



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### BEFORE THE ADJUDICATING OFFICER

**Complaint No. - 3037 of 2022**

**Date of Institution: - 16.11.2022**

**Date of Decision: - 12.09.2023**

1. Ms. Aruna Aggarwal w/o Raj Kumar Aggarwal r/o H.No 154/5, Near 28 no. Tubewell, Ladwa (Rural), Kurukshetra, Haryana-136132
2. Sumit Aggarwal s/o Raj Kumar Aggarwal r/o H.No 154/5, Near 28 no. Tubewell, Ladwa (Rural), Kurukshetra, Haryana-136132

....COMPLAINANTS

VERSUS

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

....RESPONDENT

**Hearing:-** 11<sup>th</sup>

**Present:-** Mr. Mangesh Goel Advocate, Counsel for the complainants  
None for the respondent

*Santa Gupta*

**JUDGEMENT:-**

The brief facts culminating into the institution of the present complaint are:

1. On 12.12.2012, the complainants had booked a plot in the project namely Shree Vardhman City for a total sale consideration of ₹30,00,000/-. On the same day the complainants were allotted Plot no. C-084, Shree Vardhman City having an area of 300 sq. yards @ ₹10,000/- approximately per sq. yard. After the payment of ₹19,35,000/-, the complainants and respondent company executed an agreement to sell dated 12.12.2012 wherein the target date for handing over the possession of the allotted plot was within 36 months from the execution of agreement to sell which comes to 12.12.2015. As per clause 5(a) of agreement to sell, it was specifically stated that construction of unit would be completed within 36 months. The buyer seller agreement was one sided and heavily loaded in favour of respondent pointing out to grave unfair trade practice being carried out by the respondent. The timeline for handing over possession of the plot to the complainants has already expired and entire project has been inordinately delayed. Despite illegal demands raised by respondent, the complainants kept paying the amount towards their respective plot as and when demanded. Although the complainants were not liable to pay as per demand raised by the respondent as per agreement the said stage raising a particular demand was never reached. In furtherance to malafide shown by the respondent in raising illegal demands, the respondent even charged late payment charges

from the complainants which are completely arbitrary and void as per status of construction. The respondent had wrongly charged delayed payment charges on illegal demand notices. The late payment charges must be withdrawn and the same should be adjusted in the account of the complainants. The complainants have already paid an amount of ₹37,61,105.59/- as complete basic sale consideration alongwith additional charges. The remaining amount was to be paid after offer of possession. As per knowledge of the complainants, the project in dispute has not been registered with Hon'ble Authority. The complainants had booked the plot from their hard-earned money for residential purpose but respondent company stopped responding to the complainants once the complete money was paid to them. After lapse of contract on 12.12.2015 for handing over the possession of the plot, the complainants had waited for a sufficient long time but there was no response from the respondent company. The complainants were forced to send representations to them but no reply was received by the complainants. After seeing the conduct of the respondent company and waiting for more than 5½ years from the due date of handing over the possession, the complainants received offer of possession on 05.04.2021 from the respondent alongwith list of pending charges. The respondent arbitrarily included various additional charges in the said statement of account. The respondent also started demanding ₹20,000/- towards sewerage connection charges, ₹20,000/- towards water connection charges, ₹20,000/- towards electricity connection charges and ₹25,000/- for dual electric meter charges. The respondent has been demanding

charges towards aforementioned heads much more than the amount charged by respective Government Departments. The said charges are not payable by the complainants till the respondent discloses the actual charges to be paid to respective Government Departments under the said heads. The respondent had enhanced EDC and IDC from ₹3,200/- per sq. yard to ₹4,060/- per sq. yard without enclosing copy showing the enhancement made by Government. The respondent also demanded IFMS security of ₹30,002/- and maintenance charges ₹9,000/- without first handing over the possession of the plot. The maintenance is payable only after handing over possession of the flat. The act and conduct of the respondent is contrary to settled terms and conditions of agreement to sell dated 12.12.2012. It is evident that there has been non-fulfilment of commitments from the side of respondent company and same have been acting contrary to contractual terms. The complainants had filed Complaint no.553 of 2021 before Hon'ble Authority in which Hon'ble Authority had granted delay possession charges vide order dated 29.09.2022. Since the respondent company was sure to complete the project, it added 'Time is Essence' clause in the agreement whereby the respondent put itself under the obligation to abide by the time schedule to complete the project. The respondent is under obligation to pay the agreed interest to the complainants in the event of delay in possession. The respondent is liable to pay compensation to the complainants for the loss, damage sustained due to false assurances. The respondent company has not utilized hard-earned money for the benefit of complainants rather has used the same for its own purpose and

