BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**1238 of 2019**
Date of filing complaint:	**25.03.2019**
First date of hearing:	**27.11.2019**
Date of decision :	**25.07.2022**

Mrs. Shalini Gupta **R/O**: House no. 125A, Chopra Garden, Vivek High School Street, Yamuna Nagar, Haryana	**Complainant**
Versus	
M/s Shree Vardhman Infrahome Private Limited **Regd. office:** 301, 3rd floor, Indraprakash Building, 21-Barakhamba road, New Delhi-110001	**Respondent**

CORAM:	
Dr. KK Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Rajan Gupta (Advocate)	Complainant
Sh. Gaurav Rawat (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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) 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Shree Vardhman Flora, Sector – 90, Gurugram
2.	Project area	10.881 acres
3.	Nature of the project	Residential apartment
4.	DTCP license no.	23 of 2008 dated 11.02.2008
5.	Name of licensee	Moti Ram
6.	RERA Registered/ not registered	Registered vide no. 88 of 2017 dated 23.08.2017
7.	Unit no.	Tower no. C2-503 (Page no. 12 of the complaint)
8.	Unit area admeasuring	1300 sq. ft.

		(Page no. 12 of the complaint)
9.	Allotment letter	Not placed on record/not applicable
10.	Date of buyer agreement	07.05.2012 (Page no. 10 of the complaint)
11.	Possession clause	**14 (a) Possession** *The construction of the flat is likely to be completed* ***within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located*** *with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex.* (Page 20 of the complaint).
12.	Due date of possession	**07.05.2012 + 6 months of grace period = 07.11.2015** (Calculated from date of execution of buyer agreement as date of commencement of construction is not

		available in the file.)
13.	Total sale consideration	Rs.44,30,300 /- (Page no. 31 of the complaint)
14.	Amount paid by the complainant	Rs. 42,37,380/- (Page no. 31 of the complaint) Rs. 44,30,300 **(As alleged by complainant on page 4 but the statement of account on page 31 of complaint makes it certain that complainant paid Rs. 42,37,380/-)**
15.	Occupation certificate	02.02.2022 (As per DTCP website)
16.	Offer of possession	15.03.2021 (For fit out on page 1 of additional documents)
17.	Delay in handing over the possession till date of filing complaint	3 years 4 months and 18 days

B. Facts of the complaint:

3. That respondent had launched group housing colony known as "Shree Vardhman Flora" in Sector-90, Gurugram-Haryana in the year 2011. The respondent-builder had spent a huge amount of money for the launch of

the above project and assured the interested buyers that it will be a dream project for the investors.

4. The complainant had purchased a residential apartment in above mentioned project. The basic price of the said property was Rs. 34,45,000/. That respondent had entered into agreement with the complainant on 07.05.2012.

5. That as per clause 14 (a) of the said agreement the respondent company assured the complainant that the physical possession of the said plot would be handed over to the complainant within 36 months i.e., by 07th May 2015 and in case of delay respondent will pay late possession charges. The complainant has already made a payment of Rs. 44,30,300/- (Forty-Four Lack Thirty Thousand Three Hundred Only) till date i.e., more than the basic price but respondent failed to deliver the possession as promised. That the complainant visited the said property and was shocked and surprised to see that a lot of work was still pending. That complainant having gone through immense mental agony, stress and harassment has constantly raising the issue of huge delay with respondent, but unfortunately no satisfactory response or any concrete information or the reasons of this huge delay has come forth from respondent's end. That since the respondent failed to fulfil its promise to deliver the project by 07th May 2015 the complainant is no more interested in the project and wants refund of his money invested in the above project along with interest @ 24 % per annum from the date of payment till realization from

respondent/opposite party. The respondent is also liable to compensate the complainant for the cheating and harassment done by them.

C. Relief sought by the complainant:

6. The complainant has sought following relief(s):

   i. Direct the respondent to refund the amount of Rs. 42,37,380/- along with interest @ 24% p.a. from the date of payment till realization.

D. Reply by respondent:

The respondent by way of written reply made the following submissions:

7. The residential group housing project in question i.e., It is submitted that the construction of the entire project has been completed and the respondent had already applied for grant of occupancy certificate. The central government has formed Rs 25,000 crore Special Window for Completion of Construction of Affordable and Mid-Income Housing Projects Investment Fund popularly known as the ***SWAMIH Fund***. The SWAMIH Investment Fund has been formed to help the genuinely distressed RERA registered residential developments in the affordable housing / middle-income category and that require last mile funding to complete construction. A fund of Rs. 6 Crore had also been sanctioned to the respondent vide letter dated 12.10.2020.

8. It is submitted, without prejudice to the fact that as per clause 14(a), the obligations of the respondent to complete the construction within the tentative time frame mentioned in said clause was subject to timely payments of all the installments by the complainant and other allottees of

the project. As various allottees and even the complainant failed to make payments of the installments as per the agreed payment plan, the complainant cannot be allowed to seek compensation or interest on the ground that the respondent failed to complete the construction within time given in the said clause.

