



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1231 of 2020
Date of filing:	28.10.2020
Date of first hearing:	02.12.2020
Date of decision:	11.04.2023

Mrs. Kamlesh Gupta
W/o Sh. Naveen Gupta,
R/o House No. B-224, B-Block, Ashok Vihar,
Phase-1, North West Delhi, Pin Code- 110052

....COMPLAINANT

VERSUS

Vardhman Buildtech Private Limited
Having Registered Office at
WZ-22, Second Floor, Vashista Park,
Pankha Road New Delhi-110046

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present:

Mr. Chaintainya Sinhgale, learned counsel for the complainant through video conference

None for the respondent

[Handwritten signature]

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 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	18.06.2014
4.	Booking Amount	₹ 8,13,815/-
5.	Flat no.	905, Tower-B, 9th Floor



6	Flat area	1175 sq.ft. (Super Area)
7.	Date of builder buyer agreement	09.09.2014
8.	Deemed date of possession	June, 2016 (date of completion of construction)
9.	Basic sale price	₹ 34,01,625/-
10.	Amount paid by complainant	₹ 31,39,137/-

B. FACTS OF THE COMPLAINT

3. Complainant had booked a 2 BHK flat in respondent's project namely "Vardhman Springdales" situated at Sector-3, Dharuhera, Rewari- 123302 Haryana, by paying a booking amount of Rs 8,13,815/- to the respondent. The Builder Buyer Agreement was executed on 09.09.2014, according to which the complainant was allotted unit no. 905, B-tower, 9th floor measuring 1175 sq.ft. The basic sale price of the unit was fixed for ₹34,01,625/- and the complainant paid a booking amount of ₹8,13,815/- against the same. As per the BBA the respondent has represented that it shall complete the construction before June 2016 and further as per clause 10 of the BBA the respondent was liable to issue offer of possession cum final demand notice within 30 days. The complainant received the allotment letter dated 23.09.2014 of booked unit from the respondent and



the copy of same is annexed as Annexure P-2. Complainant approached Housing Finance Company for a housing loan of ₹25 lakh from IndiaBulls Housing Finance Ltd. and signed a Tripartite Agreement dated 31.10.2014 between complainant, respondent and IndiaBulls Housing Finance Ltd. Till date the complainant has paid a sum of ₹31,39,137/- to the respondent. Copies of payment receipts and loan account are annexed as Annexure P-3 (colly).

2. Grievance of the complainant is that the respondent has failed to complete the project and give the possession within, prescribed period as per BBA. Complainant further submits that in the project only structure work is complete and the entire construction work is at halt since the last three years. Moreover respondent's project is an ongoing project and not registered under RERA.
3. The respondent has miserably failed in completing the construction of the project and in timely handing over the possession of the unit of the complainant. Therefore, due to his failure to construct the project and by not handing over the possession to the complainant, the complainant has prayer for refund of paid amount align with interest.

C. RELIEF SOUGHT

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



- (a) To refund the principal amount of ₹ 31,39,137/- paid by the complainant along with interest as per RERA rules.
- (b) To initiate suo moto disciplinary proceedings against the respondent for not registering its project with Haryana RERA.
- (C) Any other relief which this Hon'ble Authority deems fit be passed in light of the facts and circumstances of the above case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

6. Respondent till date has not filed reply in the case. However, learned counsel for the respondent filed brief written synopsis dated 16.01.2023 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. He submitted that, complainant did not participate in the voting of the committee of creditors but has alleged that the complainant was well aware of the proceedings and orders of Hon'ble NCLT. It is submitted by the respondent that as per the resolution plan the resolution



applicant shall be handing over the unit before 31.07.2023 and complainant's argument that he has not participated in the committee of creditors shall be not considered. Supporting his averment respondent has relied upon the judgment of Hon'ble NCLAT in the case titled as Steel Strips Wheels Limited versus Sh. Avil Menezes Resolution Professional of AMW, wherein it is held that once the plan is approved with 98.55% voting shares pursuant to the meeting of the committee of creditors, the Adjudicating Authority or any other court cannot reconsider or alter the same when the same was approved.

Respondent stated that one of the relief of the complainant is that to take action against the respondent as the project is not registered with RERA. It has been submitted by the respondent that the said direction i.e. to register the project with RERA has already been passed by the Hon'ble NCLT in the final order dated 28.01.2022 under para 42 and they will be complying with it.

