



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>1080 of 2021</b>
<b>Date of filing:</b>	<b>04.10.2021</b>
<b>First date of hearing:</b>	<b>16.11.2021</b>
<b>Date of decision:</b>	<b>17.08.2023</b>

Shashank Garg

.....Complainant no.1

Nishant Garg

.....Complainant no.2

H-25, Block-H, South City-I, Gurugram, Haryana

.....COMPLAINANTS

Versus

Shree Vardhman Township Pvt. Ltd

Regd. Office 301,3<sup>rd</sup> floor,

Indraprakash Building, 21-Barakhamba Road,

New Delhi-110001

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**Date of Hearing:17.08.2023**

**Present:** - Mr. Saurabh Gulia, Id counsel for the complainants through VC.

Mr. Sumit Kumar, learned counsel for the respondent through VC.

**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint has been filed on 04.10.2021 by complainants 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 the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Shree Vardhman City, sector-30, Kurukshetra, Haryana.
2.	Name of the promoter	Shree Vardhman Township Private

*Geeta Rathee*

		Limited
3.	RERA registered/not registered	Registered (HRERA-PKL-KUK-143-2019)
4.	Unit no.	D-038
5.	Unit area	267sq.yard
6.	Date of builder buyer agreement	11.12.2012
7.	Due date of offer of possession	11.12.2015
8.	Possession clause in BBA	Clause 5(a) of plot buyer agreement: Company shall endeavour to complete the development of said colony within 36 months from the date of execution of this agreement.
9.	Total sale consideration	₹24,00,330/-
10.	Amount paid by complainants	₹31,18,685/-
11.	Offer of possession	15.06.2021

### **B.FACTS OF THE COMPLAINT**

3. That complainant no.1 hadbooked a residential plotby paying booking amount of ₹ 8,40,033/- and admeasuring 267 sq. yard at basic sale price of ₹24,00,330/- in the project named “Shree Vardhman City” situated at Sector-30, NH-01, Kurukshetra, Haryana. It was assured and represented to the complainants by the respondent that it had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on the time.



4. That after delay of 4 months, plot buyer agreement was executed on 11.12.2012, whereby plot no. D-038, admeasuring 267 sq.yards was allotted to complainant no.1 Shashank Gargat basic sale price of ₹24,00,330/- which is annexed as Annexure C-2.
5. That as per clause 5(a) of plot buyer agreement possession to be delivered within 36 months from date of execution of plot buyer agreement. That means deemed date of possession comes to 11.12.2015. However, respondent failed to fulfil its obligations
6. That respondent offered possession vide letter dated 15.06.2021 of the plot No.D-038 in the said project having final area admeasuring 306.32 sq. yards (256.120 sq. mtr) whereas as per the plot buyer agreement, the complainants have been allotted a plot admeasuring 267 sq. yards (224.37 sqmtr) at the basic sale price of ₹24,00,330/- which was calculated at RS.8,990/- per sq. yard alongwith external development charges (EDC) and infrastructure development charges (IDC) @ Rs.3200/- per sq. yards, however along with the letter of possession, the respondent has raised demand of the final EDC & IDC @ Rs.4060/- per sq. yard which is way above and exceed the amount as agreed in the plot buyer's agreement.
7. That complainants jointly and severally have paid the entire sale consideration to the respondent for the said plot. As per the customer ledger dated 13.07.2021, issued by the respondent, complainants have



already paid ₹31,18,685/- towards total sale consideration as on today to the respondent and now nothing major is pending to be paid on the part of complainants. That total sale consideration for the said plot as mentioned in the ledger statement as issued by the respondent is ₹40,85,476/-. Copy of latest customer ledger dated 13.07.2021 is annexed as Annexure - C3.

