

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

Complaint no. : 4618 of 2020
First date of hearing: 23.02.2021
Date of decision : 23.02.2021

Mr. Gagan Deep Singh Kohli
Mrs. Jaspreet Kaur Kohli
Both RR/o: - T-44, Ground Floor,
Rajouri Garden, New Delhi- 110027

Complainants

Versus

M/s Vipul Ltd.
Corp. office: - Vipul Tech square, Golf Course
Road, Sector-43, Gurugram, Haryana-122009
Regd. Office: - Unit No. 201, C-50, Malviya
Nagar, New Delhi- 110017

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri. Samir Kumar

**Chairman
Member**

APPEARANCE:

Sh. Harshit Goyal
Sh. Manu Jain

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 16.12.2020 has been filed by the complainants/allottees 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 under the provision of the Act or

the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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 Business Park formerly known as Vipul World Commercial", Sector-48, Gurugram
2.	Project area	3.644 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	554-608 of 2006 dated 24.03.2006 valid upto 23.03.2017. [as per OC detail page 39 of reply]
5.	Name of licensee	Sh. Naresh Kumar. & 54 others.
6.	HARERA Registration	Not Registered
7.	Unit no.	112A, first floor, Tower-A,
8.	Unit measuring (super area)	1335 sq. ft.
9.	Date of re-allotment letter	17.12.2009 [Page 18 of complaint]
10.	Date of execution of buyer's agreement	10.03.2010 [page 21 of complaint]
11.	Payment plan	Construction linked payment plan



		[as per payment schedule page 51 of complaint]
12.	Total sale consideration	Rs.63,40,057/- [As per statement of account dated 01.11.2017 at page 58 of complaint]
13.	Total amount paid by the complainants	Rs.49,01,415/- [As per statement of account dated 01.11.2017 at page 58 of complaint]
14.	Due date of delivery of possession as per clause 15 of the agreement within 24 months from the date of this agreement and approval of complete building plans whichever is later. [page_31 of complaint]	10.03.2012 [as per calculated by the date of execution of this agreement]
15.	Offer of possession to the complainants	06.06.2016 [page 53 of the complaint]
16.	Possession certificate letter	18.11.2017 [page 54 of complaint]
17.	Delay in handing over possession till offer of possession i.e. 06.06.2016	4 years 2 months and 27 days

B. Fact of the complaint

3. The complainants submitted that the project in question ('Vipul Business Park') is a commercial office complex situated at sector 48, Gurgaon being developed by the respondent. It comprises of retail spaces, office spaces, food courts, three level basement parking, power backup and other facilities on a parcel of land admeasuring 3.65 acres.



4. The complainant submitted that in the year 2006, the representatives of the respondent approached the complainants and presented a rosy picture of the project in question and assured timely delivery of the possession of the said project. Based on the assurances as given by the said agents and representatives to be true and correct, the complainants approached the respondent and submitted application form dated 04.10.2006 for booking of an office space in the project. The respondent company issued re-allotment letter dated 17.12.2009 of unit no. 112A in the name of present complainants. Further the buyer's agreement was duly executed between the complainants and the respondent on 10.03.2010 in respect of the booked unit bearing no 112A admeasuring 1346 sq. ft super area.
5. The complainant further submitted that as per clause 15 of the buyer's agreement dated 10.03.2010, the respondent was liable to deliver the possession of the unit within a period of 24 months from the date of execution of buyer's agreement. Accordingly the due date of possession comes out to be 10.03.2012. However, the respondent had failed to fulfil its liability to deliver timely possession of the booked unit under clause 15 of the buyer's agreement and section 11(4) (a) of the Real Estate (Regulation and Development) Act, 2016.



6. The respondent has also imposed arbitrary and unlawful holding charges calculated at the rate of Rs. 50 per sq. ft per month on the shoulders of the complainants. The buyer's agreement dated 10.03.2010 is a pre-printed, standard format prescribed by the promoter; majority of the clauses of which are tilted in the favour of promoter. The holding charges so mentioned in the agreement are unfair and unreasonable. The said clause of the agreement are one sided and are liable to be ignored. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided.
7. The respondent delivered restricted possession of the booked unit without keys to the complainants vide possession certificate dated 18.11.2017 on written assurance of the completion of pending work of AHU pipeline and to handover over the keys of the booked unit. However, the respondent failed to keep his promise despite several reminders till date. The assurance to complete pending works and delivery of keys to the complainants was duly written, signed, and stamped by the authorized representative of the respondent at the back of the possession certificate.
8. The complainants submitted that the respondent has also imposed arbitrary and unlawful charges of interest free maintenance security deposit of Rs. 1,21,140/- and

