

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

Complaint no. : 874 of 2018
Date of First hearing: 27.02.2019
Date of decision : 27.02.2019

Mr. Narender Singh
R/o 65A, Ranaji Enclave, N.S Block,
Najafgarh Road, Arjun Park,
New Delhi-110043

Complainant

Versus

M/s Shree Vardhman Infra Heights Private
Limited

Mr. Sandeep Jain, Director

Mr. Sachin Jain, Director

Mr. Vivek Kumar Aggarwal, Director

Mr. Gautam Choudhary, Director

Mr. Karan Singh, Director

Office at : 302, III Floor, Indraprakash
Building, 21, Barakhamba Road, New Delhi-
110001

Respondents

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE:

Shree Jasdeep Dhillon

Non for respondents

Advocate for the complainant

Advocate for the respondents



HARERA
GURUGRAM

ORDER

1. A complaint dated 11.09.2018 was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. ^{Narendra} ~~Kuldeep~~ Singh ~~Dudeja~~ against the promoters M/s Shree Vardhman Infra Heights Private Limited and another's, on account of violation of clause 14(a) of the flat buyer's agreement executed on 26.08.2015 for unit no. 1001, tower C in the project "Shree Vardhman Victoria" for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid.*
2. The complaint was filed on 11.09.2018. Notices w. r. t. hearing of the case were issued to the respondents on 04.10.2018, 17.10.2018 and 29.11.2018 for making his appearance. Besides this, a penalty of Rs. 5,000/- was imposed on 17.10.2018 and a penalty of Rs. 10,000/- was imposed on 29.11.2018. However, despite due and proper service of notices, the respondent did not appear before the authority despite giving him due opportunities as stated

*Corrected vide order
dated 05/07/19.*





above. From the conduct of the respondents it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint

3. Since the flat buyer's agreement has been executed on 26.08.2015, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

4. The particulars of the complaint are as under: -

1.	Name and location of the project	"Shree Vardhman Victoria" in sector 70, Gurugram
2.	Unit no.	1001, tower C



3.	Project area	10.9687 acres
4.	Unit area	1350 sq. ft.
5.	Registered/ not registered	Registered (70 of 2017)
6.	Revised date of completion as per RERA registration certificate	31.12.2020
7.	DTCP license	103 of 2010
8.	Date of booking	22.12.2012
9.	Date of flat buyer's agreement	26.08.2015
10.	Basic sale price	Rs. 72,63,000/-
11.	Total sale consideration	Rs. 79,43,000/-
12.	Total amount paid by the complainant	Rs. 70,96,912/-
13.	Payment plan	Construction linked plan
14.	Date of delivery of possession Clause 14(a) - 40 months from commencement of construction + 6 months grace period	08.09.2017 as per statement of complainant Note: date of commencement of construction is not available on record
15.	Delay of number of months/ years	1 year 5 months and 19 days
16.	Penalty clause as per flat buyer's agreement dated 30.05.2013	Clause 14(b)- Rs. 107.64 per sq. mtr. or Rs. 10/- per sq. ft. per month

5. As per the details provided above, which have been checked as per record of the case file, a flat buyer's agreement is available on record for unit no. 1001, tower C according to which the possession of the aforesaid unit was to be



delivered within 40 months of commencement of construction including 6 months grace period, i.e. by **08.09.2017**. The promoters have failed to deliver the possession of the said unit to the complainant. Therefore, the promoters have not fulfilled his committed liability as on date.

6. Thereafter, again notice was send to respondents but despite service of notice the respondents neither appeared nor file their reply to the authority and complaint. As the respondents have failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore, case is being proceeded ex-parte against the respondents.

