



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. - 476 of 2022

Date of Institution: - 01.04.2022

Date of Decision: - 07.09.2022

Neelam Devi w/o late Sh. Darshan Singh r/o H.No 204, Sector-5, Urban Estate,
Kurukshetra-132118

....COMPLAINANT

VERSUS

Shree Vardhman Township Pvt. Ltd., office 301, 3rd Floor, Indraprakash
Building, 21-Barakhamba Road, New Delhi-110001

....RESPONDENT

Hearing:- 6th

Present:-Mr. Ripudaman Singh Advocate, Counsel for the complainant
through video conferencing
Mr. Sumit Kumar Advocate, Counsel for the respondent through
video conferencing

Sarla Gupta

JUDGEMENT:-

The brief facts culminating into the institution of the present complaint are:

1. In January 2012, the complainant had booked a residential plot measuring 300 sq. yards in Shree Vardhman City, Village Umri, Sector-30, G.T. Road, Kurukshetra, a project of respondent. At the time of booking, the complainant had paid an amount of ₹4,00,000/- to the respondent vide cheque dated 30.01.2012. The basic sale consideration of the plot was fixed as ₹26,97,000/-. The respondent had assured the complainant that he would provide all the facilities specified in the brochure and that it had already received all the approvals for the development of the project. Payment plan was provided to the complainant. As per payment plan, respondent vide its letter dated 30.04.2012 asked the complainant to deposit a sum of ₹2,74,250/- in order to complete 25% of basic sale price. The said 25% of basic sale price was due at the time of allotment of plot. The complainant paid the said amount of ₹2,74,250/- to the respondent vide cheque dated 10.05.2012. Vide letter dated 30.05.2012, the respondent had allotted a residential plot bearing no.D-005 measuring 300 sq. yards to the complainant in the project Shree Vardhaman City. Vide letter dated 21.07.2012, the respondent raised demand of ₹5,09,700/- i.e. 10% of the basic sale price and 25% of EDC & IDC. The said amount was due within 3 months from the date of allotment, as per the payment plan. The said amount was paid by the complainant vide cheque dated 12.08.2012. Vide letter dated 25.10.2012, respondent again demanded a sum of ₹5,77,125/- by

including 10% of basic sale price, 25% of EDC & IDC and 50% of preferential location charges (PLC). The complainant duly paid the said amount vide cheque dated 17.11.2012. Thus by 17.11.2012, the complainant had already paid an amount of ₹17,61,075/- to the respondent. After getting the substantial amount of sale consideration from the complainant, the respondent vide its letter dated 03.10.2012 informed the complainant that agreement with respect to said plot was ready and asked the complainant to visit the office of respondent for preparing the documents. Agreement in respect to said plot was executed between the parties on 11.12.2012. The basic sale consideration of ₹26,97,000/- was inclusive of internal development charges. Apart from this, the complainant was required to pay preferential location charges @ ₹449.50/- per sq. yard and EDC & infrastructure development charges @ ₹3,200/- per sq. yard. It has been mentioned in plot buyer agreement that the complainant had paid a sum of ₹17,61,075/- on the date of signing of the agreement. The complainant had opted for development linked plan i.e. payment plan (B). As per clause 5(a) of the said agreement, the respondent was bound to handover the possession of the said plot within the period of 36 months from the date of execution of plot buyer agreement. The stipulated date for handing over the possession of the said plot was fixed as 10.12.2015. After execution of agreement on 11.12.2012, the complainant continued to pay the amount as and when the same was demanded by the respondent. Vide cheque dated 16.02.2013, the complainant had paid an amount of ₹5,77,125/- to the respondent. Vide demand letter dated 10.10.2013,

