

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

Complaint no. : 1160 of 2019
First date of hearing: 19.08.2019
Date of decision : 26.08.2019

1.Mr Pradeep Kumar
S/o Shri Narayan Singh
R/o Manhorma Marg Gali Village,
Wazirabad, Sector-52 Gurugram, Haryana
122002

Complainant

Versus

1.M/s Shree Vardhman Builprop Pvt. Ltd
Regd. Office: 301,3rd floor, Indrapraksh
Building, 21- Barakhamba Road, New Delhi-
110001

Respondent

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/16th July
2019) under section 81, Real Estate (Regulation and
Development) Act, 2016

APPEARANCE:

Shri Sushil Yadav

Advocate for the complainant

EXPARTE ORDER

1. The present complaint relates to flat buyer's agreement dated 20.09.2011 executed between the complainant and the respondent promotee which is not registered with this



Authority in respect of flat no. I/707, 7th Floor, Tower no. I measuring 48 sq.mtrs approx. (520 sq.ft. approx.) carpet area consisting of Two bed-rooms, Two Toilets, One Drawing -cum- Dining Room, One Kitchen and One Balcony in the project, namely, " Shree Vardhman Mantra" situated in Sector 67, Gurugram (in short, the subject flat) for total sale consideration of Rs. 16,00,000/- which included one open car parking space in the project, EDC, IDC and cost of providing electric wiring and switches in the flat. The complainant opted for time linked payment plan (Annexure-A at page 34).

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Shree Vardhman Mantra" in sector 67, Gurugram, Haryana
2.	Nature of real estate project	Residential
3.	Project area	11.262 acres
4.	Unit no.	I/707, 7 th floor, Tower no. I
5.	DTCP license	69 of 2010 dated 11.09.2010
6.	Registered/ not registered	Not Registered
7.	Date of booking	19.02.2011 (as alleged by complainant in his complaint)
8.	Date of flat buyer's agreement	20.09.2011 (page no. 14 of the complaint)



9.	Total consideration	Rs. 16,00,000/- as detailed hereinabove
10.	Total amount paid by the complainant	Rs. 18,72,112/- (as alleged by the complainant in his complaint page no. 6)
11.	Payment plan	Time Linked Payment Plan
12.	Date of delivery of possession (As per clause 9(a) – 36 months from the date of start of foundation of the particular tower in which the flat is located + 6 months' grace period)	20.03.2015 (Cannot be ascertained as no date of commencement of construction is stipulated in records. So, the due date of delivery of possession is calculated from the date of execution of buyer's agreement i.e. from 20.09.2011) Note: - but complainant alleged in his complaint that the due date of possession of subject flat is 21.10.2015 (page no. 7 of the complaint)
13.	Delay in handing over possession till	Continuing

3. As per the averments made in the complaint, the respondent had agreed to handover the possession of the subject flat to the complainant within 36 months from the date of start of

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foundation of the particular tower in which the flat is located with additional grace period of 6 months as per clause 9(a) of the flat buyer's agreement (copy Annexure I at pages 14-32). It is, however, stated that the respondent failed to develop the project in question within the stipulated time period.

4. The complainant has further submitted that the only intention of the respondent was to take payments for the tower without completing the work and the respondent with mala-fide and dishonest motives and intention cheated and defrauded the complainant. Despite receiving 100% payment of all demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits made by him, the respondent has failed to deliver the possession of subject flat to him.
5. It is submitted that he booked a flat with a promise that the respondent will deliver the flat by 21.10.2015 but the subject flat was not completed within the time period as promised by the respondent.
6. It is further submitted that as per clause 9(a) of the flat buyer's agreement dated 20.09.2011 it was agreed by the respondent



that in case of delay, the respondent shall pay him a compensation @ Rs. 5/- per sq.ft. per month of the super area of the said flat. It is submitted that a clause of compensation at such a nominal rate of Rs. 5/- per sq.ft. per month of the super area for period of delay is unjust and the respondent has exploited him by not providing the possession of the flat even after a delay from the agreed possession plan.

7. It is submitted that if the amount is calculated in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges 24% per annum interest on delayed payment.
8. It is further submitted that he has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent to deliver possession of the flat in question along with interest @24% per annum on the amount deposited by him, but the respondent has flatly refused to do. Complainant has opted not to withdraw from the project. Hence, this complaint
9. The following issues have been raised to be decided by the Authority: -

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1. "The respondent/firm is not completing the construction. It could be seen here that the respondent has incorporated the clause is one sided buyer agreement which is unjustified.
 2. That flat has not been handed over to the complainant till today and there is no reasonable justification for the delay.
 3. The construction work is stopped from last so many years.
 4. The interest cost being demanded by the respondent/developer is very higher i.e. 24% which is unjustified and not reasonable.
 5. Regarding the facilities and amenities, the complainant cannot explain, because the physical possession has not given."
10. The reliefs sought are detailed as under: -

"Direct the respondent to handover the possession of the flat along with prescribed interest per annum from the promised date of delivery till the actual possession of the flat is delivered to complainant."

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Notice of the complaint has been issued to the respondent through speed post and at its given email address mantra@shreevardhmangroup.com and the delivery reports have been placed in the file. Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint. Accordingly, the Authority is left with no other option but to decide the complaint *ex parte* against the respondent.

8. Finding of the Authority on the Issue: -

9. 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 A-I), there is every reason to believe that vide the flat buyer's agreement dated 20.09.2011 the respondent had agreed to handover the possession of the subject flat to the complainant within a period of 36 months from the date of start of foundation of the particular tower in which the said flat is located with a grace period of 6 months which, in other words, means that the respondent was bound to offer the physical possession of the subject flat to the complainant on or before due date

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20.03.2015 including 6 months' grace period. According to complainant the date of possession is 20.10.2015. However, the possession of the subject flat has not been delivered to him till date. Hence, it is held that there is a continuing delay in handing over the possession of the subject flat to the complainant and this was in violation of the terms and conditions of the buyer's agreement and also violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) 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 @10.65% per annum w.e.f. 20.10.2015 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.

From the perusal of the record it is found that the due date of possession was 20.10.2015 and the possession has been



delayed by approximately four years. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area per month for the period of delay beyond 36 + 6 months as per clause 9(a) of flat buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

Moreover, after coming into force of the Act and the Rules framed thereunder the respondent is bound to pay delayed possession charges at the rate of interest provided in Rule 15 of the Rules.

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FINDINGS OF THE AUTHORITY

11. 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 complainants at a later stage.
12. 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.

Decision and directions of the Authority: -

14. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the due date i.e. 20.10.2015 till the date of this order within a period of 90 days and to continue to pay the charges month by month by the 7th day of each succeeding English calendar month

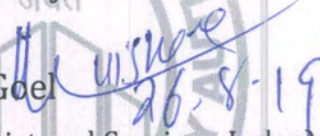
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till the actual handing over of the possession of the subject flat to the complainants.

15. Since the project is not registered, so the Authority has decided to take suo moto cognizance of this fact and directed the registration branch to initiate necessary action against the respondent under section 59 of the Act for violation of section 3 of the Act. A copy of this order be endorsed to the registration branch.

15. The complaint stands disposed of accordingly.

16. The case file be sent to the registry.


N.K.Goel

(Former Additional District and Sessions Judge)

Registrar-cum-Administrative Officer (Petitions)

(Haryana Real Estate Regulatory Authority, Gurugram)

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Dated:26.08.2019

Order ratified by the Authority as above.


(Samir Kumar)

Member


(Subhash Chander Kush)

Member

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.08.2019

Judgement uploaded on 05.09.2019