did not invest the money adequately in the completion of the project for which the complainants were duped to pay. Even on the said money, the complainants had to pay interest to the bank. The complainants felt cheated and had approached the respondent company at its office at Delhi on several occasions for making good deficiency of service but the same has not been even bothered to settle the grievance of the complainants. Despite more than 10 years of booking the plot and handing over the amount, respondent has miserably failed to handover possession of the allotted plot. The respondent had adopted unfair trade practice in conducting its business and it clearly reflects that the aforesaid acts on the part of respondent are arbitrary, illegal and malafide. Mental agony and torture caused to the complainants is beyond limit as the entire illegal acts of the respondent are deliberate and with the sole intention to harass the complainants and to gain illegal monetary benefits. The respondent had intention to cheat and rob the complainants of their hard-earned money and it has attracted ingredients of Section 406, 420 and 120B IPC and is punishable under these sections. Under similar set of circumstances, this Court had granted compensation to some other allottee vide order dated 07.09.2022 in Complaint no.476 of 2022 titled as Neelam Devi vs. Shree Vardhman Township Pvt. Ltd.. By way of present complaint, the complainants have sought compensation of ₹20,00,000/- on account of mental agony, torture and harassment, ₹5,00,000/- as compensation on account of deficiency in service and litigation cost of ₹1,00,000/-.

2. Upon notice, respondent had appeared and filed reply. Preliminary objections have been taken that residential plot bearing number C-084, Block-C was initially allotted to Ms. Saroj Bala and Mr. Gaurav Kansal vide registration form dated 23.04.2012. The said plot was allotted to Ms. Saroj Bala and Gaurav Kansal vide letters dated 08.05.2012 and 30.05.2012. They sold the said plot to the present complainants and executed an agreement to sell dated 27.07.2012. They had agreed to pay an amount of ₹7,50,000/- to the previous owners i.e. Ms. Saroj Bala and Gaurav Kansal. The previous owners and the present complainants together applied before respondent for transferring the rights of said plot in the name of the present complainants vide application dated 18.08.2012. The complainants and the respondent entered into Builder Buyer Agreement on 12.12.2012. The delay, if any, in delivery of possession of said plot to the complainants was bona fide and beyond the control of respondent. The respondent immediately after execution of collaboration agreement had applied for license before the Haryana Government, Town and Country Planning Department for setting up residential plotted colony on the said project land. Vide application dated 05.03.2012, the respondent requested Haryana Government, Town and Country Planning Department to transfer the license in the name of respondent. Vide order dated 10.07.2012, the license was transferred in the name of respondent by Haryana Government, Town and Country Planning Department. In the year 2016 Deen Dayal Jan Awas Yojna-Affordable Plotted Housing Policy for low and medium potential towns was introduced by the Government.

Respondent was also allotted the plots in the said Deen Dayal Jan Awas Yojna, applied for renewal of license and submitted revised plan before the Authority. Haryana Government, Town and Country Planning Department renewed the license vide letter dated 25.09.2018 upto 28.02.2020. As per clause 5 of the agreement, the responsibility of respondent to offer possession of the said plot was subject to force majeure reasons being beyond the control of respondent. It also included delay in receiving necessary approvals/ sanctions from Government Authorities. Demarcation plan of the project was submitted by respondent after getting the license in February 2012 from DTP Kurukshetra, which was approved and sent by DTP to Senior Town Planner, Panchkula. After approval, it was sent to DTCP. Based on demarcation plan, zoning plan was provided and approved. It was only on 05.02.2016, the correct zoning plan was issued. Due to incorrect zoning plan, the respondent was unable to seek permissions and approvals which were imperative for the development of the project. Till the respondent got the correct zoning plan from the Department, the respondent was unable to make and effect sales. The respondent was unable to get funds because on the demarcation plan the number of plot was different and on the zoning plan it was different, resulting into standstill of the said project. The department took 4 years to issue corrected zoning plan. By the time, the respondent received correct zoning plan from Town and Country Planning Department, the license for the project expired on 28.02.2016. On 02.04.2016, the respondent applied for renewal of license and Department took more than 2 years to renew the license. In September 2018, the