maintenance charges calculated at the rate of Rs.8/- per sq. ft. It is further submitted that the respondent company has failed to pay property tax dues in respect of the booked unit to the municipal corporation of Gurugram. The respondent company is responsible for all property tax liabilities till the date of registration of sale deed of the booked unit and mutation in favour of complainants as complete rights and liabilities in respect of booked unit can be lawfully transferred to the complainants only by the way of registered sale deed.

9. The respondent company has also failed to inform exact VAT liability ascertained by the competent authority in respect of the booked unit and has not even paid any amount on account of VAT to the competent authority. The respondent company is taking undue advantage of the amount deposited by complainants and other buyers on account of VAT.

C. Relief sought by the complainants:

10. The complainants have sought following relief(s).
- (i) To direct the respondent to pay delay possession charges at the prescribed rate of interest to the complainants for the period of delay in delivery of possession of the booked unit;



- (ii) To direct the respondent to refund unlawful and unfair charges of interest free maintenance security deposit and maintenance charges;
 - (iii) To direct the respondent to refund the unlawful and arbitrary charges on account of holding charges;
 - (iv) To direct respondent to call upon registration of sale deed of the booked unit with the sub registrar of competent jurisdiction after refund of amount stated;
 - (v) To direct the respondent to pay property tax dues in respect of booked unit accrued till the date of registration of sale deed;
 - (vi) To direct the respondent company to refund the amount of Rs.1,61,520/- deposited on account of VAT;
11. 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.

D. Reply by the respondent

12. The respondent contested the complainant on the following grounds: -
- a. The respondent submitted that the unit allotted to complainants was ready for possession and offer for the same was made to the complainants vide letter dated 06.06.2016. Complainants were also intimated about the

possession vide E-mail dated 08.06.2016. Furthermore, the complainants were requested to clear their outstanding dues and to fulfill other conditions as specified in letter dated 06.06.2016. The reminders dated 29.03.2017, 09.05.2017, 13.06.2017, 10.08.2017, 14.09.2017 and 01.11.2017 were also sent to the complainants. The complainants took the possession of the unit on 18.11.2017, by this time an amount of Rs. 6,62,769/- was due against the complainants as holding charges as per clause 20 of buyer agreement dated 10.03.2010. However on the request of the complainants vide their letter dated 18.11.2017, the respondent waived off the holding charges to the tune of Rs.6,62,769/-. The complainants vide undertaking dated 18.11.2017 undertook to pay the future payment/installments on demand and not to raise/demand any claim monetary or otherwise of any nature whatsoever including limitation penalty on account of delay, if any, in handing over the possession of the unit.

- b. That without prejudice, the above stated position is further substantiated by rule 4(5) of the rules which clearly states that any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules i.e. 28.07.2017, is outside the purview of RERA, unless the said application is refused by the competent

authority and it is only then that the project is required to be registered within 30 days of the receipt of such refusal.

- c. The respondent submitted that there was no delay in the completion of construction work. The respondent had applied for occupancy certificate in the year 2015 and got the occupancy certificate in June 2016. The complainants have already obtained possession of the property.
 - d. The respondent further submitted that the time of delivery of possession as stipulated in the buyer's agreement was only a proposal and not a fix time for delivery of possession and it was subject to clause 15 of the agreement. The completion of project was beyond the control of the respondent and there was no fault on the part of respondent.
13. Arguments have been heard.
14. The respondent has contended that the relief regarding refund and compensation does not lie with the authority. It seems that the reply given by the respondent is without going through the facts of the complaint as the same is totally out of context. The complainant has nowhere sought the relief of refund and regarding compensation part the complainant has stated that he is reserving the right for compensation and at present he is seeking only delay possession charges. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi*

Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no. 7 of 2018) leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as ***Emaar MGF Land Ltd. V. Simmi Sikka and anr.***

E. Findings on the relief sought by the complainants:

- i. To direct the respondent to pay delay possession charges at the prescribed rate of interest to the complainants for the period of delay in delivery of possession of the booked unit.
 - ii. To direct the respondent to pay property tax dues in respect of booked unit accrued till the date of registration of sale deed.
15. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided 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."