Facts of the complaint

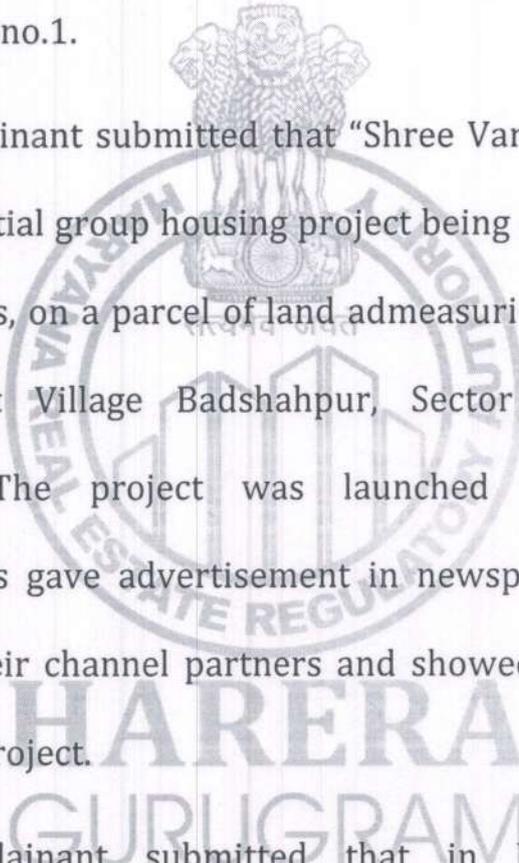
5. The complainant submitted that respondent no.1 is a private limited company duly incorporated under the provisions of the companies act, having its registered office at 302, third





floor, Indraprakash Building 21, Barakhamba Road, New Delhi-110024.

6. The complainant submitted that respondent no. 2 to 6 are the directors of the respondent no.1 and are involved in the day to day working, decision making and functioning of respondent no.1.
7. The complainant submitted that "Shree Vardhman Victoria", is a residential group housing project being developed by the respondents, on a parcel of land admeasuring 10.9687 acres situated at Village Badshahpur, Sector 70, Gurugram, Haryana. The project was launched 2012 and the respondents gave advertisement in newspapers as well as through their channel partners and showed a rosy pictures about the project.
8. The complainant submitted that in May 2012, the respondents and their representatives approached the complainant and marketed their project stating that they are the most reputed builders in Gurgaon and that they had all the requisite approvals for the project and promised that the





project shall be completed and possession given within 40 months with all the facilities and amenities such as club house, play courts, swimming pool etc.

9. The complainant submitted that after much delay on the part of the respondents, flat buyer agreement was executed by and between the complainant and respondents on 25.12.2012 for the unit no 706 on seventh floor in tower no. H having super area admeasuring 1300 sq. ft.
10. The complainant submitted that since the respondents were not able to make any progress at all in the construction of the flat, **the respondents transferred the allotment of the complainant from apartment H-706 to C-1001.** Thus, residential flat bearing no. 1001 in tower no. C, having an approximate super area of 1350 sq. ft was allotted to the complainant for a base price of Rs 72,63,000 (Rupees seventy three lakh sixty three thousand) at the rate of Rs 5380 per sq. ft.
11. The complainant submitted that the complainant at the time of transfer was promised that the timeline for possession and



all the terms would be the same as the original agreement dated 25.12.2012. However, to the utter shock and surprise of the complainant the respondents sent a fresh flat buyer agreement and the date of agreement on the same was 26.08.2015.

12. That despite the objections by the complainant the respondents forced the complainant to enter into a fresh flat buyer agreement for the same. Since the complainant had already given all his hard earned life earnings to the respondents for the flat and was in need for a flat the complainant was forced to sign the new agreement dated 26.08.2015.
13. The complainant submitted that at the time of the fresh flat buyer agreement the complainant had already paid the respondents a sum of INR 36,35,986 (thirty six lakh thirty five thousand nine hundred and eighty six), which is more than 50% of the consideration of the flat. The complainant had been given a construction linked payment plan but still a significant amount was taken from the complainant at the first instance itself.



14. The complainant submitted that the respondents replied vide email dated 31.08.2015 informing the complainant that the construction of the flat had commenced on 07.05.2014 and the project would be handed over in 40 months as per clause 14(a) of the builder buyer agreement dated 26.08.2015. Thus as per the respondents own admission and the flat buyer's agreement the possession was to be handed over on 08.09.2017. The copy of the complainant email, dated 31.08.2018, and the respondents reply, dated 31.08.2018, are annexed herewith as **ANNEXURE C-5 (Colly)**.

15. The complainant submitted that a tripartite agreement, dated 24.09.2015, was executed between the complainant, the respondents and the State Bank of India for the loan. It is pertinent to note that as per clause 14 of the tripartite agreement the respondents had assured SBI as well that the construction would be completed as per the schedule and as per the sanctioned plans.

