



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	485 of 2020
Date of filing:	20.03.2020
Date of first hearing:	07.08.2020
Date of decision:	11.04.2023

Tushar Verma S/o Naresh Kumar Verma
R/o HOUSE NO. 1563 SECTOR 21
GURGAON 122016 HARYANA

....COMPLAINANT

VERSUS

Vardhman Buildtech Private Limited
WZ 22 Second Floor, Vashista Park,
Pankha Road, New Delhi 110046

....RESPONDENT(S)

CORAM: **Dr. Geeta Rathee Singh**
Nadim Akhtar

Member
Member

Present: Mr. V. K. Ahuja, counsel for the complainant through VC.
None for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 20.03.2020 has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	"Vardhman Springdale", Sector-3, Dharuhera, Rewari- 123302 Haryana.
2.	RERA registered/not registered	Un- registered
3.	Date of Booking	06.02.2014.
4.	Booking Amount	₹ 3,50,000/-
5.	Flat no.	501, Tower-G, 5th Floor



6	Flat area	1175 sq.ft. (Super Area)
7.	Date of builder buyer agreement	17.06.2014
8.	Deemed date of possession	March, 2017
9.	Basic sale price	₹ 32,31,250/-
10.	Amount paid by complainant	₹ 28,91,527/-
11.	Offer of possession	Not made

B. FACTS OF THE COMPLAINANT

3. Complainant had booked a flat vide application dated 06.02.2014 by paying booking amount of Rs. 3,50,000/- to the respondent-promoter. Builder Buyer Agreement was executed on 17.06.2014 and Flat 501, tower G, floor 5th bearing 1175 sq.ft. was allotted to the complainant in the respondent's project "Springdale, Dharuhera, Rewari". As per the agreement, basic sale price was fixed for Rs. 32,31,250/-. Complainant has claimed to have paid Rs. 28,91,527/-. As per builder buyer agreement the respondent has to complete the construction on or before March 2017 and as per clause 10.1 of the agreement the respondent was to offer possession of the unit within 30 days from the completion of construction of the unit. As per the averment of the complainant, respondent has failed to offer possession of the unit till date.

had

4. Complainant in his averments has submitted that he had visited the site at various occasions and also approached the representatives of the respondent to enquire about the construction but no answer or commitment was given by anyone. Later in May 2017 minor construction activity started. Complainant received an email from the respondent on 16.09.2018 regarding revised deadline of the project which was to be delivered by March 2019. Complainant avers that his tower G was not mentioned in the email. The said unit was purchased by the complainant under the subvention scheme, under which the complainant was not required to pay any EMI for two years. Complainant has agreed that the builder has paid complainant Rs. 4,35,866/- between year 2015 to 2018 against the subvention scheme. Since no offer of possession has been made by the complainant and also no construction has taken place on the site, complainant has approached the Authority seeking relief of cancellation of the unit and refund along with interest.

C. RELIEF SOUGHT

5. The complainant in his complaint has prayed that the respondent be directed to:

Cancel the booking of the apartment and refund the amount along with interest in accordance with Real Estate (Regulation and Development) Act 2016 and Rules.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

6. Despite granting a number of opportunities, respondent has not filed reply till date. Respondent had submitted brief written synopsis in the registry on 16.01.2023 with following pleading therein:

Hon'ble National Company Law Tribunal in case titled "Priyanshi Arora vs Vardhman Buildtech Pvt. Ltd. bearing Company petition IB-1383 (PB/2018) vide order dated 28.01.2022 had approved resolution plan as submitted by Sh. Vivek Gupta, Resolution Applicant to Sh. Manish Gupta Resolution Professional. As per the resolution plan revival of the company was approved by 97.30% of voting share of the financial creditors (including home -buyers) after considering its feasibility and viability.

7. Respondent through his written submissions has further apprised that complainant had already filed respective claims before the Resolution Professional and alleged that complainant has concealed this fact from the Authority. Claim of the complainant in Form CA dated 18.02.2019 has been attached along with the written synopsis.

E. JURISDICTION OF THE AUTHORITY

8. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.



E.1 Territorial Jurisdiction

As per notification no. 1/92/2017' ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be the entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Dharuhera (Rewari) therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E.2 Subject Matter Jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

In view of the provisions of the Act of 2016 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 learned Adjudicating Officer if pursued by the complainants at a later stage.

