

ORDER (NADIM AKHTAR - MEMBER)

Present complaint dated 18.05.2022 was 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 fulfil 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 project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, if any, have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Shree Vardhman Green Space Infraheights Pvt. Ltd
2.	Nature of the Project	Group Housing Project
3.	RERA registered/not registered	Registered vide registration no.87 of 2017 dated 23.08.2017
4.	Allotment letter dated	26.08.2015
5.	Unit No. and area	Flat no. 0504 in Tower no. G Super built area 730 sq. ft., Carpet area 478 sq. ft., Balcony area 100 sq. ft.
6.	Flat Buyer Agreement	11.01.2016



7.	Total Sale Consideration	₹19,62,000/-
8.	Paid by the complainant	₹20,47,838/-
9.	Deemed date of possession	<ul style="list-style-type: none"> • 10.04.2019 as mentioned in pleadings at page no.17 • 4 years from the date of approval of building plans or grant of environment clearance (Clause 8(a) of the builder buyer agreement)
10.	Offer of possession	Not offered
11.	Occupation certificate	Not obtained

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT:

3. Complainant booked a flat in project of the respondent namely "Shree Vardhman Green Space" situated in Sector-14, Panchkula, Extension II for total sale consideration ₹19,62,000/-. Vide allotment letter dated 26.08.2015, Flat No.0504, Tower - G, having super built up area of 730 sq. ft., carpet area of 478 sq. ft. and balcony area of 100 sq. ft. was allotted to him. Flat buyer agreement was executed between the parties on 11.01.2016 (Annexure P/12 of complaint book). Complainant had paid total amount of ₹20,47,838/-. As per clause 8(a) of builder buyer agreement, respondent was bound to hand over possession within a period of 4 years from the date of approval of building plans or grant of environment clearance. As per clause C of the agreement building plans were approved vide memo no. ZP-1014/AD (RA)/2014/27777 DATED



09.12.2014 by Department of Town and Country Planning, Haryana. Possession was to be handed over by 10.04.2019 or maximum up to July 2019. But the respondent has failed to hand over possession despite repeated requests made through letters dated 25.08.2020 and 28.11.2020. Copies of letter annexed as Annexure P/38 and P/40. Complainant issued legal notice dated 23.12.2020 to respondent but respondent did not bother to reply and hand over possession even till date, copy of same annexed as Annexure P/42. Respondent issued a letter dated 17.10.2016 annexed as Annexure P/19 whereby intimated the complainant that it has started construction. Respondent has misled the complainant by sending letter dated 19.08.2017 along with photos of construction updates of another tower which is annexed as annexure P/21, P/22, P/23, P/26, P/27, P/28 and P/29. Despite receiving full consideration, possession of flat has not been offered till date as flat has not been constructed so far by respondent.

C. RELIEF SOUGHT:

4. The complainant in his complaint has sought following reliefs:
 - i. That respondent be directed to hand over the possession of flat no. 0504 in tower G in revenue estate of village Billah, Sector 14, Panchkula to complainant complete in all respects along with 24% interest from date of possession till the date



possession of flat is given to complainant along with cost of litigation 0.75 lac and cost of opportunity ₹5 lac.

- ii. In case respondent is not in position to give possession, direct the respondent to return the entire paid amount by complainant with 24% interest from date of payments made by complainant till actual realization with cost of litigation 0.75 lacs and cost of opportunity 5 lacs along with penalty and compensation for harassment or mental agony or oppression for not giving possession of flat to complainant.
- iii. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

5. Respondent has filed its reply and admitted the booking of flat bearing no.0504 in Tower-G vide allotment letter dated 26.08.2015. It is stated that respondent-company has been developing the project "Shree Vardhaman Green Space" which is an affordable housing project floated under Affordable Housing Project, 2013 of the Government of Haryana. Respondent submits that as per clause 8 (a) of the agreement, date of delivery of possession was tentative and subject to force majeure. Due to emergence of Covid - 19 pandemic, real estate sector and construction of the projects got seriously hampered. It is further submitted that as per agreement, respondent was to start construction of the project from the date of receipt of environmental clearance which was



granted on 15.03.2016. According to clause 8 (a) of the BBA, respondent committed to offer possession of said flat to allottee within a period of 4 years from date of approval of building plans or grant of environmental clearance whichever is later. From January 2020 onwards things started going out of control of respondent due to covid-19 pandemic. Therefore, delay whatsoever has been caused in completing the project is due to covid- 19 and is covered under the force majeure circumstances.