16. The complainant submitted that despite the respondents receiving payment of 85% of total sale consideration, the complainant on visiting the site on 21.08.2017 was shocked



to see that there was no progress at work at site. When the complainant inquired regarding the date of possession the respondents did not give any concrete response. Thereafter, the complainant vide email dated 21.08.2017 requested the respondents to provide the work completion schedule and the exact date of possession since as per the agreement the possession was to be handed over by 08.09.2017

17. The complainant submitted that the respondents have not only been illegally sitting over the hard earned money of the complainant since 2012 at zero percent interest but moreover the respondent have also diverted the funds taken from the complainant for the project. This is also brought out from the fact that the respondents till date have not refunded the money of the complainant despite repeated request. That this hon'ble authority ought to inquire the diversion of funds by the respondents and take action against the respondents for the same.

18. The complainant submitted that the date of completion of the project and offer of possession of the flat as per the respondents own admission and the builder buyer agreement



was 08.09.2017. However, the respondents have failed to give the possession by the said date and therefore are liable to refund the money paid by the complainant at the rate of 24% interest from the date of payment of the respective amount till the date of actual refund.

19. The complainant submitted that the cause of action for filing the present complaint first arose on 08.09.2017 i.e. the date of giving possession as per the agreement. It is further arose on 11.01.2018 and 16.01.2018 when the complainant requested the respondents for refund of the amounts paid alongwith interest. That the cause of action in the present is a continuing and subsisting one since not only have the respondents failed to give possession on time but moreover they have failed to refund the amounts paid alongwith interest.

20. Issues raised by the complainant

- i. Whether or not the respondents failed to perform upon the said agreement and could not handover the





possession of flat within the stipulated time period mentioned in the agreement dated 26.08.2015?

- ii. Whether the respondents despite repeated requests from the complainant failed to refund the amounts paid alongwith interest?
- iii. Whether the respondents have also illegally charged the complainant Rs.1,50,000/- for an open parking space?
- iv. Whether the respondents company are liable to be penalized for the wrong and false advertisement u/s 12 of RERA Act, 2016?
- v. Whether or not the respondents company is in defiance of the provision u/s 13 of the RERA 2016 by taking more than 10% as deposit/advance money before the signing of the agreement in terms of the cost of the flat of the complainant?
- vi. Whether or not the respondents company are liable to be penalised and the complainant compensated for non-adherence to project specification in terms of the quality of the material used and non-intimation/approval from





the allottee for alteration/addition the sanctioned plans with respect to the projects under section 14 RERA 2016?

21. Relief sought

- i. That this hon'ble authority be pleased to direct the respondents to refund the amounts paid to them by the complainant alongwith interest at the rate of 24% per annum from the date of each payment till the date of actual refund.
- ii. That this hon'ble authority be pleased to direct the respondents to pay the complainant an amount of INR 1,00,000 as penalty for contravention of the provisions of the RERA Act,2016 and the HARERA, Rules,2017.
- iii. That this hon'ble authority be pleased to pass any other order/direction it deems fit looking at the facts and circumstances of the case.

Determination of issues

22. In respect to the **first issue** raised by the complainant, the authority came across that as per clause 14(a) of flat buyer's





agreement, the possession of the said apartment was to be handed over within 40 months from commencement of construction + 6 months grace period. Therefore, the due date of possession comes out to be **08.09.2017** and the possession has been delayed by **1 years 5 months and 19 days** till the date of decision. The delay compensation payable by the respondents as per clause 14(b)- Rs. 107.64 per sq. mtr. or Rs. 10/- per sq. ft. per month of delay of the unit for the period of delay beyond 40 + 6 months as per clause 14(a) of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."



Therefore, under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondents u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoters on the due date of possession i.e. **08.09.2017** upto the date of offer of possession.

23. With respect to the **second issue** raised by the complainant, as per the RERA registration certificate, the revised date for completion of the project as undertaken by the respondent is 31.12.2020. Thus, keeping in view the intervening circumstances and the interest of the other allottees, refund of principal amount paid by the complainant cannot be granted. However, the complainant is entitled to the delayed possession interest at the prescribed rate of 10.74% per annum from the due date of possession till the actual handing over of possession failing which the complainant is entitled to seek refund of the amount.