the respondent further demanded an amount of ₹2,86,368/- on the pretext of start of road on the plot facing. The complainant paid an amount of ₹2,86,636/- vide cheque dated 29.10.2013 and cash ₹2,176/- on 06.04.2014 towards delay payment interest. The respondent further demanded an amount of ₹5,09,700/- vide demand letter dated 07.06.2014 which was due on the start of sewerage line on plot facing. The said amount was paid by the complainant vide two cheques dated both 25.06.2014. Vide demand letter dated 07.07.2014, the respondent further demanded an amount of ₹2,69,700/- which was due on the start of waterline on plot facing. The said amount was paid by the complainant vide cheque dated 27.07.2014. Till 27.07.2014, the complainant had paid total amount of ₹34,03,968/-. The complainant had never made any default in making the payments. The respondent has failed to deliver possession of residential plot within the time prescribed in the agreement. Complainant had visited the office of respondent a number of times to inquire about the exact time within which the possession would be handed over. The respondent kept on assuring the complainant that the possession of plot would be delivered shortly. The complainant had no option but to wait for the respondent to offer possession. Vide e-mail dated 29.06.2019, the son of the complainant asked the respondent about current status of delivery of possession of the plot and the compensation to be paid for causing delay in handing over the possession of the plot. The respondent did not reply to the said mail. Vide letter dated 16.06.2021, the respondent had offered the possession of the plot to the complainant along

with statement of account. The respondent acknowledged the receipt of ₹34,03,968/- from the complainant. But the respondent arbitrarily included various additional charges in the said statement of account. The respondent had also started demanding ₹20,000/- towards sewerage connection charges, ₹20,000/- towards water connection charges, ₹20,000/- towards electricity connection charges and ₹25,000/- for dual electric meter charges. The respondent has been demanding the charges towards the aforementioned heads much more than the amount charged by respective Government departments. The said charges are not payable by the complainant till the respondent discloses the actual charges to be paid to the respective Government departments under the said heads. The respondent had enhanced EDC and IDC from ₹3,200/- per sq. yard to ₹4,060/- per sq. yard without enclosing copy showing the enhancement made by the Government. The complainant was not provided copy of notification vide which the EDC and IDC were enhanced. The respondent also demanded IFMS security of ₹30,002/- and maintenance charges of ₹9,000/- without first handing over the possession of the plot. The maintenance is payable only after handing over possession of the plot. Further the respondent did not adjust any compensation from the amount demanded by it in its final statement of account. The son of the complainant vide e-mail dated 21.07.2021 also asked the respondent about the compensation for causing delay in handing over the possession, the respondent did not reply to the said mail. Since the respondent has failed to handover actual physical possession of the

residential plot till date after getting the completion certificate, it is liable to pay compensation to the complainant for causing delay in handing over the possession and providing all the facilities mentioned in the brochure. The respondent has indulged into unfair trade practices by demanding ₹20,000/- towards sewerage connection charges, ₹20,000/- towards water connection charges, ₹20,000/- towards electricity connection charges and ₹25,000/- for dual electric meter charges. The complainant is liable to pay actual charges charged by respective Government departments. The complainant is not liable to pay enhanced EDC and IDC to the respondent as no justification has been provided to the complainant for enhancing the same. The complainant has suffered a lot of financial, physical and mental hardship due to delay in delivery of possession and due to demand of arbitrary charges. Till date, the complainant has not been able to get possession of the plot and therefore she is not able to construct the house on the said plot. The complainant has to engage counsel for filing complaint before Hon'ble Authority and the present complaint before Adjudicating Officer. The complainant has paid around ₹1,00,000/- to the advocates for filing cases. There has been exorbitant increase in the cost of construction, which has gone almost double since the year 2015. The respondent was supposed to deliver the possession of the plot in the year 2015 but it has failed to deliver the same till date. Had the possession been delivered by the respondent in the year 2015, the complainant would have started construction in the year 2015 itself. The complainant is entitled to compensation

to the tune of ₹20,00,000/- on account of physical and mental harassment, ₹1,00,000/- as litigation expenses and escalation in cost of construction. The complainant had filed Complaint no.777 of 2021 before Hon'ble Authority claiming possession along with interest and compensation. In view of judgment of Hon'ble Apex court in M/s Newtech Promoters and Developers Pvt. Ltd. v/s State of U.P., the power to grant compensation vests with Adjudicating Officer, hence the complaint is being filed before this Court for claiming compensation. The complainant would withdraw the prayer for compensation in earlier complaint bearing no.777 of 2021.

