

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 06.02.2019
Complaint No.	1676/2018 Case titled as Mrs. Sucharita Bachawat & Mr. Arnab Neil Sengupta V/S Vipul Limited
Complainant	Mrs. Sucharita Bachawat & Mr. Arnab Neil Sengupta
Represented through	Complainants in person with Shri Ishwar Singh Sanghwan, Advocate.
Respondent	Vipul Limited
Respondent Represented through	Shri Rakesh Sharma authorized representative on behalf of respondent-company with Shri Vineet Sehgal, Advocate for the respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings
Project is registered with the authority.

Occupation certificate has been applied on 3.4.2018 with the competent authority.

Arguments heard.

As per clause 8.1 (a) of the Builder Buyer Agreement dated 24.9.2011 for unit No.1101, Tower-03, 11th floor, admeasuring 1780 sq. feet, in project "Vipul Lavanya" Sector-81, Gurugram, possession was to be handed over to the complainants within a period of 3 years from the date of execution of BBA + 90 days grace period which comes out to be 24.12.2014.

Complainants have already paid Rs.68,94,730/- to the respondent against a total sale consideration of Rs.73,75,629/-. However the respondent has failed to give possession on the committed date of delivery of possession. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 24.12.2014, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

It has further been alleged by the complainants that as per para No.6 of the BBA, the respondent is charging penal interest @ 15% on delayed payments. However after coming RERA into force on 25.3.2016, the rate of interest to be charged in equitable ratio i.e. 10.75%. All the calculations should be made on this formula. It has been stated at bar by counsel for the respondent that they have applied for occupation certificate on 3.4.2018 alongwith all the requisite documents. However, the DTCP Haryana has not issued occupation certificate, as such, they come within the ambit of deemed approval of OC. However, the respondents have not given any letter of possession to the complainants/buyers. In view of the prevailing circumstances and the assertions of the respondent, the authority considers that as per provisions of law, if the competent authority failed to issue occupation certificate, it comes within the ambit of deemed occupation. The respondent should give them a letter of possession on this ground and settle the matter in all respects w.r.t. payments due as well as interest accrued on account of delayed possession charges, in a fair manner and refund the amount if it is due to the complainant. It is a settled law that the company/respondent can deduct service tax/ VAT/GST applicable once and

not twice or thrice. The allottees are directed to take possession within 30 days and get the conveyance deed executed within 90 days.

The arrears of interest accrued so far shall be paid to the complainants 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.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
6.2.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 1676 of 2018
First date of hearing : 06.02.2019
Date of decision : 06.02.2019

Mrs. Sucharita Bachawat and Mr. Arnab Neil
Sengupta.

R/o. T6-1002, Parsvnath Green Ville, Sohna
Road, Sector- 48, Gurugram (Haryana)

Complainants

Versus

M/s. Vipul Limited
Regd. Office: - Regus Rectangle, Level 4,
Rectangle 1, D4, Commercial Complex,
Saket, New Delhi-110017.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mrs. Sucharita Bachawat and complainants in person.

Mr. Arnab Neil Sengupta

Shri Ishwar Singh Sanghwan Advocate for the complainant

Shri Rakesh Sharma A.R. on behalf of the respondent

Shri Vineet Sehgal Advocate for the respondent



ORDER

1. A complaint dated 06.11.2018 under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainants Mrs. Sucharita Bachawat and Mr. Arnab Neil against the promoter M/s. Vipul Limited on account of violation of clause 8.1(a) of the flat buyer's agreement dated 24.09.2011 for flat no. 1101, 11th floor in tower 3 located at sector 81, Gurugram, in the project "lavanya apartment" on account of not delivering the possession of the flat by due date i.e. by 24.12.2013 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 24.09.2011 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	NO.RC/REP/HARERA/GG M/2018/17 Dated 12.10.2018