E. JURISDICTION OF THE AUTHORITY

11. 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 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

G. ISSUES FOR ADJUDICATION

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

H. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

13. Present complaint was filed by the complainant on 28.10.2020 seeking relief of refund and vide order dated 02.12.2020, the matter was adjourned sine die. Complaint was reopened vide order dated 05.04.2022 and put up for hearing. During hearing, the complainant apprised the Authority that respondent promoter is out of NCLT proceedings. Granting an opportunity to the respondent to appear and file reply, case was adjourned. Vide order dated 10.08.2022, complainant's counsel appeared and apprised the Authority that the promoter is out of NCLT proceedings vide order dated 28.01.2022 of the Hon'ble NCLT and the original promoter has been reappointed as promoter. Authority observed that since the original promoter was reappointed, his liability towards the complainants is restored by the virtue of the agreement executed between the promoter and the allottee/complainant and therefore Authority has the



jurisdiction to hear the complaint. Relevant part of the order dated 10.08.2022 is reproduced below;

3. *Ld. counsel for the complainant has contended that resolution plan and order of the Hon'ble NCLT should not affect his prayer of refund before this Authority. He has further raised objection to 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 54 months. He contends that they have already waited for more than five long years to get the possession of the unit as deemed date to get the possession was in the year 2017. Now further giving 54 months to respondent to finish the project dissolves the purpose of buying this unit.*

4. *Authority has gone through all the facts and relevant documents in this case except copy of resolution plan and order of Hon'ble NCLT. Before pursuing the case further Authority deems fit to justify that the present case is maintainable before the Authority as original promoter has been appointed as promoter to take over the project. Since, original promoter has been reappointed and these cases have been pending against the same promoter in such case his liability is restored and therefore these cases are maintainable before the Authority. Once respondent continues to be the promoter then they are duty bound to discharge all their obligations as undertaken by them at time of executing agreement. Further jurisdiction of this Authority remains as the respondent/promoter is not declared insolvent and they are going to complete the project therefore respondent's rights and duties will be determined as per provisions of RERA Act, 2016.*

5. *Since, Authority was not in possession of hardcopy of the resolution plan and order of the Hon'ble NCLT, therefore complainants are directed to submit the same in the registry of the Authority for further adjudication in this matter. Respondents are directed to submit an application submitting current status of the project and also status of complainant's tower.*

14. The Authority has gone through the rival contentions. In light of the facts stated by the both the parties, the background of the matter has been captured in this order and also the arguments submitted by both parties. Authority has framed two sub-issues for further adjudication of the matter as follows.

First, whether provisions of RERA will override the approved resolution plan or not?

Dealing with the first issue Authority observes that the complainant has booked the unit in 2014 and respondent was supposed to handover the unit by June 2016. The Company Petition was admitted before Hon'ble NCLT on 29.01.2019, imposing moratorium under Section 14 of the Code and thereby initiating Corporate Insolvency Resolution Process ("CIRP"), against the Corporate Debtor. Claims against the respondent promoter/corporate debtor were submitted before the Hon'ble NCLT on 18.02.2019 before the committee of creditors. Vide order dated 28.01.2022, the Hon'ble NCLT had approved the resolution plan



submitted by Sh. Vivek Gupta, Resolution Applicant. Since Hon'ble National Company Law Tribunal has already approved the resolution plan, the Authority observes that the resolution plan has been approved by 97.30% of voting share by committee of creditors. The judgment passed by the Hon'ble Supreme Court in its decision in case titled as 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.

Secondly, whether complainant's plea that he has not voted in committee of creditors and therefore, his case shall not be impacted by resolution plan or orders of Hon'ble NCLT. The complainant's pleading that since he was not a part of the committee of creditors and did not vote, he shall be excluded from other homebuyers and his case be dealt in the light of his complaint filed in RERA. Authority relying upon the judgment highlighted by the respondent passed by the Hon'ble NCLAT in



case titled as Steel Strips Wheels Limited versus Sh. Avil Menezes Resolution Professional of AMW, wherein it is held that once the plan is approved with 98.55% voting shares pursuant to the meeting of the committee of creditors, the Adjudicating Authority or any other court cannot reconsider or alter the same when the same was approved. Authority further observes that the resolution plan has been approved with a voting share of 97.30%. As per procedure of IBC proceedings, all the efforts are made by the IRP for calling of creditors to participate in the proceedings. It has been stated by the respondent that a huge number of homebuyers approached IRP and were part of committee of creditors. That, upon the will of the committee of creditors, resolution plan was approved. Now, the complainant's plea that he was not a part of committee of creditors cannot be accepted at this stage. Complainant has to abide by the resolution plan as it is applicable to all. Therefore, Authority is of the view that prayer of complainant cannot be allowed and complainant shall be entitled to get possession of his unit by 31.07.2023 in terms of resolution plan. Thus, Authority deems fit to dispose of the case in terms of the order dated 28.01.2022 passed by Hon'ble National Company Law Tribunal and Resolution Plan.

15. During the pendency of the complaint, the complainant had moved an application dated 06.03.2023, wherein it is stated that notice dated



04.01.2023 has been issued for cancellation of the unit allotted to her due to non payment of dues. She has prayed for stay against the cancellation of the unit. It is to be mentioned here that the complainant had prayed for refund of the deposited amount along with interest and on the other hand Honcle NCLT has approved the resolution plan. In view of the above position the complainant granted liberty to avail appropriate remedy as per law against the cancellation of the unit in the project as now she is to be delivered possession of the unit as per the resolution plan.

I. DIRECTIONS OF THE AUTHORITY

23. This complainant is **disposed of**. File be consigned to record room after uploading the order on the website of the Authority.


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


.....
NADIM AKHTAR
[MEMBER]