2. Upon notice, the respondent had appeared through counsel and filed reply taking preliminary objections that the present complaint is not maintainable as per Section 31(2) of RERA Act and deserves to be dismissed as the complainant has not verified the said complaint as per the prescribed format. The complainant has already filed complaint before Hon'ble Real Estate Regulatory Authority Panchkula for compensation and delayed interest. If the complaint for compensation is already pending before Hon'ble Authority, the second complaint for the same cause of action cannot be entertained. In the first complaint, the complainant has prayed for interest for delayed delivery of possession. The complainant cannot seek remedy of compensation before Adjudicating Officer and interest on delayed delivery of possession before Hon'ble Authority. It would put extra burden on the developer to pay such compensation to the complainant. Surprisingly the complainant in the first

complaint has prayed for compensation of ₹5,00,000/- and in the present complaint he has increased compensation four times claiming compensation to the tune of ₹20,00,000/-. There is no document to show as to how the complainant has suffered loss of ₹20,00,000/- due to delay in delivery of possession. Vide letter dated 16.06.2021 respondent had offered possession of the plot to the complainant. Instead of taking possession of the plot, the complainant has filed second complaint on the same cause of action. The complaint has been filed intentionally on false ground to avoid taking possession. The complainant has not approached the Court with clean hands and has attempted to mislead this Court by putting incorrect, incomplete and distorted version of the facts and circumstances and on this ground alone, the complainant does not deserve any indulgence from this Court and the present complaint deserves to be dismissed. It is apparent from the facts that it is the complainant only who herself had breached her contractual obligation and therefore she is not entitled to invoke jurisdiction of this Court and does not deserve any relief. In the present complaint, the complainant has raised several issues which cannot be decided by way of the present complaint in summary proceedings and requires extensive evidence to be led by both the parties, examination and cross-examination of the witness for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Court and can only be adjudicated by learned Civil Court. Claims have been made in a manner unknown to the common law of contract and are

specifically contrary to the text. The complainant is not entitled to any compensation. Rather respondent is legally entitled to forfeit the money paid by the complainant as per the said terms and conditions. The complainant seeks to wriggle out of the binding terms of the buyer's agreement. The timelines in the agreement were agreed between the parties always keeping into consideration the normal and reasonable prevailing circumstances and conditions. It was agreed and understood between the parties that in case, there will occur any unforeseen or uncontrolled circumstances and conditions beyond the reach and control of the respondent, the timelines might not be adhered to. It was also in tune with the force majeure conditions stipulated in the agreement. Complainant cannot be allowed to discard the terms and conditions of a written contract duly entered into between the complainant and the respondent. Before submitting application, the complainant understood the terms mentioned therein and in token of acceptance, signed the said application form and the agreement out of her free will and accord and without any undue influence. The complainant cannot be permitted to rely upon certain clauses and deny other clauses in the same very agreement alleging the same to be oppressive and not being binding upon her. If the stand of the complainant is accepted, the written contract will lose its sanctity and will be considered as waste paper having no binding power as per law. The complainant opted for Plan B development linked payment plan and the respondent accordingly raised bills for payment to the complainant. Due to intervening circumstances and force majeure conditions, the schedule of

handing over possession was disrupted. The relief sought by complainant appears to be misconceived and erroneous. The complainant is estopped from raising the plea being illegal, misconceived and erroneous. The complaint filed by the complainant is abuse and misuse of process of law and the relief claimed are liable to be dismissed. No relief is liable to be granted to the complainant.

3. Preliminary submissions have been made by the respondent in written statement that the plots were to be allotted as per Deen Dayal Jan Awas Yojna – Affordable Plotted Housing Policy 2016. The responsibility of the respondent to offer possession of the plot was subject to force majeure conditions beyond the control of the respondent. The force majeure conditions also included delay in receiving necessary permissions/sanctions approval from Government Authorities. Due to incorrect zoning plan, the respondent was unable to seek permission and approvals which were imperative for the development of the project. Till the time, the respondent got the corrected zoning plan from the department, the respondent was unable to make and effect sales, raise funds because on the demarcation plan the numeric of the plot number was different and on the zoning plan, it was different. It resulted into standstill of the said project and its development. The department took four years to issue the corrected zoning plan which had far reaching impact on the development of the project. By the time, the respondent received the corrected zoning plan from Town and Country Planning Department, the license of the project had expired. The respondent applied to Town and Country Planning

