

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

Complaint no. :	4829/2021
Date of filing complaint:	07.12.2022
First date of hearing:	04.02.2023
Date of decision :	11.10.2023

Mr. Anju Goel & Mukesh Chander Goel Resident of: East lane no. 1, Near Walia House, Adral Nagar, Pathankot.	Complainants
Versus	
M/s Shree Vardhman Infrahome Pvt. Ltd. Regd. office: 301, 3 rd Floor, Indrapraksh building, 21-Barakhamba road, New Delhi-110001.	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Abhishek Garg Advocate	Complainants
Shri Gaurav Rawat Advocate	Respondent

ORDER

1. The present complaint has been filed by the complainants/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 provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Shree Vardhman Flora", village Badshapur, Sector-90, Gurugram.
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	23 of 2008 dated 11.02.2008 valid upto 10.02.2025
5.	Name of licensee	Moti ram
6.	RERA Registered/ not registered	Registered Registered vide no. 88 of 2017 dated 23.08.2017 Valid up to 30.06.2019
7.	Unit no.	Unit no. 103, tower B-4 (Page 23 of reply)



8.	Unit area measuring	1875 sq. ft. (Page 23 of reply)
9.	Date of allotment letter	12.11.2011 (Page 58 of complaint)
10.	Date of execution of buyer agreement	21.02.2012 (Page 60 of complaint)
11.	Possession clause	14 (a) Possession <i>The construction of the flat is likely to be completed within a period of thirty-six months (36) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject 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 in the said complex.</i> (Emphasis Supplied)
12	Date of commencement of construction	31.05.2012 (As per the reply on page 123)



13.	Due date of possession	31.05.2015 31.05.2015 + 6 months of grace period = 30.11.2015 (Calculated from the date of commencement of excavation work which is available in the file.)
14.	Total sale consideration	Rs. 67,05,383/- (Page no. 132 of reply)
15.	Amount paid by the complainants	Rs. 61,51,818/- (Page 132 of reply)
16.	Offer for fit-out possession.	22.07.2021 (Page no. 98 of complaint)
16.	Occupation certificate /Completion certificate	Obtained on 02.02.2022 (As per page 42 of reply)
17.	Reminder letter for possession and clearance of dues	07.02.2022 (Page no. 126 of reply)
17.	Offer of possession	Offered as of 18.04.2022 (As per page 45 of reply)

B. Facts of the complaint:

3. During the year 2011, the respondent advertised the launch of a group housing colony named "Shree Vardhman Flora" located at Sector-90, Gurugram, Haryana.

4. The complainants made a payment of Rs. 9,24,000/- towards the allotment of the flat in the respondent's project. An allotment letter was issued for the same on 12.11.2011.
5. Thereafter the complainants entered into an agreement with the respondent on 21.02.2012 for the purchase of a flat bearing no. 103 Tower no. B-4. The complainants paid a sum of Rs. 15,75,432.50/- towards the basic price as of the date of signing of the agreement.
6. The construction of the flat was to be completed within a period of thirty-six (36) months from the commencement of construction with a grace period of six (6) months. The complainants were informed that the construction of the project commenced in May 2012 and thus the project was to be completed by May 2015 and by November 2015, in case of grace period.
7. The respondent failed to deliver legal possession of the flat despite receipt of a considerable amount of Rs. 61,51,818/- against the total sale consideration of the unit till August 2017.
8. The complainants reached out to the respondent via verbal communication and had also written several emails requesting the respondent to confirm the true date of possession of the flat. However, the requests were seldom answered.
9. On 22 July 2021, the respondent wrote to the complainants offering possession for fit out of the flat. As per this letter, the respondent offered possession of the flat to carry out the fit-out work and interior design as per the choice of the complainants. This was illegal on the respondent's part as no completion and occupancy

certificates had been obtained from the relevant authorities. Furthermore, the respondent demanded escalation cost from the complainants even though as per clause 9 of the agreement between the parties, no escalation could be charged.

