



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	12 of 2022
Date of filing:	04.01.2022
Date of first hearing:	15.02.2022
Date of decision:	18.05.2023

Smt. Meena Aggarwal

W/o Rakesh Aggarwal

R/o House No. 18 Dharampura Colony

Najafgarh, New Delhi, 110043

....COMPLAINANT

VERSUS

M/s Shree Vardhman Developers Pvt. Ltd.

Registered Office

3rd Floor, Indra Prakash Building,

21- Barakhamba Road,

New Delhi - 110001

....RESPONDENT(S)

**CORAM:**

**Dr. Geeta Rathee Singh**

**Nadim Akhtar**

Member

Member

**Present:**

Mr. Chaitanya Singhal, counsel for the complainant.

Mrs. Sumit Kumar, counsel for the respondent.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint dated has been filed by complainant under Section 18 and 34(f) 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 seeking compliance of contractual obligations from the respondent.

**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 Gardenia, Sector 10 Sonipat.
2.	RERA registered/not registered	Un-Registered
3.	Date of Booking	29.04.2010
4.	Flat no.	203, 2nd Floor, Tower, C-4
7.	Flat area	1250 sq. ft.
8.	Date of builder buyer agreement	11.05.2010
9.	Deemed date of possession	11.05.2013
10.	Basic sale price	20,60,000/-

*had*



11.	Amount paid by complainant	26,09,198/-
12.	Offer of possession	Not made

### B. FACTS OF THE COMPLAINANT

3. That on 29.04.2010 the complainant through original allottee booked a 3 BHK flat in Respondent's project namely "VARDHMAN GARDENIA" situated at sector 10, Sonipat, Haryana and paid an amount of Rs. 2,19,375/- (Rupees Two Lakh Nineteen Thousand Three Hundred and Seventy Five Only) as booking amount. On 11.05.2010 Builder Buyer Agreement was executed according to which the Complainant was allotted 3 Bed Room flat no. 203, 2 Floor in Tower no. C-4 measuring approx. 1250 Sqft. Super area in project "Vardhman Gardenia" situated at Sector 10, Sonipat, Haryana for a basic sale price of Rs. 20,60,000/- (Rupees Twenty Lakhs Sixty Thousand Only).
4. As per clause 10(A) of the builder buyer agreement the Respondent had committed to deliver the possession of the booked unit within a period of 36 months from the date of BBA which comes to 11.05.2013 (deemed date of possession). Complainant alleges that respondent had failed to complete and handover the possession of the said unit till today even after a huge lapse of 9 years.

had



5. Complainant alleges that till date the respondent has not received the occupation certificate of the tower in which the unit of the Complainant is located. On several occasions, the complainant has telephonically and through written e-mail communications, enquired about the status of the project and the handover of possession of the flat so that they could start planning and arranging for shifting to the unit in question along with her family. That till date, the Complainant has made a payment of an amount of Rs. 26,09,198/- (Rupees Twenty Six Lakhs Nine Thousand One Hundred and Ninety Eight Only) against the basic sale price of Rs. 20,60,000/- (Rupees Twenty Lakhs Sixty Thousand Only)
6. The complainant has visited the project site and found that the work is at a complete standstill and there isn't much labour working at the site. The promised delivery timelines have not been met by the respondent and there has been gross negligence on their part in adhering to their contractual obligations qua the complainant and other allottees. That till date the respondent has not offered for possession. There has been a delay of almost 9 years since the possession of the said unit was committed to be handed over as per terms of the buyer's agreement to the complainant. That the said Unit or the Project is nowhere close to be completed. Therefore, the complainant has approached the Authority seeking relief of refund alongwith interest.