Department for renewal of license along with all requisites. The department took more than two years to renew the license. The respondent had been coordinating with the department seeking necessary information to enable the respondent to get the renewal of license. The respondent had been continuously following up with the department. It was also in September 2018 that the license of the respondent was renewed. With coming into force of RERA Act 2016, it had become mandatory to get RERA registration for each and every developer. On 31.07.2017, the respondent had applied with RERA Authority for registration of said project with all documents but without renewed license. Due to non-submission of renewed licence, the application of respondent seeking RERA registration was rejected, which was finally granted in September 2019. The complainant is bound by the terms and conditions of said agreement. He cannot seek any relief which is in conflict with the terms and conditions of said agreement. The complainant was also to comply with the terms and conditions and to make payment of the instalment as per the agreed payment schedule though the date of payment was specifically made the essence of the agreement. As the complainant had intentionally and utterly failed to make the payments of the instalments on time, complainant is not entitled to claim compensation. The respondent has not committed any default or any breach in any of the provisions of the agreement. The delay caused due to the late approval shall be considered as zero period and the respondent is not liable to pay any delayed interest during this period. The respondent after completing the development work has issued

offer of possession vide letter dated 16.06.2021 to the complainant. Instead of clearing the due amount, the complainant has filed the present complaint on false and frivolous grounds and one another complaint on the same ground pending before Hon'ble Authority.

4. While filing reply on merits, it has been stated by the respondent that as per clause (iv) of the agreement, it is clear that EDC and IDC charges are not included in the basic price of the plot. No fixed date was provided in the said agreement. The time period provided was a tentative time period subject to various conditions such as timely payments by the applicants of the project and also subjected to force majeure conditions including delays in receiving necessary permissions/sanctions and approvals from Government Authorities beyond the control of respondent. All the demands towards payment were raised as per terms and conditions of agreement. The respondent is not liable for interest or any compensation on delayed period due to unforeseen circumstances. EDC and IDC were the charges to be paid to the Government. The complainant had agreed to pay the final amount at the time of final call and notice. Complainant was clearly explained about preferential location even before signing the agreement and releasing the payment. The complainant had agreed to the same. Now at the time of taking possession of plot, the complainant cannot say that the demands are illegal or arbitrary. The amount mentioned in the possession letter has been raised as per agreed terms and conditions of the agreement. Detailed account statement has been provided to

the complainant at the time of offer of possession. It is the complainant herself who is not abiding the terms and conditions of agreement signed between the parties bilaterally. Previously instituted complaint bearing no.777 of 2021 claiming possession along with interest and compensation, having same cause of action and between the same parties is pending adjudication before Hon'ble Authority. The present complaint is hit by principles of sub judice and is liable to be dismissed.

5. No rejoinder was filed by the complainant.

6. Arguments of both learned counsel for the parties have been heard carefully along with meticulous examination of the records of the case.

7. It is not disputed that the complainant Smt. Neelam Devi had booked a residential plot measuring 300 sq. yards in project of the respondent at Shree Vardhman City, Village Umri, Sector-30, G.T. Road, Kurukshetra. The basic sale price of the plot was ₹26,97,000/-. At the time of booking, the complainant had paid an amount of ₹4,00,000/- vide cheque dated 30.01.2012. Residential plot no. D-005 measuring 300 sq. yards was allotted to the complainant vide allotment letter dated 30.05.2012. In pursuance to demands raised by the respondent at different times, the complainant had paid an amount of ₹4,00,000/- on 30.01.2012, ₹2,74,250/- on 10.05.2012, ₹5,09,700/- on 12.08.2012, ₹5,77,125/- on 17.11.2012, ₹5,77,125/- on 16.02.2013, ₹2,86,368/- on 29.10.2013/-, ₹1,59,700/- on 25.06.2014, ₹3,50,000/- on 25.06.2014 and ₹2,69,700/- on 27.07.2014 which comes to ₹34,09,968/-. Plot buyer agreement

