

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

Complaint no. : 3780 of 2021  
First date of hearing: 08.10.2021  
Date of decision : 07.07.2023

Rahul Verma and Reeta Verma

**Both R/O:** - House no. 116/12, Street no. 3, Krishna  
Colony, Gurugram

**Complainant**

**Versus**

Shree Vardhman Infrahome Pvt. Ltd.,  
301, 3<sup>rd</sup> floor, Indraprakash Building, 21-  
Barakhamba Road, New Delhi - 110001

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Mr. Sukhbir Yadav

Mr. Gaurav Rawat

Advocate for the complainant

Advocate for the respondent

**ORDER**

1. The present complaint dated 21.09.2021 has been filed by the complainant/allottees 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 allottee as per the agreement for sale executed inter se.

### Unit and project related details

2. 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.N.	Particulars	Details
1.	Name of the project	"Shree Vardhman Flora", Sector - 90, Gurugram, Haryana
2.	Project area	10.881 acres
3.	DTCP License no.	23 of 2008 dated 11.02.2008
4.	Name of Licensee	Moti Ram and anr.
5.	RERA registered/ not registered	Registered vide no. 88 of 2017 dated 23.08.2017
6.	Unit no.	1202, Tower - C1 [As per page no. 40 of the complaint]
7.	Super area	1300 sq. ft. [As per page no. 40 of the complaint] New area - 1352 sq. ft. (As per appendix A attached to offer of possession)
8.	Date of flat buyer agreement	17.02.2012



		[As per page no. 38 of the complaint]
9.	Endorsement dated	28.08.2013  [As per page 58 of complaint, original allottee i.e., Ajay kumar in favour of present complainant i.e., Rahul Verma and Rita Verma]
10.	Possession clause	<b>Clause 14(a)</b> The construction of the flat is likely to be completed <i>within 36 months of commencement of construction of the particular tower/ block in which the subject flat is located with a grace period of 6 months</i> , on receipt of sanction 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(s) in the said complex.
11.	Due date of Possession	<b>29.08.2015</b> <b>29.02.2012 + 6 months of grace period</b>

		(Taken from the date of excavation of work i.e., 29.02.2012.)
12.	Total sale consideration	Rs.46,99,650/- [As per customer ledger dated 04.04.2022 on page no. 39 of the reply]
13.	Amount paid	Rs. 39,52,714/- [As per page no. 42 of the reply]
14.	Occupation certificate	02.02.2022 [As per page 46 of the reply]
15.	Offer of possession	01.04.2021 (As per page 50 of the reply - Not a valid offer) 20.04.2022 (As per document provided by respondent)
16.	Grace period	Grace period is allowed in this complaint

**Facts of the complaint**

3. That the complainant/allottees Rahul Verma & Reeta Verma are law-abiding and peace-loving citizens. In July 2011, Mangal Singh (original allottee) being relied on representation & assurances of the respondent booked an apartment in the project under construction link payment plan for a total sale consideration of Rs. 39,80,000/- including basic sales price, covered parking charges, etc.



4. That with the permission of the respondent, Mr. Ajay Kumar Singh purchased the said flat from the original allottee (Mangal Singh) and became subsequent allottee on 19.08.2011. That on 17.02.2012, pre-printed, unilateral, ex-facie, and arbitrary builder buyer's agreement was executed inter-se the respondent and the subsequent allottees (Ajay Kumar Singh). According to clause 14(a) of the buyer's agreement, the respondent has to give possession of the said flat within a period of 36 months from the commencement of the construction of the particular tower/block in which the flat is located with a grace period of 6 months. The construction for block C1 was commenced on 27.02.2012, therefore, the due date of possession was 27.02.2015. That with permission from the respondents, Rahul Verma & Reeta Verma purchased the said flat from the Ajay Kumar Singh (previous allottee) and became the subsequent allottees on 23.08.2013.
5. The complainant availed a housing loan of Rs. 29,00,000/- from State Bank of India and the bank issued a loan sanction Letter in favor of the complainant. That on 12.06.2017, the respondent sent a letter to the complainant and asked to pay demand of Rs. 72,843.76/- on account of VAT charges and the same was duly paid by the complainant on 30.06.2017 and payment receipt for the same was issued by the respondent. That on 29.11.2017, the respondent sent a demand letter to the complainant and raised a demand of Rs. 4,10,518.45. That as per the demand letter the complainant has paid Rs. 39,45,829.18/- i.e., 99% of the total sale consideration. It is pertinent to mention here that the complainant has requested several times to the respondent to furnish the

latest statement of account, but the respondent did not pay any heed to the just & reasonable requests of the complainant and till now has not provided the statement of account to the complainant.

6. That on 01.04.2021, the respondent sent a letter stating "offer for possession for the said unit and stated that a balance of Rs. 11,39,662.32/- is due towards the complainant which include the unreasonable demand under the head escalation charges and also raised an unreasonable demand of Rs. 1,62,244.54/- under the head "Government taxes/VAT/CESS" and Rs. 1,52,586.72/- under the head maintenance charges. Moreover, the respondent increased the super area of the flat by 52 sq. ft. without any justification (The original super area was 1300 sq. ft., and the revised super area is 1352 sq. ft.). It is pertinent to mention here that the letter contains unjustifiable demand & is not a valid possession letter. It is again pertinent to mention here that the respondent has raised the demand under the head maintenance charges and the unit is yet not ready for possession & even after 9 years from the date of booking the unit is not complete in all respect. It is again pertinent to mention here that due to the increase in area, there was an increase in the basic cost of the flat and an increase in the cost of EDC/IDC, moreover, the GST came into effect on 01.07.2017 and the due date of possession was 04.07.2015.