license of the respondent was renewed. Meantime, the Real Estate Regulatory Authority Act came into force in the year 2016 and it had become mandatory to get the RERA registration. On 31.07.2017, the respondent applied for registration of the project with the RERA Authority. Since the license was not renewed by that time, due to non-submission of renewed license, application for respondent seeking registration from RERA Authority was rejected. When the license was renewed in the year 2018, the respondent again applied with the Authority for registration of the project which was granted in September 2019. All the issues concerning quantum of compensation are to be governed by the terms and conditions of the agreement. Complainants are bound by the terms and conditions of agreement and cannot seek any relief which is in conflict with the said agreement. The complainant was to make payment of instalments as per agreed payment schedule as the date of payment was specifically made essence of the contract. As per clause 5(a), the application of the respondent to complete the project within the time mentioned in the clause was subject to timely payments of all the instalments by the complainants and other allottees of the project. Since, the complainants utterly failed to make the payments of instalment, they are not entitled to claim any compensation. Respondent has not committed any default or breach of any of the provisions of agreement. The allegations are unsubstantiated and frivolous. After completing the development work, the respondent had issued offer of possession letter on 05.04.2021. Instead of clearing the due amount, the complainants have filed the present complaint on frivolous



grounds. The complainants have filed a complaint bearing no. CC/553/2021 before Adjudicating Authority in which the complainants had sought compensation of ₹10,00,000/- for mental agony and ₹5,00,000/- for litigation charges and in the present complaint the complainants have exorbitantly increased the compensation amount for mental agony to ₹20,00,000/-, for deficiency of services ₹5,00,000/- and litigation charges ₹1,00,000/-. Preliminary objections have been taken by the respondent that the complainants have not approached this Court with clean hands and have misled the Court by putting incorrect, incomplete and distorted version of the facts. The complainants do not deserve any indulgence from the Court. Complainants have themselves breached their contractual obligations. They cannot be permitted to rely upon certain clauses in the same very agreement alleging to be oppressive and not being binding upon them. If the stand of the complainants is accepted, the written contract will lose its sanctity. Exorbitant amount of compensation, which the complainants have sought, is not justifiable. The complainants have received the amount for the delayed period from Hon'ble Authority, still they are claiming compensation. The only intention of the complainants is to harass the respondent. This Hon'ble Court has no territorial jurisdiction to entertain the complaint. Complainants have not proved the losses against which they have sought compensation. If the exorbitant amount of compensation is granted by the Court to the complainants, it will hamper the progress of the project, it would further cause losses to other allottees which is not in interest of justice and against the

principles of natural justice. On merits, it has been stated that the respondent has never made any illegal demand. The complainants must give some evidence in their favour to prove the averments. Respondent has already mentioned in Builder Buyer Agreement that EDC / IDC charges are tentatively fixed at ₹3200/- per sq. feet. Respondent had sent offer of possession to the complainants vide letter dated 05.04.2021 with the amount due which the complainants have to pay prior to taking possession. Despite that complainants have failed to comply with the same and did not give any response. The respondent has neither shown any deficiency in service nor any unfair trade practice. The complainants have purchased the said plot only for the purpose of investment and not for residential purposes. It is a plotted colony and the complainants have stated that they had visited the project site to watch the development of residential flat, which is contradictory statement. The allegations made by the complainants under Section 406, 120, 120B IPC are frivolous and misconceived. The respondent has prayed for dismissal of complaint.

3. Arguments of learned counsel for the complainant have been heard carefully along with meticulous examination of the records of the case. None has appeared on behalf of respondent.