8. That respondent by committing delay in delivering of the possession of the aforesaid plot has violated the terms and conditions of the plot buyers agreement and promises made at the time of booking of said plot. Thus, cause of action accrued in favour of the complainants against the respondent on 24.08.2012 when the complainants had booked the said plot and it further arose when respondent failed /neglected to deliver the said plot on the agreed date and further arose on 15.06.2021, when the respondent made offer of possession after a much delay of 66 months. The cause of action is continuing and is still subsisting as said plot has not been handed over till date.

### **C. RELIEF SOUGHT**

9. Complainants sought following relief :

- a) Pass an order to direct the respondent to pay the interest at the prescribed rate on the total sale consideration amounting to



₹31,18,685/- paid by the complainants for the said plot on account of delay in delivering possession from the date of payment till delivery of physical and vacant possession of said plot.

- b) Pass an order to direct the respondent to pay an amount of ₹ 55,000/- to the complainants as cost of the present litigation.
- c) Any other relief/order or direction, which this Hon'ble Authority may, deems fit and proper considering the facts and circumstances of the present complaint.

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

10. Respondent filed its reply on 22.12.2021, where it is stated that it is the complainant who themselves breached their contractual obligations and therefore they are not entitled to invoke the jurisdiction of this Hon'ble Authority and do not deserve any relief from this Hon'ble Authority.

11. That complaint is barred by limitation and hence this Hon'ble Authority have no jurisdiction to decide and adjudicate the present complaint.

12. That the delay in the delivery of the said plot to the complainant no.1 was bonafide and was beyond the control of the respondent and further submitted that the respondent immediately after executing the collaboration agreement of the land had applied for license before the Haryana Government, Town and Country Planning Departments for setting up of residential plotted colony on the land measuring 50.125 acres situated in the

revenue estate of village Umri, Tehsil- Thanesar, Sector- 30, Distt. Kurukshetra, Haryana.

13. That the Haryana Government, Town and Country Planning Department vide its letter dated 29.02.2012 issued a License bearing no. 15 of 2012 to the respondent. Copy of License no.15 is annexed as ANNEXURE- R2 and vide order dated 10.07.2012 license was transferred in the name of the respondent by the Haryana Government, Town and Country Planning Departments. Copy of order dated 10.07.2012 is annexed as ANNEXURE - R3.

14. That Prime Minister introduced DeenDayal Jan AwasYojana (DDJAY) affordable plotted housing policy 2016 and respondent in order to allot plot under said DDJAY and applied for renewal of license and submitted revised plan before Authority. T&CP vide letter dated 25.09.2018 renewed the license upto 28.02.2020.

15. That demarcation plan of the project was submitted by the respondent after getting the license in February 2012 to the DTP Kurukshetra, which was approved and sent by DTP to the senior town planner Panchkula, then after approval from the concerned official it was sent to DTCP. On the basis of the demarcation plan, which was approved by the Town and Country Planning (T&CP), the respondent had got the Zoning Plan. However, the Zoning Plan which was provided and approved by the T&CP depicted numerically wrong plot numbers which were not in accordance with the



Demarcation Plan approved by the T&CP. Thereafter, respondent made communications with the T&CP regarding correction of the Zoning Plan and it was only in 2016 i.e. 05.02.2016 that the correct Zoning Plan was issued by the T&CP.

16. That by the time respondent received the corrected Zoning Plan from T&CP the license for the project i.e. the License No. 15 of 2012 had expired on 28.02.2016 and therefore on 02.04.2016 respondent applied to the T&CP for renewal of License along with all requisites. However, in September 2018 that the license of the respondent, bearing No. 15 of 2012 was renewed. That means there was no wilful default on part of respondent.

17. That plot buyer agreement dated 11.12.2012 was executed between the complainant no. 1, i.e., Shashank Garg and the respondent and complainant no. 1 agreed to purchase a residential plot at "Shree Vardhman City" Sector-30, Kurukshetra. The said agreement did not provide any definite date or time frame for handing over of possession to the complainant and on this ground alone the relief claimed by the complainant is not maintainable.