5.	DTCP license no.	26 of 2010
6.	Date of booking	22.09.2011
7.	Date of allotment letter	22.09.2011
8.	Allotted flat no.	1101, 11 th floor, tower 3
9.	Admeasuring area of the unit	1780 sq. ft.
10.	Date of execution of flat buyer's agreement (Annx C)	24.09.2011
11.	Total consideration	Rs. 73,75,629.25/-
12.	Total amount paid by the complainant	Rs. 68,94,730.42/-
13.	Payment plan	Construction linked payment plan
14.	Date of delivery of possession. [Clause 8.1 (a) :- 36 months + 90 days grace period from the date of signing of agreement]	24.12.2013
15.	Period of delay in delivery of possession	5 years and 2 months (approx.)
16.	Penalty clause as per flat buyer's agreement dated 24.09.2011	Clause 8.1 (iv) of the agreement i.e. – Rs. 5/- per sq. ft. per month of the super area for the delay.
17.	Occupation certificate	Applied on 03.04.2018, status pending.

4. As per the details provided above, which have been checked as per record of the case file. A flat buyer's agreement dated 24.09.2011 is available on record for flat no. 1101, 11th floor, tower 3 of the project, according to which the possession of the aforesaid flat was to be delivered by 24.12.2013 but the respondent by failing to fulfil its



commitment has violated clause 8.1 of the flat buyer's agreement dated 24.09.2011.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 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. Relying on the representations made by the officials of the respondent complainants booked a flat in the respondent's project namely, 'vipul lavanya' located at sector 81, Gurugram on 22.09.2011 by paying Rs. 6,31,900/- as booking amount.
7. In pursuance to the aforesaid booking of the complainants, respondent vide allotment letter allotted flat no. 1101 on 11th floor, tower 3 of the project in favour of the complainants. On 24.09.2011, flat buyer's agreement for the allotted flat was executed between the parties. The total consideration of the flat was agreed at Rs. 73,75,629.25/- out of which the complainants have made total payment of Rs. 68,94,730.42/- till date under construction linked payment plan, as and when demanded by the respondent.



8. As per clause 8.1(a) of the flat buyer's agreement dated 24.09.2011, possession of the flat was to be delivered within a period of 36 months plus 90 days grace period i.e. on or before 24.12.2013. It was alleged by the complainants that the respondent has failed to deliver the possession of the allotted flat till date despite collecting substantial amount of sales consideration and lapse of more than 5 years from the stipulated period of delivery of possession.
9. It was further alleged by the complainants that the respondent has charged additional amount for allotted car parking space ignoring the fact that it forms the part of allotted super area. In this regard the complainants have served legal notice to the respondent seeking refund of the paid amount, but the respondent has failed to give any positive response. Hence, the complainants was constrained to file the instant complaint before this authority.



Issues raised by the complainant: -

- I. Whether the complainants are entitled for refund of the entire amount alongwith interest @ 18% p.a.**
- II. Whether the respondent has violated the terms and conditions of the flat buyer's agreement.**

Reliefs sought: -

1. **Direct the respondent to refund the entire amount of Rs. 68,94,730.42/- to the complainant alongwith interest at the rate of 18% p.a. on the aforesaid amount from the date of deposit till the date of realization of such amounts.**
2. **Direct the respondent to pay compensation of Rs. 10,00,000/-.**

Reply of the respondent: -

10. In the reply the respondent has denied each and every allegation made by the complainant. The present complaint is baseless, misconceived, malafide and the same deserves to be dismissed with costs.
11. The respondent has submitted that 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, Gurugram with the intention to promote



and develop a group housing colony over the same. The owner companies have obtained license, from the DTCP, Haryana, for setting up a group housing colony over the aforesaid land. 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.

12. Pursuant to the aforesaid inter se agreement, M/s Vipul Ltd. launched the group housing project by the name of “vipul lavanya”.
13. 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. The company through letters, individually to all its allottees



including the complainants, 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 its letter dated 03.04.2018. The grant of the occupation certificate as on date is under consideration at the office of the competent authority. This fact is well within the knowledge of the complainants.

14. 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 complainants. It is inconceivable that the complainants remained silent for 4 long years and waited to raise the issue of delay in possession at the time when the company is about to give the possession. It is not the case of the complainants that they were not informed about the progress of the construction or project. The complainants knew about the aforesaid difficulty being faced by the company while



constructing the project and the complainants were/are having complete knowledge of the same.