24. With respect to the **third issue** raised by the complainant, as per section 2(n) open parking spaces comes in the common areas hence, respondents cannot sell the open parking space. Therefore, respondents have illegal charge and sold the open parking spaces to the complainant.
25. With respect to the **second issue** raised by the complainant, the authority grants grace period to every respondent company as a matter of practice as it is mentioned in the agreement signed by both the parties and thus the complainant cannot drift away from this fact when earlier he signed the agreement after going through all the terms and conditions therein. Thus, the authority is justified in granting grace period as mentioned in the agreement.
26. With respect to the **fourth issue** raised by the complainant, due to lack of sufficient documentary proof this issue cannot be decided and remains unascertained.
27. With respect to the **fifth and sixth issues**, the agreement was executed prior to coming in force of RERA, 2016. Thus, section 13 and section 14 cannot be applied retrospectively.



Findings of the authority

28. **Jurisdiction of the authority-** The project “Shree Vardhman Victoria” is located in sector 70, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.
29. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. 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.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.





30. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
31. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.
32. As required by the authority, the respondents have to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.
33. Such notices were issued to the respondents on 04.10.2018, 17.10.2018 and 29.11.2018.
34. As the respondents have failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the





facts adduced by the complainant in its pleading. To prove the communication of date of hearing to respondent, it is sufficient to prove that such information was available on the website and an electronic communication (e-mail) was served on the respondents.

35. Complaint was filed on 11.09.2018. Notice w.r.t. reply to the complaint were issued to the respondent on 04.10.2018, 17.10.2018 and 29.11.2018. Beside this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 17.10.2018 and on 29.11.2018 for non-filing of reply even after service of notices.
36. A final notice dated 18.02.2019 by way of email was sent to both the parties through email to appear on 27.02.2019 before the authority by way of making personal appearance by adducing and producing any material particulars in the matter.
37. Despite calling the matter twice, none has appeared on behalf of the respondent nor any communication has been received.





Under the circumstances, the authority has no option but to proceed ex-parte against the respondents.

38. As per clause 14 (a) of the flat buyer's agreement dated 26.08.2015 for unit no. 1001, tower-C, in the project "Shree Vardhman Victoria", Sector-70, Gurugram, possession was to be handed over to the complainant within a period of 40 months + 6 months grace period. It was a construction linked plan. Vide email dated 06.09.2017, the respondent has informed the complainant that they will offer the possession in April, 2018 as per flat buyer's agreement. However, the respondent has not delivered the unit till date. Complainant has already paid Rs. 70,96,912/- to the respondent against total sale consideration of Rs.79,43,000/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. April, 2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of possession. In case the respondent fails to deliver the possession of the unit on the revised due date, the



complainant shall be entitled to seek refund of the deposited amount alongwith prescribed rate of interest.

Decision and directions of the authority

39. 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 respondent:

- (i) The respondents are directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. April, 2018 till the offer of possession.
- (ii) The respondents are directed to pay interest accrued on account of delay in handing over of possession to the complainant within 90 days from the date of this order.
- (iii) Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid before 10th of every subsequent month.





(iv) Respondents are also directed to deposit the amount of Rs.5,000/- and Rs.10,000/- as penalty imposed with authority within a period of 30 days.

40. The complaint is disposed of accordingly.

41. The order is pronounced.

42. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 27.02.2019

Corrected Judgement uploaded on 10.07.2019

HARERA
GURUGRAM



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APPEARANCE:

Shree Jasdeep Dhillon
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ORDER

1. A complaint dated 11.09.2018 was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Kuldeep Dudeja against the promoters M/s Shree Vardhman Infra Heights Private Limited and another's, on account of violation of clause 14(a) of the flat buyer's agreement executed on 26.08.2015 for unit no. 1001, tower C in the project "Shree Vardhman Victoria" for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid.*
2. The complaint was filed on 11.09.2018. Notices w. r. t. hearing of the case were issued to the respondents on 04.10.2018, 17.10.2018 and 29.11.2018 for making his appearance. Besides this, a penalty of Rs. 5,000/- was imposed on 17.10.2018 and a penalty of Rs. 10,000/- was imposed on 29.11.2018. However, despite due and proper service of notices, the respondent did not appear before the authority despite giving him due opportunities as stated



above. From the conduct of the respondents it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint

