

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

Complaint no.:	1211 of 2021
Date of filing complaint:	05.03.2021
First date of hearing:	18.03.2021
Date of decision:	13.09.2022

Ramesh Kumar s/o Sh. Hukum Chand R/O: - House No. 2, Gali No. A-1, Ashok Vihar Ext. III, Gurugram	Complainant
Versus	
M/s Shree Vardhman Infraheights Private Limited (Through its Managing Director and other directors) Regd. Office at: 302, 3 rd Floor, Indraprastha Building, 21, Barakhamba Road, New Delhi - 110001	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Shri. Gaurav Bhardwaj	Complainant
Shri. Gaurav Rawat	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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

- The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Heads	Information
1.	Project name and location	"Shree Vardhman Victoria ", sector - 70, Gurugram
2.	Nature of the project	Residential- group housing colony
3.	a) DTCP license no.	103 of 2010 DATED 30.11.2010
	b) License valid up to	29.11.2020
	c) Name of the licensee	Santur Infrastructures Pvt. Ltd.
	d) area	10.9687 acres
4.	RERA registered/not registered	Registered Registered vide no. 70 of 2017 dated 18.08.2017 Valid upto 31.12.2020
5.	Unit no.	Tower no. A-401 (Page 17 of complaint)
6.	Unit area admeasuring	1950 sq. ft. (Page 17 of complaint)
7.	Allotment letter	25.12.2012

		(Page 17 of complaint)
8.	Date of buyer agreement	Not executed
9.	Possession clause	14(a) Possession <i>The construction of the flat is likely to be completed within a period of forty months (40) 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.</i> (Emphasis Supplied) (Taken from similar case file)
10.	Date of commencement of construction	Not placed on record
11.	Due date of possession	25.10.2016 25.04.2016 + 6 months of grace period = 25.10.2016 (Calculated from date of allotment i.e., 25.12.2012 as date of commencement of construction is not available in the file.)
12.	Total sale consideration	Rs. 1,03,15,500/- (Page 17 of reply)
13.	Amount paid by the complainant	Rs. 57,26,850/- (Page 5 of complaint)
14.	Occupation certificate	Obtained
15.	Offer of possession	Not offered
16.	Delay in handing over the possession till date of filing	4 years 4 months 8 days

complaint

B. Facts of the complaint

3. That a project by the name of "Shree Vardhman Victoria" situated in Sector -70, Gurugram (Haryana) was being developed by the respondent-builder. The complainant coming to know about the same and after being presented a rosy picture booked a unit in it by paying Rs. 10 lakhs on 23.06.2012.
4. That on the basis of booking made by the complainant, the respondent allotted a unit in the above-mentioned project bearing no. A-401 measuring 1950 sq. ft. vide letter dated 25.12.2012 for a total sale consideration of Rs. 103,15,500/-.
5. That after allotment of the unit, the complainant requested the respondent for execution of buyer's agreement in his favour. But the respondent kept on raising demands against the allotted unit and did not come forward for execution of buyer's agreement.
6. That the respondent-builder failed to execute the buyer's agreement of the allotted unit in favour of the complainant and threatened to cancel his allotment in case of demand raised against the unit were not fulfilled. So, in such a situation the complainant was left with no alternative but to make payments as per the demands with a hope that the project would be completed, and he would be offered possession as per the time schedule.
7. That till date, the complainant paid a sum of Rs. 57,26,850/- against the demands raised by the respondent as per the payment plan.
8. That during the period of the year 2016-2017, the complainant went to the site to see about the progress of the project. But he was shocked to see that the project was nowhere near completion and only few laborers were

working there. On seeing this, the complainant contacted the respondent and who assured him of the completion of project within a year and handing over possession of the allotted unit. Since the complainant was in need of accommodation and there was delay in completion of the project, so, he requested the respondent for refund of the paid-up amount but with no results.

9. It is further the case of complainant that on 01.07.2019, he again approached the respondent to see the progress of the project and was shocked to know that the same was nowhere near completion. So, he demanded refund of the paid-up amount from the respondent. But instead of refund, the respondent sent a letter of cancellation of the allotted unit vide letter dated 19.07.2019. The complainant waited for his dream house for a period of 9 years from the date of booking and instead of receiving offer of possession of the allotted unit was given letter of cancellation, thereby cheating him of his hard-earned money.
10. That since the respondent failed to complete the project within the time schedule and offer possession of the allotted unit by the due date, so the claimant sought refund of the paid-up amount on the grounds mentioned earlier.

C. Relief Sought: -

The complainant has sought the falling relief from the respondent:

- i. To refund the entire amount of Rs. 57,26,850/- along with compound interest.
- ii. To pay the compensation.

11. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

The respondent- builder by way of reply made the following submissions:

12. That the authority has no jurisdiction to entertain and proceed with the complaint. So, the complaint filed by the allottee is not maintainable.
13. That the flat-buyer agreement was executed between the parties prior to coming into operation the Act of 2016. So, the section 18 of the Act cannot be made applicable to the case in hand and the complaint can't be adjudicated under the provisions of Act of 2016. Moreover, the project is already under stress due to various reasons beyond the control of respondent-builder. So, if any order of refund is passed, then the same would cause a irreparable loss and financial hardship to the promoter and opening flood gate for such type of orders and sound the death knell for the project.
14. It was further pleaded that the construction of the first pace of the project consisting of towers A to C H & I has been completed and an application for getting occupation certificate has already been filed with the competent authority. However, the project could not be completed due to the reasons beyond the control of the promoter who has to fought against all the odds.