**C. RELIEF SOUGHT**

7. The complainant in her complaint had originally prayed for possession of the unit along with interest. Complainant vide application dated 17.08.2022 has changed his prayer to refund of the amount paid alongwith interest and the same was allowed by the Authority vide order dated 29.09.2022. Complainant has prayed that the respondent be directed to:

- (i) To refund the amount of Rs. 26,09,198/- (Rupees Twenty Six Lakhs Nine Thousand One Hundred and Ninety Eight Only) paid by the complainant along with interest as per Rule 15 of HRERA Rules 2017.
- (ii) To initiate penal proceedings under Section 59 of the RERA Act for Non- registration of "On-going" project under RERA and to impose penalty of 10% of the overall cost of the project upon the Respondent.
- (iii) Any other relief which the authority deems fit in the favor of complainant.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

8. The Original allottee submitted an application to the Respondent for booking/allotment of unit no. 203 on second floor in Tower-C4 having





built up area of 1250 square feet of super built-up area consisting of three bedrooms, one living cum dining room, one kitchen, two toilets, two balconies in the complex named "Vardhman Gardenia". Respectively the flat bearing no. 203 on second floor in tower-C4 in the project "Shree Vardhman Gardenia " sector-10, Sonapat (Haryana) was allotted to the Original allottee.

9. The original allottee also read and understood the terms and conditions of BBA and undertook to sign the same as and when required by the Respondent. The BBA also contained the payment plan in accordance to which the complainant was to make the due instalments as specified. That the payment plan clearly stated at Plan -C: time linked payment plan and the timelines defined ate -

“at the time of booking/ allotment - 10%, within 2 months 10%, within 4 months of booking 10%, within 6 months allotment 8% +100% of E.D.C.I.D.C. (within 09 months of allotment 8% +50% of Car parking, within 12 months of allotment 8% + 50% of Car Parking, within 15 month of allotment 8% +Club Membership fee, Within 18 month of Allotment 7%, Within 24 month of allotment 7%, Within 27 months of allotment 6%, and Within 30 months of





allotment 6%, At the time of offer Possession- 5% +stamp duty + others charges was to be paid respectively.”

10. BBA also contains the specifications such as description of the structure, license and building plans granted by DTCP Haryana.
11. That the Complainant purchased the said Flat from Sushil Kumar Jain who was the original allottee of the said flat via Agreement to Sell dated 11.05.2010. The original allottee then informed the Respondent vide their letter dated 13.07.2012 requesting for the change of right in respect of the said flat in favour of the complainant. That the Complainant after going through the terms and conditions of the agreement dated 11.05.2010, signed and handed over the same to the Respondent. It is submitted that as per Clause 5(a) of the Flat Buyer Agreement, the timely payment of the instalments of the basic price and other charges are the essence of the Agreement. It is further submitted that as per clause 5(b) in exceptional circumstances, the company may, in their sole discretion, condone the delay in payment by charging interest at the rate of 24% per annum on the amount in default but shall not be bound to do so. It is further submitted that as per Clause 6 the allottee(s) herein referred as complainant had agreed and undertaken to pay any municipal tax, property tax, service tax, VAT, GST and/or any enhancement thereof including but not limited to enhanced development charges (EDC), or any other tax or charges, the





government levies including any fresh incidence of tax or compensation as may be levied, charged or imposed by the Government of Haryana/competent authority/ Central Government, retrospectively or prospectively. If such charges are increased with retrospective or prospective effect after conveyance/sale deed has been executed, then the allottee (complainant) undertakes to pay the same upon the intimation by the Developer. It is further submitted that as per clause 12 (b) of the agreement the date of delivery of possession of the flat to the buyer was only on receipt of the entire amount due in terms of the Agreement and registration of sale deed in favour of the buyer.

12. Respondent has alleged that complainant has breached her obligation to make the entire and timely payment of the instalments and caused losses to the respondent as it kept reserved one of the flat for the complainant for a considerable period of time without payment of the agreed instalments. In the real estate projects like the project in question the development being multi-storied group housing development, the default in payment committed by even one allottee adversely affect the development of the other units as well as the financial planning, the pace of the project etc. gets adversely affected thereby causing impediment in the development and overall delay in delivery of the project. That the present project in the process of completion and the Respondent Company may soon handover the possession of the flat/unit bearing no. no.203 on Second Floor in





Tower-C4 having built up area of 1250 square feet (equivalent to 116.17sq. meter).