6. As per clause 4(a) of the agreement, timely payment of instalments shall be essence of the agreement, but complainant failed to make timely payment several times. Further, respondent submitted that no timelines for delivery of possession was agreed between the parties which means at the time of execution of BBA it was understood by allottees that in case there occurs any unforeseen circumstances beyond the control of respondent, any timeline may not be adhered to. Secondly, that respondent could not complete the project due to force majeure circumstances of covid-19. Hence, respondent has not made any breach of any clause of the Agreement executed between the parties and is not at fault.

E. REJOINDER AND WRITTEN ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

7. Case of the complainant is that he booked a unit in project of the respondent namely "Shree Vardhman Green Space" of respondent



situated in sector 14 at Panchkula, Extension II in 2015. Vide allotment letter dated 26.08.2015, Flat no. 0504 in Tower G, admeasuring super build up area of 730 sq. ft. was allotted to him. Flat Buyer Agreement was executed between the parties on 11.01.2016.

8. According to clause 8 (a) of the BBA, respondent committed to offer possession of said flat to allottee within period of 4 years from date of approval of building plans or grant of environmental clearance whichever is later. As per clause 2 (a) basic sale price for the unit was fixed at ₹19,62,000/-. Complainant has paid ₹20,47,838/-. Complainant argued that since entire payment was made to the respondent, possession should have been offered within reasonable period thereafter.

9. Complainant further alleges that even after receiving full total sales consideration for the said flat, respondent has failed to offer lawful possession of the flat till date. As per version of the respondent, project was to be completed by 15.03.2020 and thus the date for delivery is not tentative. It is further argued that lock down was started from 24.03.2020 i.e., after the due date of possession. Complainant alleges that inordinate delay has already been caused. Aggrieved by the same complainant has filed the present complaint.

10. During oral arguments, learned counsel for complainant has pressed upon relief of refund along with interest at prescribed rate of interest.



F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:

7. During oral arguments, learned counsel for respondent reiterated his arguments as were submitted in writing.

G. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to refund of the deposited amount along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF THE AUTHORITY:

11. After considering facts and circumstances of the case and going through oral as well as written arguments, Authority observes that the complainant was allotted flat no.0504 in the real estate project namely, "Shree Vardhman Green Space" situated in sector 14 at Panchkula, Extension II in 2015. Flat buyer agreement between complainant and respondent was executed on 11.01.2016. Basic sales consideration was agreed to be ₹19,62,000/-. Complainant had paid ₹20,47,838/- i.e., more than the basic sale price. This is an affordable group housing colony. Allottees of such project are middle class or lower middle-class persons. It is assumed that they arranged funds with great difficulty. After payment of entire consideration amount, legitimate expectations of complainant would be that possession of the apartment will be delivered within a reasonable period of time. With agreement having been executed on 11.01.2016 and full payment having been made by the year 2018, legitimate expectation is



generated that possession will be delivered within the time period stipulated in the flat buyer agreement. As per clause 8(a) of the agreement, due date of delivery of possession was within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. As admitted by the respondent in its reply environment clearance was granted on 15.03.2016, meaning thereby that the respondent was obligated to deliver the project by 14.03.2020. However, the respondent has taken a plea that time stipulated in clause 8(a) is subject to force majeure and due to outbreak of covid-19 pandemic, it could not deliver the project within the stipulated time. In this regard, it is observed that the nation-wide lockdown was imposed on 24.03.2020 i.e., subsequent to the lapse of deemed date of possession. Therefore, the respondent cannot be allowed to take advantage of an event that happened post deemed date of possession for not handing over the project within stipulated time. Further, complainant was filed this complaint after waiting for more than 2 years for an offer of possession and in these 2 years the respondent never reached out the complainant/allottee or made any efforts to complete the project. Complainant alleges that structure of the project as was there in 2017 is in same condition even now. No further work has been carried out and there is nobody working at the project site. The project is lying abandoned. Authority observes that even in its written reply, respondent has stated nothing with regard to timelines for completion of the project. If

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indeed the project is not being constructed at all, confidence of allottees is bound to be defeated and they are bound to get apprehensive about fate of their investments. In such circumstances, complainant will be very much within his rights to seek refund of the money paid to the respondent.