3. Since the flat buyer's agreement has been executed on 26.08.2015, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

4. The particulars of the complaint are as under: -

1.	Name and location of the project	"Shree Vardhman Victoria" in sector 70, Gurugram
2.	Unit no.	1001, tower C



3.	Project area	10.9687 acres
4.	Unit area	1350 sq. ft.
5.	Registered/ not registered	Registered (70 of 2017)
6.	Revised date of completion as per RERA registration certificate	31.12.2020
7.	DTCP license	103 of 2010
8.	Date of booking	22.12.2012
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10.	Basic sale price	Rs. 72,63,000/-
11.	Total sale consideration	Rs. 79,43,000/-
12.	Total amount paid by the complainant	Rs. 70,96,912/-
13.	Payment plan	Construction linked plan
14.	Date of delivery of possession Clause 14(a) – 40 months from commencement of construction + 6 months grace period	08.09.2017 as per statement of complainant Note: date of commencement of construction is not available on record
15.	Delay of number of months/ years	1 year 5 months and 19 days
16.	Penalty clause as per flat buyer's agreement dated 30.05.2013	Clause 14(b)- Rs. 107.64 per sq. mtr. or Rs. 10/- per sq. ft. per month



5. As per the details provided above, which have been checked as per record of the case file, a flat buyer's agreement is available on record for unit no. 1001, tower C according to which the possession of the aforesaid unit was to be

delivered within 40 months of commencement of construction including 6 months grace period, i.e. by **08.09.2017**. The promoters have failed to deliver the possession of the said unit to the complainant. Therefore, the promoters have not fulfilled his committed liability as on date.

6. Thereafter, again notice was send to respondents but despite service of notice the respondents neither appeared nor file their reply to the authority and complaint. As the respondents have failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore, case is being proceeded ex-parte against the respondents.



Facts of the complaint

5. The complainant submitted that respondent no.1 is a private limited company duly incorporated under the provisions of the companies act, having its registered office at 302, third

floor, Indraprakash Building 21, Barakhamba Road, New Delhi-110024.

6. The complainant submitted that respondent no. 2 to 6 are the directors of the respondent no.1 and are involved in the day to day working, decision making and functioning of respondent no.1.

7. The complainant submitted that "Shree Vardhman Victoria", is a residential group housing project being developed by the respondents, on a parcel of land admeasuring 10.9687 acres situated at Village Badshahpur, Sector 70, Gurugram, Haryana. The project was launched 2012 and the respondents gave advertisement in newspapers as well as through their channel partners and showed a rosy pictures about the project.

8. The complainant submitted that in May 2012, the respondents and their representatives approached the complainant and marketed their project stating that they are the most reputed builders in Gurgaon and that they had all the requisite approvals for the project and promised that the



project shall be completed and possession given within 40 months with all the facilities and amenities such as club house, play courts, swimming pool etc.

9. The complainant submitted that after much delay on the part of the respondents, flat buyer agreement was executed by and between the complainant and respondents on 25.12.2012 for the unit no 706 on seventh floor in tower no. H having super area admeasuring 1300 sq. ft.
10. The complainant submitted that since the respondents were not able to make any progress at all in the construction of the flat, **the respondents transferred the allotment of the complainant from apartment H-706 to C-1001.** Thus, residential flat bearing no. 1001 in tower no. C, having an approximate super area of 1350 sq. ft was allotted to the complainant for a base price of Rs 72,63,000 (Rupees seventy three lakh sixty three thousand) at the rate of Rs 5380 per sq. ft.
11. The complainant submitted that the complainant at the time of transfer was promised that the timeline for possession and



all the terms would be the same as the original agreement dated 25.12.2012. However, to the utter shock and surprise of the complainant the respondents sent a fresh flat buyer agreement and the date of agreement on the same was 26.08.2015.

12. That despite the objections by the complainant the respondents forced the complainant to enter into a fresh flat buyer agreement for the same. Since the complainant had already given all his hard earned life earnings to the respondents for the flat and was in need for a flat the complainant was forced to sign the new agreement dated 26.08.2015.

