

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

**Complaint no. : 2508 of 2018**  
**Date of first hearing: 01.08.2019**  
**Date of decision : 06.08.2019**

Mr. Ravinder Kumar Arora  
R/o. H.No. 275, Sector -14, Gurugram

**Complainant**

1. M/s Shree Vardhman Infraheights Pvt. Ltd.
2. Mr. Sandeep Jain
3. Ms. Rishi Gupta
4. Mr. Vivek Kumar Aggarwal
5. Mr. Gautam Chowdhary
6. Mr. Sachin Jain

**Respondents**

Office : 302, 3<sup>rd</sup> floor, Indraprakash  
Building, 21- Barakhamba Road, New  
Delhi.

**CORAM:**

N.K.Goel  
(Former Additional District and Sessions Judge)

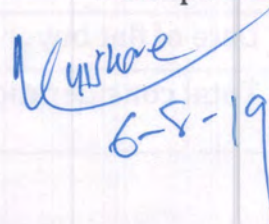
Registrar-cum-Administrative Officer(Petitions)  
(Haryana Real Estate Regulatory Authority, Gurugram)

(Authorised by resolution no.  
HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July  
2019)

**APPEARANCE:**

Shri Rahul Yadav

Advocate for the complainant  
Respondent is ex parte

  
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**EXPARTE ORDER**

1. The present complaint relates to a flat buyer agreement dated 02.07.2014 executed between the original allottee Smt. Prerna Garg and the respondent no.1 promoter, registered with this Authority vide registration no. 70 of 2017 dated 18.08.2017, in respect of flat measuring 1300 sq. ft. super area consisting of one covered parking bearing no. 103, Tower C in the project, namely, "Shree Vardhman Victoria" situated in Sector 70, Gurugram, (in short, the subject flat) for a total sale consideration of Rs. 69,94,000/- and raised to Rs. 79,08,942/- (as per complaint) and the complainant opted for construction linked payment plan. Respondent no. 2 to 6 are stated to be whole time directors, chairman , managing directors of respondent no. 1.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	Shree Vardhman Victoria, Sector 70, Gurugram
2.	Nature of real estate project	Group housing colony
3.	DTCP license no.	103 of 2010 dated 30.11.2010
4.	Area of the project	10.9687 acres
5.	Unit no.	103, Tower C
6.	Area of unit	1300 sq. ft. (120.82 sq meters)
7.	Registered/not registered	<b>Registered (70 of 2017) dated 18.08.2017</b>
8.	Date of allotment letter	25.11.2012
9.	Date of flat buyer agreement	02.07.2014
10.	Total consideration	Rs. 7890759.12/- (as per call notice/Intimation)



		letter pg 58 of complaint)
11.	Total amount paid by the complainant	Rs. 72,11,834.31/- (as per pg. 58 of complaint) and Rs. 79,08,942/- as per averment made in the complaint
12.	Due date of possession Clause 14(a)- 40 months plus 6 month's grace period from date of commencement of construction of particular tower  Date of construction cannot be ascertained so calculated from agreement	02.05.2018
13.	Payment plan	Construction linked payment plan
14.	Delay in handing over the possession	Continuing
15.	Penalty Clause (As per clause 14(b) of buyer agreement)	Rs. 10/- per sq. ft. per month of the super area of the flat per month for the period of delay

3. It is stated that the complainant contacted Mrs. Prerna Garg, the original allottee to purchase the subject flat and the complainant vide "Agreement to Sell/transfer of rights dated 26.06.2014" purchased the said flat from Mrs. Prerna Garg and an application for change of rights of the said flat was given to respondent no. 1 on 02.07.2014 and thereafter the said flat ownership was transferred in favour of the complainant with the respondent's permission. Thus, the complainant became entitled to all rights and subjected himself to all liabilities, which Mrs. Prerna Garg was having on the subject flat.

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4. As per clause 14 (a) of the agreement, the respondent had agreed to handover the possession of the subject flat to the complainant within 40 months from the date of construction with the additional grace period of 6 months after the expiry of the said 40 months.
5. The complainant made all payments regularly as per payment plan that was given to the complainant. It is stated that though the actual agreement dated 02.07.2014 was for a total sale consideration of Rs. 69,94,000/- but the respondents have raised the consideration without any notice and knowledge of complainant and till date, complainant has made payment of an amount of Rs. 79,08,942/- which is in excess of Rs. 9,14,942/-
6. It is stated that the said 40 months and the grace period of 6 months expired in the month of May, 2018 and as per sub-clause (a and b ) of the agreement dated 02.07.2014, complainant is entitled to receive penalty after expiry of 40 months and further grace period of 6 months for delay in handing over possession of the subject flat, as per schedule mentioned in clause 14 , sub - clause (b) @Rs. 10 per sq. ft. (or Rs. 107.64 per sq. mtr.) of the super area of the unit per month for the period of delay. According to the complainant he does not intend to withdraw from the project under the proviso to section 18(1) of the Haryana Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as Act). Relevant part of the application for amendment of the complaint reads as under:

*"I do not intent to withdraw from the project. As per obligations on the promoter under section 18(1) proviso, the promoters obligated to pay me interest at the prescribed rate for every month of delay till the*



*handing over the possession. Promoter has not fulfilled his obligation."*

Hence, this complaint.

7. The following issues have been raised to be decided by the Authority: -
  - i. Whether the respondents have failed to give the possession of the flat in accordance with the terms of agreement?
  - ii. Whether the respondents are liable to return the amount received along with interest as calculated as per the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as Rules).
8. The reliefs sought are detailed as under: -
  - i. Refund the amount deposited in the sum of Rs. 79,08,942/- along with interest @ 10.25 % p.a. being the highest marginal cost of lending rate plus 2% in terms of section 18(1)(a) of Act read with rule 15 of the Rules.
9. Notice of the complaint has been issued to the respondents thrice and the delivery reports have been placed in the file. Despite service of notice the respondents have preferred not to put their appearance and to file their reply to the complaint. Accordingly, the Authority is left with no other option but to decide the complaint *ex parte* against the respondents.
10. Arguments advanced by the counsel for the complainant are heard. His only contention is that the respondent no.1 has failed to deliver the possession of the subject flat to the complainant within the period stipulated in the agreement and hence the complainant is entitled to delayed possession interest. The contention advanced by him is well founded.

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11. The copy of endorsement made on the agreement dated 22.07.2014 executed between Smt. Prerna Garg and the respondent no. 1 has been placed on the file at pg 41 which proves that the complainant is now the recorded owner of the subject flat.

**Issue wise findings of the authority: -**

12. **Issue no. 1:** -As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the flat buyer's agreement (copy annexure C3), there is every reason to believe that vide the flat buyer agreement dated 02.07.2014 the respondent no.1 had expressed his likely intention and had agreed to handover the possession of the subject flat to the complainant within a period of 40 months from the date of construction of the particular tower with a grace period of 6 months which, in other words, means that the respondent no. 1 was to offer the physical possession of the subject flat to the complainant on or before 02.05.2018. The project is registered with the Authority and the revised date of completion as per registration certificate i.e. 31.12.2020. This is totally irrelevant so far as the date of handing over the possession of the subject flat within the time stipulated in the agreement is concerned. The complainant is not a party to the revised date of completion, nor has it been shown that the complainant had been informed about this progress/contingency and his consent had been obtained in this regard. The respondent has not offered or handed over the possession of the subject flat to the complainant till date. Hence the respondent no. 1 is bound to pay the delay possession

interest to the complainant. There is a violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016 because on the date of coming into force of the Act the project in question was not complete and it was an "on-going" project and, thus, governed by the provisions of the Act and the Rules framed thereunder. Hence, the complainant is entitled for delayed possession charges for every month of delay at the prevalent prescribed rate of interest @10.60% per annum w.e.f. 02.05.2018 in terms of proviso to section 18(1) of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

**Findings of the Authority: -**

13. The Authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose for promoter projects 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.

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**Decision and directions of the authority: -**

14. The Authority exercising its power under section 37 of the Act hereby directs the respondent no.1 to pay delayed possession charges at the prevalent prescribed rate of interest of 10.60% per annum with effect from the due date of delivery of possession i.e. 02.05.2018 till the date of this order within a period of 90 days and to continue to pay the same to the complainant every month by the 7<sup>th</sup> day of each succeeding English calendar month till date of handing over the actual possession of the subject flat to the complainant.
15. This Authority is of the opinion that no order should be passed at this stage against respondent no.2 to 6 who are stated to be Directors/Chairman/Managing Directors of the respondent no.1.
16. The complaint stands disposed of accordingly.
17. The case file be consigned to the registry.

N.K.Goel

(Former Additional District and Sessions Judge)

Registrar-cum-Administrative Officer(Petitions)  
(Haryana Real Estate Regulatory Authority, Gurugram)

(Authorised by resolution no.

HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July  
2019)

Date: 06.08.2019

Judgement uploaded on 08.08.2019