9. It is submitted that the tentative/estimated period given in clause 14 (a) of the FBA was subject to conditions such as force majeure, restraint/restrictions from authorities, non-availability of building material or dispute with construction agency / work force and circumstances beyond the control of the respondent company and timely payment of installments by all the buyers in the said complex including the complainant. Many buyers / allottees in the said complex, including the complainant, committed breaches / defaults by not making timely payments of the installments. It is pertinent to note that the Hon'ble Punjab & Haryana High Court on 21.08.2012 in CWP No. 20032 of 2008 prohibiting ground water extraction for construction purposes in the District of Gurgaon and due to the said ban, water was not available for construction of the project in question for a very long period of time. The Administrator HUDA, Gurgaon granted NOC for carrying our construction at site of the project vide its memo dated 27.12.2013. The respondent had engaged M/s Mahalakshmi Infra engineers Private Limited and DSA Buildtech Private Limited as the contractors who despite having received payments from respondent did not pay to its labor /work force who in term refused to work severely hampering the pace of construction work.

The respondent ultimately had to remove both the contractors and carried the construction on its own. The respondent directly made the payment of their laborers/workforce/sub-contractors to regularize the work. It is also submitted that the construction activity in Gurugram has also been hindered due to orders passed by Hon'ble NGT/State Govts. /EPCA from time to time putting a complete ban on the construction activities in an effort to curb air pollution. The district administration, Gurugram under the Graded Response Action Plan to curb pollution banned all construction activity in Gurugram, Haryana from 01.11.2018 to 10.11.2018 which resulted in hindrance of almost 30 days in construction activity at site. In previous year also Hon'ble NGT vide its order 09.11.2017 banned all construction activity in NCR and the said ban continued for almost 17 days hindering the construction for 40 days.

10. It is also submitted that as per the FBA the tentative period given for completion of construction was to be counted from the date of receipt of sanction of the building plans/revised plans and all other approvals and commencement of construction on receipt of such approvals. The last approval being Consent to Establish (CTE) was granted by the Haryana State Pollution Control Board on 15.05.2015 and as such the period mentioned in Clause 14(a) shall start counting from 16.05.2015 only. It is submitted and without prejudice to the submissions made hereinabove, that the tentative period as indicated in FBA for completion of construction was not only subject to force majeure conditions, but also other conditions beyond the control of respondent. The Ministry of Home

Affairs, GOI *vide* notification dated March 24, 2020, bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty) days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the lockdown has not been completely lifted. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity. Pursuant to issuance of advisory by the GOI *vide* office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the Real Estate (Regulation and Development) Act, 2016 due to '*force majeure*', the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 (six) months for all real estate projects whose registration or completion date expired and, or, was supposed to expire on or after March 25, 2020. In past few years construction activities have also been hit by repeated bans by the courts/authorities to curb air pollution in NCR region. In recent past the Environmental Pollution (Prevention and Control) Authority for NCR (**"EPCA"**) vide its notification bearing No. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6pm to 6am) from 26.10.2019 to 30.10.2019 which was later on converted into complete 24 hours ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification No. EPCA-R/2019/L-53 dated 01.11.2019. Due to the said

shortage the construction activity could not resume at full throttle even after lifting of ban by the Hon'ble Supreme Court. Even before the normalcy in construction activity could resume, the world was hit by the 'Covid-19' pandemic.

11. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

12. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(a)***
>
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> **Section 34-Functions of the Authority:**
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objections regarding default on behalf of the complainant:

13. It was pleaded on behalf of respondent that the complainant failed to make timely payments with regard to consideration of the subject unit and never came forward to get execute the buyer's agreement and other documents. The authority observes that the complainant opted for construction linked payment plan and the same is evident from

application form filed by him. The occupation certificate of the project has been received on 02.02.2022. The complainant till date has paid an amount equivalent to 95.6 % of total consideration. It was the obligation on part of the respondent to allot a specific unit in respect of application filed by the complainant before raising any further demands from him. Therefore, the plea advanced by the respondent is devoid of merit and hence, is rejected.

G. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the amount of Rs. 42,37,380/- being the principal amount paid by the complainant to the respondent against the sale consideration of the subject unit along with the interest @ 24% p.a.

Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

The due date of possession as per agreement for sale as mentioned in the table above is 07.11.2015 and there is delay of 3 years 4 months and 18 days on the date of filing of the complaint.

The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is

received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate

Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others* SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the

apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for

adjudging compensation with the adjudicating officer under section 71 read with section 31(1) of the Act of 2016.

The authority hereby directs the promoter to return the amount received by him i.e., Rs. **42,37,980/-** with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid

The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the

allottee in respect of that unit with interest at the prescribed rate. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

14. The authority hereby directs the promoter to return to the complainant, the amount received by it i.e., **Rs. 42,37,980/-** with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority:

15. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

    i) The respondent /promoter is directed to refund the amount received from the complainant i.e., Rs. 42,37,980/- along with interest at the rate of 9.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of amount.

ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

16. Complaint stands disposed of.

17. File be consigned to the registry.

(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.07.2022