16. As per clause 15 of the buyer's agreement executed between the parties, the possession was to be handed over within a



period of 24 months from the date of execution of this agreement or approval of completion of building plans by the competent authority, whichever is later. The due date of possession can be calculated from the date of execution of this agreement i.e. 10.03.2010 which comes out to be 10.03.2012. Clause 15 of the buyer's agreement is reproduced herein below:

"15 That the possession of the said Premises is propose to be delivered by the VENDORS to the VENDEE(s) within 24 months from the date of this Agreement or Approval of completion of building plans by the competent Authority, whichever is later. If the completion of the said Building is delayed by the reason of non-availability of steel and/or cement or other building materials, or water supply or electricity power or slow down, strike or due to a dispute with the construction agency employed by the VENDORS, lock out or civil commotion or by reason of war of enemy"

17. **Payment of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka (Supra)** observed as under: -

"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."

F. Finding of the authority

F.I finding relating to the date of offer of possession: -

The complainant brought to the notice of the authority that possession was offered and the same was also taken over by the allottee but the keys of the unit were handed over to the AR of the respondent for completion of Air Handling Unit (AHU) pipe line work. The complainant after taking over possession on 18.11.2017 never ever sent any reminder to the respondent regarding possession but only made request to the respondent for execution of the conveyance deed. The complainant was offered possession on 06.06.2016 but inspite of reminders by the respondent for taking possession dated 29.03.2017,09.05.2017,13.06.2017,10.8.2017,14.9.2017 and 01.11.2017, the allottee finally took possession on 18.11.2017. There is nothing on record as to why the allottee failed to take possession. Accordingly, date of offer of possession is to be treated as 06.06.2016. There is a delay in offering possession from 10.03.2012 to 06.06.2016.

F.II finding relating to occupation certificate obtained prior to coming into force of RERA Act: - The contention of the respondent that since it had applied for grant of Occupation Certificate in respect of the project in question on 27.04.2017 i.e. before the coming into force of the Haryana Real Estate (Regulation & Development) Rules, 2017, the project is not covered under the provisions of the Act is without any force.

19. Only those projects in respect of which completion certificates or Occupation Certificates had been received on

the date on coming into force of the Act were not covered under the provisions of the Act and the Rules as provided in proviso no. 1 of Section 3 (1) of the Act. Ongoing project has been defined in Rule 2 (1)(o) of the Rules it reads as under: -

“(O) “on-going project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

- I. any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules; and
- II. That part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.”

20. In the present case the completion of the development work was not complete on the date of coming into force of the Act and the Rules. Hence, it cannot be turned as the complete project and therefore must be treated as an ongoing project. If



it is so the project in question is squarely covered under the provisions of the Act and the Rules. The respondent itself knows this legal position and this is for reason that the respondent has got the project registered under Sections 3 & 4 of the Act. Therefore, the said contention of the respondent is rejected.

21. On consideration of the documents, and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 15 of the buyer's agreement executed between both the parties on 10.03.2010, the possession of the booked unit was to be delivered within a period of two years from the date of execution of buyer's agreement or approval of completion of building plans by the competent authority, whichever is later. The due date of possession can be calculated from the date of execution of this agreement i.e. 10.03.2010 which comes out to be 10.03.2012. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 10.03.2010 to hand over the possession within the stipulated period as the possession has been offered approximate by 4 years after the due date of possession i.e. 10.03.2012 and the respondent has offered the possession on 06.06.2016. Therefore, 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 @9.30% p.a. w.e.f. 10.03.2012 till the actual offer of possession i.e. 06.06.2016 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

22. Hence, the authority hereby passes 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 complainants from due date of possession i.e. 10.03.2012 till the actual offer of possession i.e., 06.06.2016.
- ii. The arrears of interest accrued till date of decision shall be paid to the complainants within a period of 90 days from the date of this order.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- v. Interest on the due payments from the complainants 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 complainants in case of delayed possession charges.

- vi. The promoter is directed to execute the conveyance deed within one month from today after making adjustment for the delayed possession charges.
 - vii. The complainants are directed to pay due property tax.
 - viii. The promoter will share the information about VAT with the complainant within a month.
23. Complaint stands disposed of.
24. File be consigned to registry.


(Samir Kumar)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021

Judgement uploaded on 10.07.2021