10. Further, the validity of the RERA registration of the aforesaid project expired in 2019, and its renewal application was also rejected by the Hon'ble Authority. This registration was later renewed on 28.09.2020.
11. The complainants had booked the flat at the agreed rate of Rs.2400 per sq. ft. prior to the onset of the GST regime. However, since the respondent had delayed the construction of the project and asked for the final payments during the GST regime, the complainants are entitled to the commensurate reduction in the price of the flat in light of the reduction in rates of tax and availability of input tax credits.
12. Furthermore, on a bare perusal of Appendix - A, B, and C of the letter dated 22.07.2021, it emerges that the respondent is seeking to collect an amount of Rs.1,10,484/- as value-added tax. It is imperative to state that the value-added tax laws have completely subsumed in GST and it is completely illegal on the part of the respondent to ask its customers for amounts as value-added tax.
13. The complainants sent a legal notice dated 16.11.2021 to the respondent asking the respondent to pay interest on delayed possession.

C. Relief sought by the complainants:

14. The complainants have sought the following relief(s):

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- i. Direct the respondent to pay interest on delayed possession at the rate determined by this Hon'ble Authority for every month of delay from the due date of possession.

D. Reply by the respondent

15. The respondent developed the project "Shree Vardhman Flora" on a piece of land measuring 10.881 acres situated at village Hayatpur, Sector-90, Gurugram.
16. The construction of the project has been completed in 3 phases. The first phase consisting of towers B1, B2, and B3 was completed in November 2019 and the application for the grant of an occupation certificate for that phase was made on 18/11/2019. The second phase consisting of Tower B4, Tower C1, and Tower C2 was completed in April 2021 and the application for a grant of OC for that phase was made on 16/04/2021. The third phase consisting of Tower A1 and Tower B5 was completed in June, 2021 and the application for grant of OC for that phase was made on 18/06/2021. As all three applications were pending with the department, the respondent/licensee was advised to move a single consolidated application for all the phases for the sake of convenience and early grant of OC. As such the consolidated application for grant of OC was made on 19/07/2021 for the complete project and the OC was granted on 02/02/2022.
17. The flat in question is situated in Tower B4 which was completed in April 2021, and the application for OC was submitted on 16/04/2021 and the OC was received on 02/02/2022.

18. Considering the completion of the project and pendency of applications for a grant of OC, various allottees approached the respondent to permit them to carry out interiors/fit-outs in their respective flat and the respondent agreed to the said requests and many allottees took fit-out possession of their respective flat from the respondent. A similar offer of fit-out possession was also made to the complainants vide letter dated 22/07/2021, however, they did not avail of the said offer.
19. After receipt of OC, the complainants were called upon to take possession of the flat in question. However, despite a number of requests and reminders, the complainants did not come forward to take possession of the flat. The notices/reminders sent to the complainants in this regard include inter-alia letters and reminders dated 07/02/2022 and 18/04/2022.
20. In the FBA no definite date for handing over possession to the allottees was given. However, clause 14 (a) provided a tentative period of 42 months within which the project/flat was to be completed and application for OC was to be made to the competent authority. As the possession was to be handed over only after receipt of OC from DTCP Haryana and it was not possible to ascertain the period that DTCP, Haryana would take in granting the OC, therefore the period for handing over of possession was not given in the agreement. In this particular case, the flat/tower in question was completed in April 2021 and the occupancy certificate in respect thereof was applied on 16/04/2021, as such the answering respondent cannot be held liable for payment of any



interest and/or compensation for the period beyond 16/04/2021. Neither contractually nor in law the respondent can be held liable for the period taken by the concerned government department for granting the OC.

21. That as per the FBA, the tentative period given for completion of construction was to be counted from the date of receipt of sanction of the building plans/revised plans and all other approvals and commencement of construction on receipt of such approvals. The construction of the tower in question commenced sometime around 03/10/2012. The approval consent to establish (CTE) was granted by the Haryana State Pollution Control Board on 15/05/2015.
22. The complainants had opted for a construction-linked payment plan and had agreed that the payment of the installments was the essence of the contract, yet they did not make timely payments of. Various requests and reminders were sent to the complainants demanding the due payment, however, they did not regularize the payment.
23. As various allottees and even the complainants failed to make payments of the installments as per the agreed payment plan, the complainants cannot be allowed to seek compensation or interest on the ground that the respondent failed to complete the construction within the time given in the said clause.
24. The tentative period given in clause 14 (a) of the FBA was subject to conditions such as force majeure, restraint/restrictions from authorities, non-availability of building material or dispute with

construction agency/workforce, and circumstances beyond the control of the respondent company and timely payment of instalments by all the buyers in the said complex including the Complainant. Various other factors beyond the control of the respondent came into play including the following: Supreme court and high court orders, COVID-19, disputes with contractors, orders passed by NGT, EPCA, State Governments, District administration, and labor shortage.