13. It is submitted by the respondent that the complainant cannot be allowed to reap the benefits out of her own breaches and cannot be allowed to walk out of the same at any time as per her sweet will and desire and that too with benefits. It is submitted that as per the agreement, the respondent was to hand over the possession of the said flat after receipt of the entire amount due in terms of the agreement and registration of sale Deed in favor of the Buyer. That the Respondent Company wrote a reminder Letter Dated 19.12.2011, requesting the complainant / allottee to make the balance due payment of Rs. 5,96,673.62/- (Five Lakh Ninety-Six Thousand Six Hundred Seventy-Three and Sixty-Two Paise) against the provisional booking of Flat no. C4/203 in "Shree Vardhman gardenia" sector- 10, Sonapat (Haryana). The Complainant has not approached this Hon'ble Authority with clean hands and has attempted to mislead this Hon'ble Authority by putting incorrect, incomplete, and distorted version of the facts and circumstances and on this ground alone, the Complainant does not deserve any indulgence from this Hon'ble Authority and the present complaint deserves to be dismissed on this ground alone.
14. Vide application dated 25.11.2022 respondent submitted that he occupation certificate is already granted to the for the complainant's





tower. Occupation certificate dated 02.03.2017 is annexed along with an affidavit dated 23.11.2022.

**E. JURISDICTION OF THE AUTHORITY**

15. 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 Sonipat 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

*Handwritten signature*



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. ISSUES FOR ADJUDICATION**

16. Whether the complainant is entitled to refund alongwith interest as per his prayer ?

#### **G. OBSERVATIONS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT**

17. Complainant had booked a unit in the respondent's project i.e. residential apartment in the group housing Project "Vardhman Gardenia" in Shree Vardhaman Township situated at sector 10, Sonipat, Haryana. On 11.05.2010, B.B.A was executed according to which the Complainant was

*had*



allotted 3 Bed Room flat no. 203, 2 Floor in Tower no. C-4 measuring approx. 1250 Sqft. Super area. Basic sale price of the unit was fixed for Rs. 20,60,000/- against which the complainant has paid a sum of Rs. 26,09,198/-. As per clause 10(A)" of the builder buyer agreement the Respondent had committed to complete the construction within a period of 36 months + grace period of 6 month and deliver the possession of the booked unit from the date of BBA which comes to 11.11.2013. Grievance of the complainant is that despite lapse of 9 years from the deemed date of possession respondent has not only failed to offer the possession of the unit but also has not completed the construction of her tower. Complainant time and again has pressed on this issue and brought the same before the Authority vide application dated. 10.10.2022 wherein she has annexed the photographs of her tower. Again via email dated 12.05.2023, she has annexed photographs showing the current status of her tower where there is no major construction.

19. On the other hand, the respondent has submitted that his project is complete and has also received an occupation certificate of this project dated 02.03.2017. It is submitted by the respondent that despite knowing the payment plan, the complainant has failed to make payments on time and despite various reminders issued to the complainant, the complainant has defaulted in making payments on time. Respondent vide email dated 17.05.2023 has intimated that the project is complete and they have





annexed photographs of the project. They have further annexed a copy of offer of possession issued to two allottees in the same towers in which the complainant has booked his unit i.e. tower C4.

20. Perusal of reply filed by the respondent reveals that respondent has attached only one reminder letter i.e. dated 19.12.2011. Further, the said reminder letter issued is prior to the deemed date of possession. It is further revealed that the occupation certificate on which respondent has relied upon shows that the complainant's tower is not mentioned specifically in the occupation certificate, whereas block numbers are mentioned instead of towers. Complainant has challenged that his tower is C4 which is nowhere mentioned in the occupation certificate. Also in the occupation certificate under column block numbers, respondent has handwritten C4 aside to block 11. Complainant has alleged that the respondent is trying to mislead the court by falsely incorporating the tower C4 number in front of block numbers 11.
21. Authority had communicated to the DTCP, Haryana to inquire about the said issue. In response to the same, it has been apprised that revised building plans in the said case were approved on 16.11.2011, wherein building plans of block numbers 1 to 19 have been approved. It is further brought to the knowledge of the Authority that nothing has been handwritten by the DTCP on the occupation certificate. Authority has also



gone through the approved building plans wherein only block numbers have been approved.