7. That the complainant does not want to withdraw from the project. The promoter has not fulfilled his obligation therefore as per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the



interest at the prescribed rate for every month of delay till the handing over of the possession. That the present complaint is not for seeking compensation, without prejudice, complainant reserve the right to file a complaint to Adjudicating Officer for compensation.

### **C. Relief Sought**

This Authority may be pleased to direct the respondent as follows:

- i. To get the Physical possession of the fully developed/constructed unit with all amenities within 6 months of the filing of this complaint.
- ii. To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).
- iii. To get an order in their favour by directing the respondent(s) party to provide area calculation (carpet area, loading & Super area).
- iv. To get an order in their favour by restraining the respondent(s) from charging cost escalation.
- v. To get an order in their favour by restraining the respondent(s) from charging GST.

### **D. Reply by the respondent**

8. The present complaint filed under Section 31 of the Real Estate "RERA Act" is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act. As per rule 28(1) (a) of RERA Rules, a complaint under section 31 of RERA Act can be filed for any alleged violation or contravention of the provisions of the RERA Act after such

violation and/or contravention has been established after an enquiry made by the Authority under Section 35 of RERA Act. In the present case, no violation/contravention has been established by the Authority under Section 35 of RERA Act and as such, the complaint is liable to be dismissed.

9. 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 which were entered prior to the RERA Act came into force. The complaint as such cannot be adjudicated under the provisions of RERA Act.
10. 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 and the same having been executed prior to the date the Act came into force.
11. It is submitted without prejudice to above objection that in case of agreement to sell executed prior to RERA coming into force, the dates for delivery of possession committed therein cannot be taken as trigger point for invocation of Section 18 of the Act. When the parties executed such agreements, section 18 was not in picture and as such the drastic consequences provided under section 18 cannot be applied in the event of



breach of committed date for possession given in such agreements. On this ground also, the present complaint is not maintainable.

12. 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.
13. 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 deserves to be dismissed. The complainant cannot be allowed to seek any relief which is in conflict with the said terms and conditions of the FBA. 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 contain 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 /compensation on any other basis. 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 the complainant was aware that the delay in completion of construction beyond the tentative time given in the contract was possible. It is submitted that issue of grant of interest/compensation for the 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 makes 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. The complaint is not in the prescribed format and is liable to be dismissed on this ground alone.

14. Copies of all the relevant documents have been duly filed and placed on the 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**

15. 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**

16. 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**

The 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

17. 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**

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

18. The 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. 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 and 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."

19. 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."*

20. 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. Findings on the relief sought by the complainant**

- i. Direct the respondent to give physical possession of the fully developed/constructed unit with all amenities within 6 months of the filing of this complaint.
- ii. Direct the respondent to pay delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant/allottees are seeking delay possession charges at the prescribed rate and proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of



possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
24. The definition of term 'interest' as defined under section 2(za) of the act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

26. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the agreement executed between the parties on 17.02.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by 29.08.2015 (*within 36 months of commencement of construction of the particular tower/ block in which the subject flat is located with a grace period of 6 months*). As far as grace period is concerned, the same is allowed for the reasons quoted above. The Occupation certificate of the project has been received on 02.02.2022. The respondent has delayed in offering the possession and the



same was offered on 20.04.2022. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 29.08.2015 till date of grant of OC i.e., 02.02.2022 plus two months at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

iii. **To get an order in their favour by directing the respondent(s) party to provide area calculation (carpet area, loading & Super area).**

27. As per section 19(1) of Act of 2016, the allottees shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide details of license and statutory approvals to the complainant within a period of 30 days.

iv. **To get an order in their favour by restraining the respondent(s) from charging cost escalation.**

28. There is no such clause which defines or mentions cost escalation in the said agreement. Therefore, respondent shall not charge cost escalation charges from the complainant.
- v. **To get an order in their favour by restraining the respondent(s) from charging GST.**
29. The authority has decided this issue in the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements. In the present complaint, the possession of the subject unit was required to be delivered by 29.08.2015 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. So, the respondent/promoter is not entitled to charge GST from the complainant/allottees as the liability of GST had not become due up to the due date of possession as per the said agreement.
30. Vide proceedings dated 07.07.2023, the counsel for the respondent stated at bar that possession has been handed over to the complainant-allottees



on 04.04.2023 and the entire maintenance charges upto April 2023 have been waived off.

#### **H. 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 function entrusted to the authority under section 34(f):



- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.70 % p.a. for every month of delay on the amount paid by it to the respondent from the due date of possession i.e., 29.08.2015 till date of OC i.e., 02.02.2022 plus two months which is 02.04.2022.
- ii. The promoter shall not charge anything which is not part of the BBA and if any payment is due from the complainant, it shall be adjusted from the amount of delayed possession charges.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed to provide details of area calculation details to the complainant within a period of 30 days.
- v. The respondent shall not charge cost escalation charges from the complainant.

- v. The respondent is not entitled to charge GST from the complainant/allottees as the liability of GST had not become due up to the due date of possession as per the said agreement.
- vi. As per section 2(za) of Act of 2016, the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee.

32. Complaint stands disposed of.

33. File be consigned to registry.



  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 07.07.2023**

**HARERA**  
**GURUGRAM**