannot be ascertained
16.	Due date of delivery of possession "8.POSSESSION 8.1 Time of handing over the Possession <i>.....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, for applying and obtaining the occupation certificate in respect of the GROUP HOUSING COMPLEX."</i>	04.03.2014
17.	Occupation certificate	No OC is received for subject tower till now.
18.	Offer of possession to the complainant	28.03.2019 (Offer is not legal as OC has not been granted by the competent authority.) (Possession taken over by the complainant as per possession certificate at page no. 21 of the complaint)
19.	Delay in offer of possession till date of decision	5 years 24 days
20.	Specific reliefs sought	i. Direct the respondent to get the OC from the concerned authority and register the conveyance deed in favour of the complainant. ii. Compensation

3. As per possession clause 8.1 of the apartment buyer's agreement executed between the parties, the possession was to be handed over within a period of 36 months from the date of execution of the apartment buyer's agreement along with a grace period of 90 days which comes out to be 04.03.2014. Clause 8.1 of the apartment 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 months from the date of signing of this agreement. The vendee agrees and understands that the vendor shall be entitled to a grace period of 90 days, after the expiry of 36 months....."

4. The possession of the subject apartment has been offered to the complainant on 28.03.2019 which is not a valid offer as till date occupation certificate has not been granted by the competent authority. The complainant seeks delay interest as per section 18 of the Act. The complainant reserves his right to file a separate application for seeking compensation

from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainant. Hence, this complaint for the reliefs as stated above.

5. The complainant submitted that they are owners of her respective flat but not a legal owner of the said property unless the occupancy certificate and conveyance deed registered or issued by the relevant authorities in favour of the complainant. From the occupancy certificate it shows and proof that the building has been completed as per the sanction plan. The respondent company had offered the said flats without an occupancy certificate and assured all the complainant that the Occupancy certificate for relevant Towers have been applied and it may take some time.
6. The complainant submitted that this Hon'ble Court may be pleased to direct the respondent to adequately compensate for the delay in getting the OC and till such time the registered Conveyance deed is to be executed in favour of the buyer/complainant.
7. The complainant submitted that it is important to brought this fact to knowledge of this Hon'ble Court that the respondent has filed insolvency proceedings before NCLT wherein Hon'ble Tribunal has held "The appellant is

directed to comply with the 'Terms of Settlement', failing which it will be open to the first respondent to move an appropriate application before this appellate tribunal for initiation of contempt proceedings against the appellant or the directors/shareholders and for revival of the 'corporate insolvency resolution process'.

8. The respondent has filed reply on 22.12.2020. 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.
9. The respondent has contended on the following grounds:-
 - a. The companies namely M/s Graphic Research Consultants (India) Pvt. Ltd, M/s Vinneta Trading Pvt. Ltd. and M/s Abhipra Trading Pvt. Ltd. had acquired and purchased the land admeasuring 10.512 acres situated within the revenue estate of Village Nawada Fatehpur, Sector - 81, Gurgaon with the intention to promote and develop a group housing colony over the same. The owner companies have obtained license, from the Director, Town and Country Planning, Haryana, for setting up a Group Housing Colony over the aforesaid land.

- b. That M/s Vipul Ltd. had inter-se entered into agreement with the owner companies in terms of which the M/s Vipul Ltd. is entitled to develop a group housing colony on the land admeasuring 10.512 acres situated in village Nawada, Fatehpur, Sector 81, Tehsil and District Gurugram.
- c. It is a matter of record 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.
- d. It is respectfully submitted that the complainant is aware 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 conveyance deed shall be executed, but still the complainant with malafide intention chose the Hon'ble Authority to agitate their frivolous claim.

- e. It has already applied for OC to the DTCP on 03.04.2018, furthermore the respondent has never denied for execution of a conveyance deed after the OC is granted by the DTCP, hence the present complaint is pre-mature and liable to be dismissed on this ground alone.
10. 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.
11. The Authority on the basis of information, explanation, other submissions made and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.
12. Arguments have been heard.
13. On consideration of the circumstances, the evidence and other record, submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of Act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. This is a statutory example where builder without bothering for law has offered possession even

without obtaining occupation certificate. This has happened in the RERA regime. There were large number of examples before coming into force of Real Estate (Regulation and Development) Act, 2016, where builders flouted law and gave possession to the innocent allottee without obtaining occupation certificate but now look at the dare devil approach of the builder where without any fear of penal action, he is offering possession to the allottee without obtaining occupation certificate. Registry is directed to write to the Director Town & Country planning for such type of lapse on the part of builder. The possession offered cannot be said as valid offer of possession. The counsel for the respondent further made a statement which is far from the truth that the offer of possession was only fit out possession/ permissive possession whereas the possession certificate available at Annexure R3 speaks otherwise. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

14. By virtue of clause 8.1(a) of the apartment buyer's agreement executed between the parties on 04.12.2010, possession of the booked unit was to be delivered within a period of 36 months from the date of execution of the

agreement along with a grace period of 90 days for unforeseen circumstances. As such the due date of delivery of possession comes out to be 04.03.2014.

15. With respect to relief sought by the complainant the authority has found that conveyance deed cannot be registered in the name of the complainant as the promoter has applied for the occupation certificate on 03.04.2018, but the same has not been received from the competent authority. Thus, the relief sought by the complainant cannot be granted at this stage.
16. It is found that an offer of possession has been made to the complainant on 28.03.2019 i.e. without obtaining OC of the subject tower. Thus the said offer of possession is illegal in nature.
17. 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. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 04.03.2014 till the date of actual handing over the possession after receiving the OC.

- ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and subsequent interest shall be paid on or before 10th of each succeeding month till the actual handing over of possession.
 - iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
 - v. Interest on the delay payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
18. Complaint stands disposed of.
 19. File be consigned to registry.



(Dr.K.K. Khandelwal)
Chairman



(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021