15. It may not be out of place to submit that the statement of objects and reasons of the RERA inter-alia is an attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It is submitted that the complainants have never been at all aggrieved and do not fall under the definition of aggrieved person, but still by filing such false frivolous and vexatious complaints the complainants are not only harassing the respondent company to succumb to their illegal demand, but by filing such false complaint, they are misleading the Ld. authority.

Rejoinder of the complainants: -



The complainants have filed rejoinder to the reply of the respondent on 17.12.2018, denying each and every contentions so raised by the respondent in their reply.

Determination of issues:-

16. Regarding the **first and second issues raised by the complainants**, the respondents by not delivering the

possession of the allotted unit within the timeframe as per the terms flat buyer's agreement dated 24.09.2011 has violated the terms of agreement and breached the trust of complainant. Therefore, the complainants through instant complaint have sought refund of the paid amount alongwith interest @ 18% p.a. and intend to withdraw from the project.

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 as per section 18(1) of the Act *ibid*.



Findings of the authority: -

17. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

18. During the course of arguments, learned counsel for the complainants stated that as per para no. 6 of the BBA, the



respondent is charging penal interest @ 15% p.a. on delayed payments. However, after coming into force of this Act ibid, the rate of interest should be charged in equity i.e. @10.75% p.a. All the calculations should be made on this formula. Learned counsel for the respondent has further stated that they have applied for occupation certificate on 03.04.2018 alongwith all requisite documents. However, the DTCP, Haryana has not issued occupation certificate (OC), as such, they come within the ambit of deemed approval of OC. But it is pertinent to note that the respondents have not given any letter of possession to the complainants/buyers.

Decisions and Directions of the Authority :-

19. 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. In view of the prevailing circumstances and the assertions of the respondent, the authority considers that as per the provision of law if the competent



authority has failed to issue occupation certificate, it comes within the ambit of deemed occupation. The respondent should give them a letter of possession on this ground and settle the matter in all respects with respect to payments due as well as interest accrued on account of delayed possession charges, in a fair manner and refund the amount if it is due to the complainant. It is a settled law that the company/respondent can deduct service tax/VAT/GST applicable once and not twice or thrice. The allottees are directed to get the conveyance deed executed within 90 days.

- ii. The respondent is duty bound to pay interest at the prescribed rate i.e. 10.75% p.a. on the paid amount of the complainant for every month of delay from due date of possession i.e. 24.12.2013 till the date of decision.
- iii. The interest accrued so far from due date of possession till the date of this order be paid to the complainant after adjusting due amount, if any, against the complainant within 90 days from the date



of decision and subsequent interest to be paid by the
10th of every succeeding month.

20. The order is pronounced.

21. Case file be consigned to the registry.

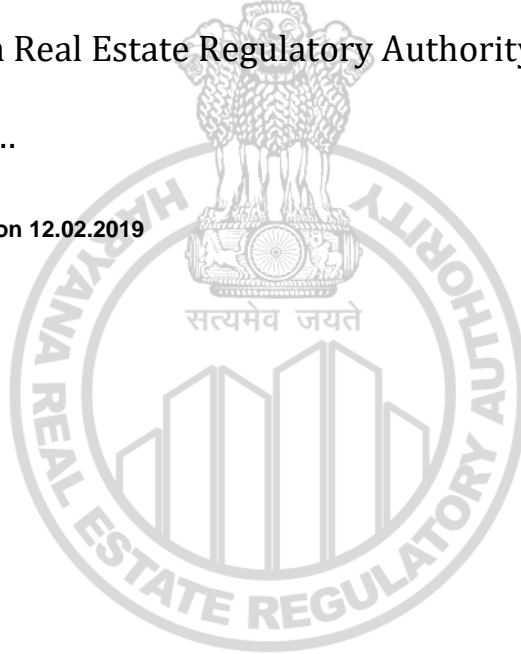
(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated.....

Judgement uploaded on 12.02.2019



HARERA
GURUGRAM