was executed between the parties on 11.12.2012. As per clause 5(a) of the said agreement, the possession of the plot was to be delivered within 36 months from the date of execution of plot buyer agreement. The stipulated date for handing over possession comes to 10.12.2015. The total payment made by the complainant comes to ₹34,03,968/-, which has been admitted by the respondent. It is the argument of learned counsel for the complainant that till date the respondent has not offered possession of the plot to the complainant. On the other hand, it is the argument of learned counsel for the respondent that the offer of possession was made on 16.06.2021. Along with offer of possession, statement of account showing balance amount to be paid by the complainant was also attached. He has further argued that instead of taking possession of the plot, the complainant has filed the present complaint. After examining the schedule of payment made by the complainant, it transpires that a sum of ₹9,60,000/- has been paid by the complainant as EDC & IDC and ₹16,668 towards service tax on other charges which works out to ₹9,76,668/-. This amount has to be deducted out of the total amount paid by the complainant, which was in possession of the respondent. The amount of EDC and IDC and the taxes was to be deposited by the respondent with various departments. It is admitted by the complainant that Complaint no.777 of 2021 seeking possession along with interest was filed by her which was pending before Hon'ble Authority. Vide order dated 12.07.2022 said Complaint no.777 of 2021 has been disposed of by Hon'ble Authority. In para no.3 of said order, it has been

observed by Hon'ble Authority that the complainant was ready to take possession of the plot. It has also been observed by Hon'ble Authority that offer of possession made on 16.06.2021 by the respondent to the complainant was valid offer. In the present case, it is proved on the record that a sum of ₹24,27,300/- (₹34,03,968/- - ₹9,76,668/-) was being utilized by the respondent unlawfully even after 10.12.2015 when the possession was to be delivered till 16.06.2021 when the offer of possession was made by the respondent to the complainant. Though it was the argument of learned counsel for complainant that it was not a valid offer as a number of demands were also raised by the respondent from the complainant, yet it is pertinent to mention here that while disposing of Complaint no.777 of 2021 titled as Neelam Devi vs Shree Vardhman Township Pvt. Ltd. on 12.07.2022, Hon'ble Authority has observed that it was a valid offer and interest has been paid by Hon'ble Authority to the complainant taking the said date as valid offer of possession. In the present case also the offer of possession is being treated as valid offer. The complainant remained deprived of use of said money of ₹24,27,300/- from 11.12.2015 to 16.06.2021, it amount to causing wrongful loss to the complainant. The loss caused to the complainant is quantifiable. Hence the complainant becomes entitled to compensation on amount of ₹24,27,300/- from the date when possession was to be delivered to the complainant i.e. 11.12.2015 till 16.06.2021, when valid offer of possession was made by the respondent to the complainant.

8. Though objection has been taken by learned counsel for respondent that the complaint is not in prescribed format, but learned counsel for the respondent has failed to point out as to how it is not in prescribed format.

9. As per observations of Hon'ble Apex Court in Civil Appeal No.6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. v/s DLF Southern Homes Pvt Ltd (now known as BEGUM OMR Homes Pvt. Ltd.) and Ors., it has been observed that for default of the promoter, compensation @ 6% p.a. is to be paid to the allottee/home buyer.

10. The calculation of compensation is tabulated below:

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹24,27,300	11.12.2015 to 16.06.2021	6%	₹8,04,002/-

11. The complainant is also awarded ₹25,000/- as cost of litigation.

12. The total compensation comes to ₹8,04,002/-+ ₹25,000 (cost of litigation) = ₹8,29,002/- (Rupees Eight Lakh Twenty Nine Thousand and Two only).

13. Sequel to aforesaid observations, the present complaint is partly allowed. The respondent is directed to pay an amount of ₹8,29,002/- (Rupees Eight Lakh Twenty Nine Thousand and Two only) within 90 days to the

complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

14. The present complaint stands **disposed of**. File be consigned to record room after uploading of this order on the website of the Authority.

07.09.2022

Sarita Gupta

(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 17 pages and all the pages have been checked and signed by me.

Sarita Gupta

(DR. SARITA GUPTA)
ADJUDICATING OFFICER



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