



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

Complaint no.	:	1087 of 2022
Date of filing complaint:	:	21.03.2022
First date of hearing	:	15.07.2022
Date of decision	:	18.10.2022

Kamaldeep Singh R/O: A-20, 3 rd Floor, Om Sai Apartment, Plot no. 1041, Ward no. 8, Near Mehta Chowk, Mehrauli, New Delhi	Complainant
Versus	
M/s Shree Vardhman Infraheights Private Limited Regd. office: 302, 3 rd floor, Indraprakash Building, 21-Barakhamba road, New Delhi-110001	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Rahul Bhardwaj (Advocate)	Complainant
Sh. Gaurav Rawat (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter

shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Victoria", village Badshapur, Sector-70, Gurugram
2.	Project area	10.9687 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	103 of 2010 dated 30.11.2010 valid upto 29.11.2020
5.	Name of the Licensee	Santur Infrastructures Pvt. Ltd.
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 70 of 2017 dated 18.08.2017 Valid upto 31.12.2020
7.	Unit no.	203, Tower - F (Page 20 of reply)
8.	Unit area admeasuring	1950 sq. ft. (Page 20 of reply)

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9.	Allotment letter	07.11.2012 (Page 25 of complaint)
10.	Date of buyer agreement	13.09.2013 (Page 28 of complaint)
11.	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)
12.	Date of commencement of construction	07.05.2014 (As per affidavit submitted by respondent in another case file of same project)
13.	Due date of possession	07.03.2018 07.09.2017 + 6 months of grace period = 07.03.2018 (Calculated from date of

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		commencement of construction which is available in another file of the same project.)
14.	Total sale consideration	Rs. 1,03,15,500 /- (Page 30 of complaint) Rs. 1,20,06,750/- (As per page 61 of reply)
15.	Amount paid by the complainant	Rs. 26,26,850/- (Page 63 of reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Delay in handing over the possession till date of filing complaint	4 years and 14 days

B. Facts of the complaint:

3. That the complainant is a law-abiding citizen of the Country who has been cheated by the malpractices adopted by the respondent as stated to be a builder and is allegedly carrying out real estate development since many years. The respondent advertised the real-estate project as a one-of-kind development with impeccable facilities and further promised to complete the project within time. Induced by the attractive advertisements, assurances, representations and promises made by respondent and thus, believing the same to be correct and true, the complainant agreed to book a unit in the project.

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4. Vide an allotment letter dated 07.11.2012, the respondent acknowledged the booking request made by the complainant. Relying upon the respondent's representations and being assured that it would abide by its commitments, the complainant paid an amount of Rs. 24,37,600/- to the respondent against the basic sale consideration for the said apartment is Rs. 1,03,15,500/-. Pursuant to the payment of the aforesaid amount by the complainant, they entered into a builder-buyer agreement dated 13.09.2013 wherein the complainant was allotted residential apartment bearing no. 203 in Tower F, admeasuring 1950 sq. ft. Furthermore, the payment made by the complainant was duly acknowledged by the respondent in the agreement. As per clause 14(a) of the agreement dated 13.09.2013, the possession of the apartment was to be delivered within 40 (Forty) months with a grace period of 6 (Six) months, totalling to 46 months from the date of the execution of the agreement. Hence, the possession of the apartment was to be delivered by July 2017.
5. That the complainant went to the project site to check the progress of the project. But to his utter shock and dismay, he found out that it is far from completion. As per the inactions of the respondent, it is crystal clear that it has no intention to complete the project in the near future. The complainant's case is not of a simple or ordinary delay but one of an inordinate delay wherein the possession of the apartment has not been offered till date i.e., even after an inordinate delay of over 4 years and 7 months from the date of possession as per the agreement executed between the parties and which has caused immense financial burden on him.
6. It is submitted that the entire purpose for purchasing the said apartment has been completely frustrated. It is submitted that the innocent allottee

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cannot be left at the behest of unscrupulous organization like the respondent. The respondent deliberately induced the complainant to part way with his entire life's hard-earned money which he had saved to buy a home for his family. It is pertinent to mention here that the action of the respondent has resulted in great financial and emotional loss to complainant. He is seeking and entitled as per the provisions of RERA Act, 2016, to full refund of the amount including but not limited to all the payments made in lieu of the said commercial unit, as per the terms and conditions of the agreement executed by the developer and even otherwise, is entitled to the same.

C. Relief sought by the complainant:

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

- a) Direct the respondent for an immediate 100% refund of the total amount paid by the complainant along with interest at a rate of 18% per annum from the date of receipt of payments.
- b) Direct the respondent to pay compensation of Rs. 3,00,000/- to the complainant for mental agony, harassment, discomfort and undue hardships caused as a result of the above acts and omissions on its part.
- c) Direct the respondent to pay a sum of Rs. 1,50,000/- to the complainant towards litigation costs.