13. The complainant submitted that at the time of the fresh flat buyer agreement the complainant had already paid the respondents a sum of INR 36,35,986 (thirty six lakh thirty five thousand nine hundred and eighty six), which is more than 50% of the consideration of the flat. The complainant had been given a construction linked payment plan but still a significant amount was taken from the complainant at the first instance itself.



14. The complainant submitted that the respondents replied vide email dated 31.08.2015 informing the complainant that the construction of the flat had commenced on 07.05.2014 and the project would be handed over in 40 months as per clause 14(a) of the builder buyer agreement dated 26.08.2015. Thus as per the respondents own admission and the flat buyer's agreement the possession was to be handed over on 08.09.2017. The copy of the complainant email, dated 31.08.2018, and the respondents reply, dated 31.08.2018, are annexed herewith as **ANNEXURE C-5 (Colly)**.

15. The complainant submitted that a tripartite agreement, dated 24.09.2015, was executed between the complainant, the respondents and the State Bank of India for the loan. It is pertinent to note that as per clause 14 of the tripartite agreement the respondents had assured SBI as well that the construction would be completed as per the schedule and as per the sanctioned plans.

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to see that there was no progress at work at site. When the complainant inquired regarding the date of possession the respondents did not give any concrete response. Thereafter, the complainant vide email dated 21.08.2017 requested the respondents to provide the work completion schedule and the exact date of possession since as per the agreement the possession was to be handed over by 08.09.2017

17. The complainant submitted that the respondents have not only been illegally sitting over the hard earned money of the complainant since 2012 at zero percent interest but moreover the respondent have also diverted the funds taken from the complainant for the project. This is also brought out from the fact that the respondents till date have not refunded the money of the complainant despite repeated request. That this hon'ble authority ought to inquire the diversion of funds by the respondents and take action against the respondents for the same.

18. The complainant submitted that the date of completion of the project and offer of possession of the flat as per the respondents own admission and the builder buyer agreement



was 08.09.2017. However, the respondents have failed to give the possession by the said date and therefore are liable to refund the money paid by the complainant at the rate of 24% interest from the date of payment of the respective amount till the date of actual refund.

19. The complainant submitted that the cause of action for filing the present complaint first arose on 08.09.2017 i.e the date of giving possession as per the agreement. It is further arose on 11.01.2018 and 16.01.2018 when the complainant requested the respondents for refund of the amounts paid alongwith interest. That the cause of action in the present is a continuing and subsisting one since not only have the respondents failed to give possession on time but moreover they have failed to refund the amounts paid alongwith interest.

20. Issues raised by the complainant

- i. Whether or not the respondents failed to perform upon the said agreement and could not handover the



possession of flat within the stipulated time period mentioned in the agreement dated 26.08.2015?

- ii. Whether the respondents despite repeated requests from the complainant failed to refund the amounts paid alongwith interest?
- iii. Whether the respondents have also illegally charged the complainant Rs.1,50,000/- for an open parking space?
- iv. Whether the respondents company are liable to be penalized for the wrong and false advertisement u/s 12 of RERA Act, 2016?
- v. Whether or not the respondents company is in defiance of the provision u/s 13 of the RERA 2016 by taking more than 10% as deposit/advance money before the signing of the agreement in terms of the cost of the flat of the complainant?
- vi. Whether or not the respondents company are liable to be penalised and the complainant compensated for non-adherence to project specification in terms of the quality of the material used and non-intimation/approval from



the allottee for alteration/addition the sanctioned plans with respect to the projects under section 14 RERA 2016?

21. Relief sought

- i. That this hon'ble authority be pleased to direct the respondents to refund the amounts paid to them by the complainant alongwith interest at the rate of 24% per annum from the date of each payment till the date of actual refund.
- ii. That this hon'ble authority be pleased to direct the respondents to pay the complainant an amount of INR 1,00,000 as penalty for contravention of the provisions of the RERA Act,2016 and the HARERA, Rules,2017.
- iii. That this hon'ble authority be pleased to pass any other order/direction it deems fit looking at the facts and circumstances of the case.



Determination of issues

22. In respect to the **first issue** raised by the complainant, the authority came across that as per clause 14(a) of flat buyer's

agreement, the possession of the said apartment was to be handed over within 40 months from commencement of construction + 6 months grace period. Therefore, the due date of possession comes out to be **08.09.2017** and the possession has been delayed by **1 years 5 months and 19 days** till the date of decision. The delay compensation payable by the respondents as per clause 14(b)- Rs. 107.64 per sq. mtr. or Rs. 10/- per sq. ft. per month of delay of the unit for the period of delay beyond 40 + 6 months as per clause 14(a) of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)***,

wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."