12. In regard to stage of construction, Authority has checked factual position from its project section. This project was registered with the Authority vide Registration No. 87 of 2017 dated 23.08.2017. One of the conditions of registration is that promoter has to submit quarterly progress report. Information available with project section reveals that respondents have submitted quarterly progress report up to June 2022, however, the report does not specify how much construction work of the project is complete. In all quarterly reports submitted since 2018, they have only mentioned "work in progress". Writing "work in progress" in all the quarterly reports submitted last 4 years in an evasive reply. It gives rise to presumption that hardly any construction activity is been carried out at the project site. work is actually stopped. Therefore, plea for refund is tenable to be accepted.

13. The promoter is responsible for all obligations, responsibilities and function under the provisions of the Act 2016 or the Rules and the Regulations made thereunder or to the allottee as per agreement for sale under section 11 (4)(a) of the RERA Act 2016. Here the promoter has failed to complete or unable to hand over the possession of the unit on the date as stipulated by it in agreement for sale under section 4 (2)(1)(D) of the RERA Act 2016. Now, the



complainant/allottee in exercise of his right under section 18 wish to withdraw from the project, the promoter is liable to the allottee, without prejudice to any other remedy available, to return the amount received by him in respect of the units with interest at such rate as may be prescribed. In this regard the Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and Others" has observed that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done on agreed date. Relevant Para 25 of ibid judgement is reproduced below:

"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."

14. Thus, Authority deems it a fit case for allowing relief of refund along with interest in favour of complainant.



15. The complainant is seeking refund of the amount paid along with interest @ 24% per annum from the date of investment made by her. However, section 18 of the RERA Act 2016 provides that interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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 (NCLR) 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”.

16. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017 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 interest, it will ensure uniform practice in all cases.

17. 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., 30.05.2023 is 10.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%. Hence, Authority directs respondent to return the amounts along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e., at the rate of SBI highest



marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount.

18. Authority has got calculated the total amount along with interest at the rate of 10.70% till the date of this order as per detail given in the table below:

S.no.	Principal amount	Date of payment	Interest till 30.05.2023	Total payable amount
1.	₹1,01,131/-	20.06.2015	₹86,034/-	₹1,87,165/-
2.	₹4,06,537/-	04.09.2015	₹3,36,793/-	₹7,43,330/-
3.	₹2,45,250/-	08.03.2016	₹1,89,803/-	₹4,35,053/-
4.	₹2,45,250/-	08.09.2016	₹1,76,575/-	₹4,21,825/-
5.	₹2,45,250/-	07.03.2017	₹1,63,633/-	₹4,08,883/-
6.	₹2,74,680/-	05.09.2017	₹1,68,614/-	₹4,43,294/-
7.	₹2,64,870/-	10.03.2018	₹1,48,150/-	₹4,13,020/-
8.	₹2,64,870/-	10.10.2018	₹1,31,534/-	₹3,96,404/-
Total	₹20,47,838/-		₹14,01,136/-	₹34,48,974/-

19. Regarding relief of compensation sought by the complainant under the heads: mental agony, harassment and litigation expenses, it is made clear that nothing stated in this order shall debar the complainant from filing a complaint before the Adjudicating Officer to claim such compensations as he may be entitled under the law.

I. DIRECTIONS OF THE AUTHORITY:

20. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the





Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the amount of ₹34,48,974/- to the complainant.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

21. The complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading order on the website of the Authority.


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DR. GEETA RATHEE SINGH
(MEMBER)


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NADIM AKHTAR
(MEMBER)