F. ORAL SUBMISSIONS OF THE COMPLAINANT.

9. Ld. counsel for the complainant has contended that resolution plan and order of the Hon'ble National Company Law Tribunal should not affect his prayer of refund before this Authority. He has further raised objection to the resolution plan submitting that the complainant booked his unit in Tower G and as per resolution plan the said unit will be completed within two years and maximum period that is given to the respondent to finish the project is 36 - 42 months (including Phase I). He further contends that they have already waited for more than five long years to get the possession of the unit as the deemed date to get the possession was in the year 2017. Now further giving 3 years to the respondent to finish the project dissolves the purpose of buying this unit.




G. ISSUES FOR ADJUDICATION

10. Whether the complainants are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

11. The Authority has gone through the rival contentions. Present case was filed before the Court of Learned Adjudicating Officer on 20.03.2020 seeking relief of refund. Vide order dated 22.10.2020, said complaint was transferred to the Authority. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that the complainant booked a unit on 06.02.2014 and the said unit was to be delivered by 2017. Basic sale price of the unit was fixed for Rs. 32,31,250/-. Complainant has claimed to have paid Rs. 28,91,527/- and has attached receipts Rs.21,67,129/- in the complaint. Till date no construction has taken place in tower G booked by the complainant and henceforth complainant has approached the Authority to cancel his booked unit, seeking relief of paid amount along with interest as per HRERA Rules, 2017.
12. On the other hand, respondent has submitted that vide order dated 28.01.2022 Hon'ble National Company Law Tribunal in case titled "Priyanshi Arora vs Vardhman Buildtech Pvt. Ltd. bearing Company

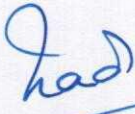


petition IB-1383 (PB/2018) has approved a resolution plan for the revival of the company. Respondent has further submitted that since the complainant has already placed his claims before the Resolution Professional therefore, his complaint be dismissed.

13. Authority observes that the respondent company was facing insolvency proceedings before the Hon'ble National Company Law Tribunal. In view of the same, a resolution plan dated 09.10.2023 was placed by Sh. Vivek Gupta, Resolution Applicant to Sh. Manish Gupta Resolution Professional. As per clause 5. iv (a)(i) of the resolution plan it is stated that homebuyers shall be satisfied by handing over possession of the flats and nothing will be paid in cash. Vide order dated 28.01.2022, Hon'ble National Company Law Tribunal had approved the resolution plan dated 09.10.2023. It is observed that complainant had filed the complaint in the Authority on 20.03.2020 and perusal of written submissions of the respondent reveals that prior to filing of the complaint, complainant vide application form CA dated 18.02.2019 had already filed his claim before Interim Resolution Professional seeking refund of paid amount along with interest. It is further observed that complainant was well aware of the National Company Law Tribunal proceedings and had filed his claims way back before filing of the complaint. Further, complainant cannot seek relief of similar nature before two Authorities at the same time.



Since Hon'ble National Company Law Tribunal has already approved the resolution plan. The Authority is of the view that when the resolution plan has been approved by 97.30% of voting share, Insolvency and Bankruptcy Code, 2016 is subsequent Act to Real Estate Regulatory Authority Act, 2016 (RERA), and Real Estate Regulatory Authority Act, 2016 cannot supersede the provisions of Insolvency and Bankruptcy Code, 2016. The Hon'ble Supreme Court in its decision in case titled Pioneer Urban Land and Infrastructure Limited and Another versus Union of India and others WP (C) No. 43 of 2019 has held that RERA Act, 2016 and Insolvency and Bankruptcy Code, 2016 must be held to co-exist and be interpreted harmoniously and in the event of clash RERA must give way to Insolvency and Bankruptcy Code, 2016. It is further held that in event there is any conflict between the approved resolution plan and the provisions of RERA, the approved resolution plan shall remain binding on all stake-holders under section 31 of the Insolvency and Bankruptcy Code, 2016 and would override the provisions of RERA in accordance with Section 238 of the Code. Therefore, Authority deems fit to dispose of the said case by directing the complainant to follow up his claim in terms of the order dated 28.01.2022 passed by Hon'ble National Company Law Tribunal and Resolution Plan.



I. DIRECTIONS OF THE AUTHORITY

14. This complaint is disposed of. File be consigned to record room after uploading order on the website of the Authority.

Geeta

.....
Dr. GEETA RATHEE SINGH
[MEMBER]

Nadim

.....
NADIM AKHTAR
[MEMBER]