Therefore, under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondents u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoters on the due date of possession i.e. **08.09.2017** upto the date of offer of possession.

23. With respect to the **second issue** raised by the complainant, as per the RERA registration certificate, the revised date for completion of the project as undertaken by the respondent is 31.12.2020. Thus, keeping in view the intervening circumstances and the interest of the other allottees, refund of principal amount paid by the complainant cannot be granted. However, the complainant is entitled to the delayed possession interest at the prescribed rate of 10.74% per annum from the due date of possession till the actual handing over of possession failing which the complainant is entitled to seek refund of the amount.



24. With respect to the **third issue** raised by the complainant, as per section 2(n) open parking spaces comes in the common areas hence, respondents cannot sell the open parking space. Therefore, respondents have illegal charge and sold the open parking spaces to the complainant.

25. With respect to the **second issue** raised by the complainant, the authority grants grace period to every respondent company as a matter of practice as it is mentioned in the agreement signed by both the parties and thus the complainant cannot drift away from this fact when earlier he signed the agreement after going through all the terms and conditions therein. Thus, the authority is justified in granting grace period as mentioned in the agreement.

26. With respect to the **fourth issue** raised by the complainant, due to lack of sufficient documentary proof this issue cannot be decided and remains unascertained.

27. With respect to the **fifth and sixth issues**, the agreement was executed prior to coming in force of RERA, 2016. Thus, section 13 and section 14 cannot be applied retrospectively.



Findings of the authority

28. **Jurisdiction of the authority-** The project “Shree Vardhman Victoria” is located in sector 70, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.
29. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. 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.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



30. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
31. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.
32. As required by the authority, the respondents have to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.
33. Such notices were issued to the respondents on 04.10.2018, 17.10.2018 and 29.11.2018.
34. As the respondents have failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the



facts adduced by the complainant in its pleading. To prove the communication of date of hearing to respondent, it is sufficient to prove that such information was available on the website and an electronic communication (e-mail) was served on the respondents.

35. Complaint was filed on 11.09.2018. Notice w.r.t. reply to the complaint were issued to the respondent on 04.10.2018, 17.10.2018 and 29.11.2018. Beside this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 17.10.2018 and on 29.11.2018 for non-filing of reply even after service of notices.
36. A final notice dated 18.02.2019 by way of email was sent to both the parties through email to appear on 27.02.2019 before the authority by way of making personal appearance by adducing and producing any material particulars in the matter.
37. Despite calling the matter twice, none has appeared on behalf of the respondent nor any communication has been received.



Under the circumstances, the authority has no option but to proceed ex-parte against the respondents.

38. As per clause 14 (a) of the flat buyer's agreement dated 26.08.2015 for unit no. 1001, tower-C, in the project "Shree Vardhman Victoria", Sector-70, Gurugram, possession was to be handed over to the complainant within a period of 40 months + 6 months grace period. It was a construction linked plan. Vide email dated 06.09.2017, the respondent has informed the complainant that they will offer the possession in April, 2018 as per flat buyer's agreement. However, the respondent has not delivered the unit till date. Complainant has already paid Rs. 70,96,912/- to the respondent against total sale consideration of Rs.79,43,000/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. April, 2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of possession. In case the respondent fails to deliver the possession of the unit on the revised due date, the



complainant shall be entitled to seek refund of the deposited amount alongwith prescribed rate of interest.

Decision and directions of the authority

39. 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 respondent:

- (i) The respondents are directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. April, 2018 till the offer of possession.
- (ii) The respondents are directed to pay interest accrued on account of delay in handing over of possession to the complainant within 90 days from the date of this order.
- (iii) Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid before 10th of every subsequent month.



(iv) Respondents are also directed to deposit the amount of Rs.5,000/- and Rs.10,000/- as penalty imposed with authority within a period of 30 days.

40. The complaint is disposed of accordingly.

41. The order is pronounced.

42. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 27.02.2019

Judgement uploaded on 26.03.2019

HARERA
GURUGRAM