D. Reply by respondent:

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

8. The complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is not maintainable under the said provision. The

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respondent has not violated any of the provisions of the Act. The complainant has sought relief under section 18 of the RERA Act but the said section is not applicable in the facts of the present case and as such, the complaint deserves to be dismissed. It is submitted that the operation of Section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came into force. The parties while entering into the said transaction could not have possibly took into account the provisions of the Act and as such cannot be burdened with the obligations created therein. In the present case also, the agreement was executed much prior to the date when the RERA Act came into force and as such section 18 of the RERA Act cannot be made applicable to the present case. Any other interpretation of the RERA Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the RERA Act nugatory. The complaint as such cannot be adjudicated under the provisions of RERA Act.

9. That the expression "agreement to sell" occurring in Section 18(1)(a) of the RERA Act covers within its folds only those agreements to sell that have been executed after RERA Act came into force and the FBA executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force.
10. That the FBA executed in the present case did not provide any definite date or time frame for handing over of possession of the apartment to the complainant and on this ground alone, the refund and/or compensation and/or interest cannot be sought under RERA Act. Even clause 14 (a) of the FBA merely provided a tentative/estimated period for completion of construction of the flat and filing of application for occupancy certificate

with the concerned authority. After completion of construction, the respondent was to make an application for grant of occupation certificate (OC) and after obtaining the OC, the possession of the flat was to be handed over.

11. The relief sought by the complainant is in direct conflict with the terms and conditions of the FBA and on this ground alone, the complaint deserve to be dismissed. The complainant signed the agreement only after having read and understood the terms and conditions mentioned therein and without any duress, pressure or protest and as such the terms thereof are fully binding on him. The said agreement was executed much prior to RERA Act coming into force and the same has not been declared and cannot possibly be declared as void or not binding between the parties.
12. It is submitted that delivery of possession by a specified date was not essence of the FBA, and the complainant was aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contained provisions for grant of compensation in the event of delay. As such, it is submitted without prejudice that the alleged delay on part of respondent in delivery of possession, even if assumed to have occurred, cannot entitle the complainant to ignore the agreed contractual terms and to seek interest and/or compensation on any other basis.
13. It is submitted without prejudice that the alleged delay in delivery of possession, even if assumed to have occurred, cannot entitle the complainant to rescind the FBA under the contractual terms or in law. The delivery of possession by a specified date was not essence of the FBA and

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the complainant was aware that the delay in completion of construction beyond the tentative time given in the contract was possible.

14. It is submitted that issue of grant of interest/compensation for loss occasioned due to breach committed by one party of the contract is squarely governed by the provisions of section 73 and 74 of the Contract Act, 1872 and no compensation can be granted de hors the said sections on any ground whatsoever. A combined reading of the said sections make it amply clear that if the compensation is provided in the contract itself, then the party complaining the breach is entitled to recover from the defaulting party only a reasonable compensation not exceeding the compensation prescribed in the contract and that too upon proving the actual loss and injury due to such breach/default. On this ground, the compensation, if at all to be granted to the complainant, cannot exceed the compensation provided in the contract itself.
15. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

16. 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

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As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondent:

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

17. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation or rights of the parties inter-se in accordance with the apartment 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 will 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. The 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 06.12.2017 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

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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."

18. 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 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."

19. 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

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other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

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

20. It was pleaded on behalf of respondent that the complainant failed to make timely payments of the subject unit. The authority observes that the complainant opted for construction linked payment plan and the same is evident from buyer's agreement. The occupation certificate of the project has not been received till now. The complainant till date has paid an amount equivalent to 25.4 % of total consideration. It was the obligation on part of the respondent to complete the construction within time. When the complainant did not get any positive response w.r.t. completion of project, he stopped making further payments to the respondent and as per Section 18 of RERA Act, if a promoter fails to complete or is unable to give possession of an apartment/unit (residential apartment in the present case) duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Therefore, the plea advanced by the respondent with regard to non-payment by the complainant is devoid of merit and hence, is rejected.
21. The respondent stated at bar that he has mentioned in his reply that he has sent various notices, reminders to complainant for regularizing the payment, however he did not stop making default. Subsequently, the unit was cancelled vide letter dated 23.12.2014 but the same was re-stored on request of complainant.

G. Entitlement of the complainant for refund:

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G.I Direct the respondent for an immediate 100% refund of the total amount paid (Rs. 26,26,850/-) by the complainant along with interest at a rate of 18% per annum from the date of receipt of payments.

22. 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.

The due date of possession as per agreement for sale as mentioned in the table above is 07.03.2018 and there is delay of 4 years and 14 days on the date of filing of the complaint.

23. The occupation certificate /part occupation certificate of the building/tower where allotted unit of the complainant is situated is not received till now. The complainant-allottee has already wished to withdraw from the project and he has become entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as he failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate

24. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (Civil) 357* 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 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

25. 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 he may file an application for adjudging

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

26. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 26,26,850/- with interest at the rate of 10.25% (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 Direct the respondent to award compensation of Rs. 4,50,000/-


27. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, 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.

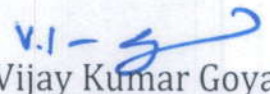
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H. Directions of the Authority:

28. 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 refund the amount received from the complainant i.e., Rs. 26,26,850/- along with interest at the rate of 10.25% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of amount.
 - ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
29. Complaint stands disposed of.
30. File be consigned to the registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 18.10.2022