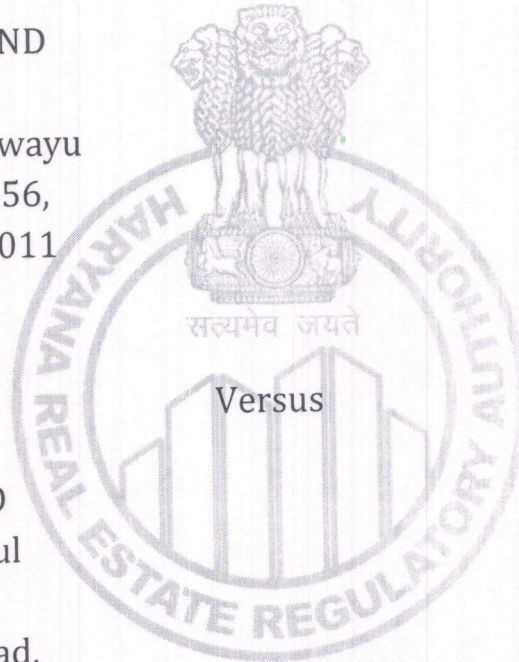


**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 656 of 2020

Date of decision : 10.11.2021

ANSHUL DEO AND
SWETA DEO
R/O : A-411, Jalwayu
Towers, Sector-56,
Gurugram- 122011



Complainants

Versus

VIPUL LIMITED
ADDRESS : Vipul
Tech square,
Golf Course Road,
Sector-43, Gurugram

Respondent

APPEARANCE:

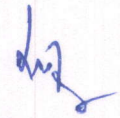
For Complainants:

Mr. M.S. Sehrawat Advocate

For Respondent:

Mr. Manu Jain Advocate

ORDER


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1. This is a complaint filed by Anshul Deo and Sweta Deo Mittal(also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules,2017 (in short, the Rules) against respondent/developer.
2. As per complainants, on 14.06.2016, they jointly booked a flat in respondent's project **Vipul Lavanya**, situated at sector-81, Gurugram and paid of Rs 8,01,302 as booking amount . The respondent allotted a unit No. 501 in Tower 02 admeasuring 1780 sq. ft. for a total consideration of Rs 80,13,021 including BSP, PLC, EDC and etc. A flat buyer's agreement dated 27.06.2016 was executed between parties in this regard.
3. As per Clause 8.1 (a) of buyer's agreement, the possession of said premisses was proposed to be delivered within 36 months from the date of execution of buyer's agreement, with grace period of 90 days. The respondent vide letter dated 15.07.2016, changed/modified possession clause and proposed to handover possession of unit within 18 months from the date of execution of buyer's agreement, with grace period of 90 days. The respondent failed to complete the construction work and consequently failed to deliver the same till date.
4. The complainant had booked said unit under 'ready to move in scheme' of respondent, upon assurances that possession



will be given soon. At the time of booking, it was assured that construction of towers 2 and 3 will be completed soon, as their super structure is ready, only finishing work was remaining. They (complainants) made regular visits to the site and found that there was no progress and condition of their unit was same, as it was at the time of booking.

5. As per demands raised by respondent, they (complainants) made timely payment of Rs 40,06,510 but to their utter dismay, the possession of the apartment has not been offered, as agreed at the time of booking. The condition of towers 2 and 3 of this project is facing serious issues. No official or representative of respondent is ready to divulge any information, about real cause of delay. They (complainants) sent letters dated 20.09.2019 and 21.10.2019, but to no avail.
6. Contending that the respondent has breached fundamental terms of the contract, by inordinately delaying the delivery of possession, which was booked under ready to move in scheme, the complainants have sought refund of entire amount of Rs 40,06,510 paid by them till now along with interest @ 15 % p.a., Rs 9,62,000 i.e rental for living accommodation since the due date of possession was 01.01.2017, Rs 5,00,000 as compensation and Rs 40,000 as cost of litigation.
7. The particulars of the project, in tabular form are reproduced as under:

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S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Vipul Lavanya", Sector 81, Gurugram,
2.	Project area	10.512 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	26 of 2010 dated 18.03.2020
5.	RERA Registered/ not registered	Registered
UNIT DETAILS		
1.	Unit no.	501
2.	Unit measuring	1780 sq. ft.
3.	Date of Booking	14.06.2016
4.	Date of Buyer's Agreement	27.06.2016
5.	Clause 8.1 (a) of buyer's agreement- (modified by letter dated 15.07.2016) proposed to handover possession of unit within 18 months from the date of execution of buyer's agreement, with grace period of 90 days.	27.12.2017 (Calculated from the date of agreement)
6.	Delay in delivery of possession till date of order	3 years 11 months

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PAYMENT DETAILS		
7.	Total sale consideration	Rs 52,61,644
8.	Amount paid by the complainants	Rs 40,06,510
9.	Payment Plan	50 % at the time of signing of FBA and 50 % on letter of offer of possession

10. The respondent contested the complaint by filing a reply dated 09.02.2021. It is contended that the project is not ongoing project as occupation certificate for 8 towers of the project has already been received. The construction work of subject tower is complete and respondent has applied for occupation certificate which will be received soon. The provisional offer of possession has already been made to complainant vide letter dated 29.01.2021 and there is no delay on the part of respondent.

11. Some persons had filed a case titled as **Vardhaman Kaushik vs Union of India & Ors** wherein NGT, while considering degradation of environment was pleased to restrain/stop construction activity in region of Delhi and NCR. It (respondent) had informed about the stoppage of work of aforesaid project to all the allottees individually vide letters dated 31.10.2018, 26.12.2018 and 19.11.2019. When said restraint order was vacated, the construction work was resumed and has been completed now. It (respondent) has applied for occupation

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certificate from competent authority vide letter dated 03.04.2018. The grant of occupation certificate as on date is under consideration in office of competent authority.

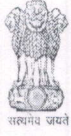
12. Contending all this respondent prayed for dismissal of complaint.

13. I have heard learned counsels for parties and perused the documents on record.

14. It is an admitted position that the project is not complete till date. So far as claim of respondent that it was not ongoing project is concerned. What to say about completion certificate, even occupation certificate has not been received till now.. The respondent was obliged to apply for registration within 3 months of Act of 2016 came into force. In this way, provisions of Act of 2016 are well applicable, in this case.

15. Copy of no such order of NGT as referred above, has been placed on record. Moreover, there is no evidence, to prove as for how much time the construction work of subject tower remained stopped due to that order. The delay cannot be justified on such grounds, without any evidence to substantiate the same.

16. When buyers have made payment as per payment plan and same were allotted 'ready to move in' unit, same are well within their right to claim possession. According to complainants through letter dated 15.07.2016, the respondent had undertaken to handover possession of subject unit, within 18 months of agreement (dated 27.06.2016) with grace period of



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90 days. No occupation certificate of unit has been received till date of final arguments. A buyer cannot be made to wait indefinitely, for his/her dream unit.

17. Considering facts stated above, complaint in hands is allowed and respondent is directed to refund entire amount paid by complainants i.e. Rs 40,06,510 within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. A litigation cost of Rs 1,00,000 is also imposed upon respondent to be paid to complainants.

File be consigned to registry.

10.11.2021


(RAJENDER KUMAR)

सत्यमेव Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 27.11.2021.

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