25. All the above factors/force majeure events have resulted so far in wastage of almost 2½ years.
26. The respondent had also applied for financial support from SWAMIH Fund and its application for the same was also cleared after all verification. A fund of Rs. 6 Crore had also been sanctioned to the respondent vide letter dated 12.10.2020. This sanction of financial assistance by the Government of India-backed *SWAMIH Fund* depicts the genuineness of the promoter of the project in question.
27. Further, the RERA Act is not applicable to the facts of the present case, and as such the complaint deserves to be dismissed. The operation of Section 18 is not retrospective in nature and it cannot be applied to the transactions that were entered prior to the RERA Act coming into force. In the present case, the flat buyer agreement was executed much prior to the date when the RERA Act came into force and as such section 18 of the RERA Act cannot be made applicable to the present case.

E. Jurisdiction of the authority:

28. The plea of the respondent regarding the rejection of the complaint on the grounds of jurisdiction stands rejected. 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

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 the entire Gurugram District for all purposes 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

29. So, given 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 complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed before coming into force of the Act.

30. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the flat buyer's agreement was executed between the parties before the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
31. The authority is of the view that the provisions of the Act are quasi-retroactive to some extent in operation and would apply to the agreements for sale entered into even prior to coming into operation of the Act where the transaction is still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would 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."

32. Also, 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-

"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."

33. 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 and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of the above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objections regarding force Majeure.

34. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by the Hon'ble SC, HC, NGT, EPCA to stop construction, notification of the district administration Gurugram,

labor shortage, Covid 19, etc. The plea of the respondent regarding various orders of the SC, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed banning construction in the NCR region were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

G. Findings on relief sought by the complainants.

G.1 Direct the respondent to pay interest on delayed possession for every month of delay from the due date of possession.

35. In the instant case, the complainants wish to continue with the project and is seeking DPC as provided under the proviso to sec 18(1) of the Act. Sec 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided 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 the possession, at such rate as may be prescribed."

36. The respondent while relying on clause 14(a) states that the FBA does not provide any firm and definite date for delivery of possession of the flat and that since there has been a delay on the part of state authorities in granting OC, and there has been labor and material shortages, force majeure events, etc. the due date

cannot be found out. Further, the respondent contends that the due date of delivery must be calculated from the date of sanction of building plans. The aforesaid clause is produced below for ready reference.

*"14 (a) The construction of the flat is likely to be completed **within a period of thirty-six months (36) of commencement of construction of the particular tower/block in which the flat is located** with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject 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 in the said complex."*

A perusal of the aforesaid clause makes it clear that the possession of the flat was to be delivered within 36 months of the date of commencement of construction. In the instant case, the date of commencement of construction work in the tower of the complainants can be taken from the date when the payment demand was raised regarding the commencement of excavation work regarding that tower i.e. 31.05.2012. Therefore, the due date of possession comes out to be 31.11.2015 after allowing a 6-month grace period.

37. **Admissibility of delay possession charges at prescribed rate of interest:** 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's 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.

38. 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.
39. Consequently, as per the website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as of the date i.e., 11.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be the marginal cost of lending rate +2% i.e., 10.75%.
40. The definition of the 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 that 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;"*

41. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.75%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
42. On consideration of the circumstances, the documents, submissions made by the parties, and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the agreement executed between the parties on 21.02.2012, the possession of the subject unit was to be delivered within 36 months plus a 6-month grace period from the date of the start of construction. Therefore, the due date for handing over possession was 30.11.2015. The respondent has failed to hand over possession of the subject unit till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfill its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there

is a delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 21.02.2012 executed between the parties.

43. Accordingly, it is the failure of the promoter to fulfill its obligations and responsibilities as per the agreement dated 21.02.2012 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 allottees shall be paid, by the promoter, interest for every month of a delay from the due date of possession i.e., 30.11.2015 till the date of the offer of possession plus 2 months or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions issued by the Authority:

44. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- I. The respondent is directed to hand over possession of the subject unit and pay delay possession charges to the complainants against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 30.11.2015 till offer of possession plus two



- months at prescribed rate i.e., 10.75% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- II. The rate of interest chargeable from the allottee by the promoter, in case of default, shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- V. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
45. Complaint stands disposed of.
46. File be consigned to the Registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.10.2023