22. Authority has gone through all the relevant facts and documents submitted by both the parties and is of the view that there is no controversy in the issue that the respondent was duty bound to complete the project and handover the unit to the complainant by 11.11.2013. However, respondent has failed to abide by the terms of the agreement and handover the possession of the unit to the complainant. Despite receiving occupation certificate, the respondent has failed to issue any offer of possession. Further, copies of offer of possession attached by the respondent in his email dated 17.05.2023 shows that the said offer of possession was issued to other allottees on 05.05.2023 and 12.05.2023.
23. Respondent has failed to assist the Authority in proving whether the said occupation certificate mentions complainant's tower or whether the complainant's tower is complete or not? In the foregoing circumstances Authority is of the view that said issue will not impact justice in the present matter as complainant had sought relief of refund and respondent has not offered possession till now and thus complainant has a right to leave the project and seek refund. Therefore, in such circumstances after the lapse of 9 years, allottee/complainant cannot be forced to stay with the project, if he wishes to withdraw himself from the project. He is at liberty to decide whether to continue with the project or not? It is amply clear





from the facts and circumstances, complainant was earlier praying to direct the respondent to handover his unit along with delay interest. In the foregoing circumstances and looking at the construction he has preferred to change his relief from possession with delay interest to refund of the paid amount. Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this 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."*





The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

24. There is no clear position with regard to the fact that when was the project completed. Even if it is presumed that since the respondent's project was complete by 2017 as per the occupation certificate, there is still no clarity as to why the respondent till date had not issued any fresh offer of possession. Further, considering the offer of possessions issued to other allottees attached by respondent in his email dated 17.05.2023, it is very much clear that the said offer of possession was also issued to other allottees in the month of May 2023. Possession has never been offered to the complainant. Further, there is nothing on record to convince the Authority as to why the offer was not issued to the complainant. Also neither payment reminder nor any letter of communication has been issued by the respondent. Therefore, Authority finds it to be a fit case for allowing refund along with interest in favour of the complainant. The complainant has sought the relief of interest @ 18% per annum. However, as per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.





25. 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 (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".*

26. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(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;

*had*



27. The legislature in its wisdom in the subordinate legislation under the provisions 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.
28. 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. 13.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.
29. Thus, respondent will be liable to pay the complainant interest from the dates amounts were paid till date of order. Authority directs respondent to refund to the complainant the paid amount of Rs. 26,09,198/- 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 date of order. Authority has got calculated the total amount along with interest calculated at the rate of 10.70% till the date of this order and total amount works out to Rs. 58,55,045/- as per detail given in the table below:





Sr. no.	Principal Amount	Date of payment	Interest Accrued till 18.05.2023
1.	219375	2010-04-29	306630
2.	219375	2010-06-28	302771
3.	150000	2010-12-18	199416
4.	100000	2011-03-01	130804
5.	100000	2011-04-05	129778
6.	100000	2011-05-19	128488
7.	150000	2011-07-05	190665
8.	100000	2011-09-05	125293
9.	200000	2011-12-30	243784
10.	153000	2012-03-27	182548
11.	564507	2012-04-18	669886
12.	153276	2012-06-04	179777
13.	136905	2012-07-04	159371
14.	131380	2012-12-27	146161
15.	131380	2012-09-06	150475
	<b>Total principal amount = Rs. 26,09,198</b>		<b>Total upfront Interest = Rs. 32,45,847</b>

*Handwritten signature*




**I. DIRECTIONS OF THE AUTHORITY**


30. Hence, 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 entire amount of ₹ 58,55,045/- to the complainants in equal share.

(ii) A period of 90 days is given to the respondents 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.

31. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.

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

  
.....  
**NADIM AKHTAR**  
**[MEMBER]**