15. That due to various orders passed by the statutory authorities, the construction of the project could not be carried out in a desired manner. Due to stoppage of construction activities even for small period results in a longer delay as it becomes difficult to rearrange, regather the work force particularly the labour as they move to other places/their villages.
16. It was admitted that the complainant is an allottee of the respondent and who executed flat buyer's agreement with regard the allotted unit with his free will and concerned. It was denied that the complainant was regular in making payments against the allotted unit. Rather he like various other allottees committed default in making timely payments leading to issuance of a number of reminders and ultimately cancelation of the allotted unit.
17. It was denied that there was no construction at the site at the time of alleged visits by the complainant-allottee. Due to various reasons the construction of the project could not be completed resulting, in its delay and delivery of possession. It was pleaded that the complainant failed to make payments as and when demanded and so he is not entitled to seek refund of the paid-up amount after withdrawing from the project.
18. All other averments made in the complaint were denied in toto.
19. Copies of all the relevant do 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 submissions made by the parties.

E. Jurisdiction of the authority:

20. 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

21. 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

22. 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) The promoter shall-

(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.

23. 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.
24. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgements passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357 and 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*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and

interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

25. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Objection regarding force majeure conditions.

26. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project, but all the pleas advanced in this regard are devoid of merit. The subject unit was allotted in the year 2012 and the events taking place such as shortage of labour, supply of raw material and various orders passed by statutory authorities do not have any impact on the project being developed by the respondent and the same are annual features. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned in the said project can be put on hold due to fault of due to some of the allottees, the answer is in the negative. Thus, the promoter respondent cannot be given any leniency on

based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs and the plea advanced in this regard is devoid of merit.

F.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.012.2017 which provides as under:

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under

Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

27. Further in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed as under:-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

28. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective

departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Entitlement of the complainant for refund

G.I To refund the entire amount of Rs. 57,26,850/- alongwith compound with interest.

29. The complainant was allotted unit in the project of respondent named as "Shree Vardhman Victoria" on 07.11.2012 on the basis of application dated 23.06.2012 for a sale consideration of Rs. 1,17,63,000/-. He opted for time linked payment plan as per letter of allotment and paid a sum of Rs. 10,00,000/- as booking on 23.06.2012. Later on, a some of Rs. 10,63,000/- was also paid on 20.12.2012. No buyer's agreement was executed between the parties w.r.t. allotted unit. Despite that the complainant continued to make payments against the allotted unit and paid a total some of Rs. 57,26,850/- upto the year 2015. The due date for completion of the project and offer of possession of the allotted unit as per a similar case of the project comes to 25.10.2016. However, the completion of the project was not going as per schedule and so the complainant stopped making remaining payments. Even he visited the site a number of times but neither the project was near completion, nor the respondent gave any satisfactory reply to the complainant. Ultimately the unit was allegedly cancelled vide letter dated 19.07.2019 issued through Lexjuris, Advocates and Consultants. The respondent-builder raised a plea

that despite a number of reminders sent to the complainant from the year 2016, he failed to make payment of the amount due. Secondly just like the complainant, a number of allottees were defaulters leading to delay in completion of the project. Thirdly, due to force majeure conditions detailed above, the project was delayed, ultimately leading to cancelation of allotment. But all the pleas advanced in this regard are devoid of merit. The complainant was allotted the unit under a time linked payment plan. He deposited about 50 % of the sale consideration upto the year 2015 though the due date for completion of the project and offer of possession of the allotted unit was October 2016. Although he was required to deposit the remaining amount and received reminders but was not obligated to pay the same as there was no progress of the project at the spot. He visited the site earlier in the years 2016-2017 and later on in the year 2019 and there was no progress of construction at the site. So, keeping in view these facts, he wrote a letter to the respondent on 07.10.2020 and no reply to the same was received. But a letter dated 15.09.2021 showing the status of the project was received. Though it was mentioned that the respondent has applied for occupation certificate on 23.02.2021 but the same was not received till the filing of the complaint. Thus, the cancelation of allotment was only a paper transaction as neither any amount after cancelation by retaining 10 % of the earnest money was sent nor the same was received by the complainant from the respondent. Thus, the facts detailed above show that the respondent has no intention

to cancel the allotment of the allotted unit of the complainant and letter dated 19.07.2019 issued by it was never acted upon. So, for all practical purposes, the respondent treated the alleged cancelation only as a formality, not to be acted from and replied to the issues raised by the complainant from time to time. If the cancelation of the allotment had actually been done as alleged, then there was no occasion for the respondent to act upon the correspondence of the complainant and reply to the same. Though the occupation certificate of the project is stated to have been received by the respondent but only after filing of the complaint with the authority seeking refund of the paid-up amount by with dying from the project. Thus, keeping in view, the fact that the allottee-complainant wishes to withdraw from the project and is 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.

30. The due date of possession as per agreement for sale taken from another case as mentioned in the table above is **25.10.2016 and there is delay of 4 years 4 months 8 days on the date of filing of the complaint.**

The occupation certificate/completion certificate of the project where the unit is situated is stated to have been received by the respondent-builder but only after filing of the complaint. The authority is of the view that the

allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration.

The Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others* (supra) observed as under: -

25. 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 he 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 sections 71 & 72 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. 57,26,850 /-** with interest at the rate of 10% (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*.

G.II Compensation: The complainant is claiming compensation under the present relief. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

G. Directions of the Authority:

31. Hence, the Authority hereby passes this order and issues 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 return the amount of Rs. 57,26,850/- deposited by the complainant from each date of deposit till its actual refund along with interest at rate of 10%. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

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.

32. Complaint stands disposed of.
33. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.09.2022

HARERA
GURUGRAM