4. Though the respondent has stated that the residential plot bearing no. C-084, Block-C was initially allotted to Ms. Saroj Bala and Gaurav Kansal vide registration dated 23.04.2012 and the said plot was allotted to them vide letters dated 08.05.2012 and 30.05.2012, they had sold the said plot to the

present complainants, yet no documents to this effect have been placed on record by learned counsel for respondent. On the other hand, the averment of learned counsel for complainant is that they had applied for allotment of the plot, Plot no. C-084, Block-C was allotted to them vide letter dated 23.04.2012. They have also not placed on record any document. However agreement to sell dated 12.12.2012 has been placed on record by learned counsel for complainant. As per version of the complainants they had booked a residential plot measuring 300 sq. yards in project of the respondent at Shree Vardhman City, Village Umri, Sector-30, G.T. Road, Kurukshetra. The basic sale price of the plot was ₹30,00,000/-. At the time of booking, the complainant had paid an amount of ₹4,00,000/- vide cheque dated 25.04.2012. Residential plot no. D-084, measuring 300 sq. yards was allotted to the complainants vide allotment letter dated 12.12.2012. In pursuance to demands raised by the respondent at different times, the complainants had paid an amount of ₹4,00,000/- on 25.04.2012, ₹3,50,000/- on 17.05.2012, ₹5,40,000/- on 17.08.2012, ₹6,45,000/- on 17.11.2012, ₹6,45,000/- on 17.02.2013, ₹3,00,000/- on 31.10.2013/-, ₹5,40,000/- on 27.02.2014 and ₹3,00,000/- on 28.07.2014 which comes to ₹37,61,105.59/-. Plot buyer agreement was executed between the parties on 12.12.2012. As per clause 5(a) of the said agreement, the possession of the plot was to be delivered within 36 months from the date of execution of plot buyer agreement. The stipulated date for handing over possession comes to 12.12.2015. The total payment made by the complainants comes to ₹37,61,105.59/- which has been admitted by the respondent. After examining the schedule of payment made

by the complainant, it transpires that a sum of ₹9,60,000/- has been paid by the complainant as EDC & IDC. This amount has to be deducted out of the total amount paid by the complainants, which was in possession of the respondent. The amount of EDC and IDC and the taxes was to be deposited by the respondent with various Departments. Vide order dated 29.09.2022 passed by Hon'ble Authority it has also been observed that offer of possession made on 05.04.2021 by the respondent to the complainant was a valid offer. In the present case, it is proved on the record that a sum of ₹28,01,105.59/- (₹37,61,105.59/- - ₹9,60,000/-) was being utilized by the respondent even after 12.12.2015 when the possession was to be delivered, till 05.04.2021 when the offer of possession was made by the respondent to the complainant. In the present case the offer of possession is being treated as valid offer. The complainant remained deprived of use of said money of ₹28,01,105.59/- from 21.12.2015 to 05.04.2021, it amounts to causing wrongful loss to the complainant. The loss caused to the complainant is quantifiable. Hence, the complainant becomes entitled to compensation on amount of ₹28,01,105.59/- @ 6% p.a. from the date when possession was to be delivered to the complainant i.e. 12.12.2015 till 05.04.2021, when valid offer of possession was made by the respondent to the complainant.

5. The calculation of compensation is tabulated below:

#### Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹28,01,105.59/-	12.12.2015 to 05.04.2021	6%	₹8,94,205/-

6. The complainant is also awarded ₹25,000/- as cost of litigation.
7. The total compensation comes to ₹8,94,205/-+ ₹25,000 (cost of litigation) = ₹9,19,205/- (Rupees Nine Lakhs Nineteen Thousand Two Hundred and Five only).
8. Sequel to aforesaid observations, the present complaint is partly allowed. The respondent is directed to pay an amount of ₹9,19,205/- (Rupees Nine Lakhs Nineteen Thousand Two Hundred and Five only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.
9. The present complaint stands disposed of. File be consigned to record room after uploading of this order on the website of the Authority.

12.09.2023

*Sarita Gupta*  
 .....  
 (DR. SARITA GUPTA)  
 ADJUDICATING OFFICER

**Note:** This judgement contains 13 pages and all the pages have been checked and signed by me.

*Sarita Gupta*  
 .....  
 (DR. SARITA GUPTA)  
 ADJUDICATING OFFICER