18. It is stated that time period provided in said agreement was tentative time period and was subjected to various conditions such as timely payment by the allottee of the project and was also subject to force majeure conditions including delay in receiving necessary permission/ sanction approval from the Government Authorities and conditions beyond the control of respondent.





19. That since the price of plot had not elevated as expected by the complainant no.1 and thereafter the complainant no.1 refused to make the payment of the agreed amount. The respondent thereafter issued several call notices and emails to the complainant no.1 for payment. The complainant no.1 did not paid any heed to the requests of the respondent .respondent finally issued cancellation letters to the complainant. Copies of emails, call notices and cancellation letters are attached as Annexure R7.
20. That the plot buyer agreement dated 11.12.2012 was executed with Shashank Garg and the complainant no.2 Nishant Garg have no legal right to file complaint for compensation against the respondent as on 22.12.2015, complainant no. 2 had cancelled his plot and requested for transfer of amount ₹15,11,336/- in the booking of complainant no.1. Complainant no. 2 had already cancelled his plot and the amount was adjusted towards the booking of Complainant no.1. Therefore, on this ground the Complaint deserve to be dismissed Copy of letter dated 22.12.2015 is attached herewith as ANNEXURE R8.
21. It is submitted that as per clause 2(a) of the agreement it was agreed that area can be increased or decreased and complainant has to make the payments as per final measurement, therefore, respondent has raised final bill on the increased area at the agreed rate amount. It is further submitted that as per clause 2(e) of the agreement, it was agreed that in case of

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increase of IDC/EDC charges he complainant has to pay charges on the increased or decreased amount.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

22. Ld counsel for the complainants and respondent reiterated their submissions as mentioned in complaint and reply respectively.

**F. ISSUE FOR ADJUDICATION**

23. Whether the complainants are entitled to delay interest on said plot on account of delay in delivering possession from the date of payment till delivery of physical and vacant possession of said plot.

**G. OBJECTIONS AND OBSERVATIONS BY THE AUTHORITY**

24. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments made by both parties, Authority observes that there is no dispute regarding the fact that plot no.D-038 was allotted to Mr. Shashank Garg in the project namely "Shree Vardhman City"; the plot buyer agreement was signed on 11.12.2012 and the complainant has paid ₹31,18,685/- against the basic sale price of ₹ 24,00,330/-. It is observed that complainant has alleged that possession was to be handed over within 36 months from the date of execution of the plot buyer agreement, i.e., by 11.12.2015. However, the

respondent had failed in its obligation to hand over possession of plot within the time stipulated in the plot buyer agreement. Complainant has further alleged that the respondent offered the possession of the plot only on 15.06.2021 and that too accompanied by illegal and arbitrary demands. Thus, in view of aforesaid reasons complainant in exercise of his right is seeking the relief of delayed interest till delivery of physical and vacant possession of the said plot. Per contra, respondent had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation law . In this regard, it is observed that since, the promoter till date has failed to fulfil his obligations to hand over the possession of the booked plot in its project as per agreement for sale, the cause of action is re-occurring and the ground that complaint is barred by limitation stands rejected. Further, in this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

*"19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."*

RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings



under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court.

25. Further, respondent has averred that there has been no delay in handing over of possession, since possession clause 5(a) of plot buyer agreement was subject to the conditions mentioned in clause 5(b) of plot buyer agreement. Clause 5(a) and clause 5(b) of plot buyer agreement are as follow:

*“Clause 5(a) Company shall endeavor to complete the development of said colony within thirty six months from the date of execution of this Agreement.*

*Clause 5(b) Company's responsibilities to offer possession of said plot shall be subject to Force Majeure conditions and causes beyond the control of company (like flood, earthquake, terrorists acts, sabotage, war, riots, labour problems, shortage of materials or electric power, strikes, delays in receiving necessary permission /sanctions/approvals from Government Authorities, failure/delay at the end of Government/HUDA to provide necessary infrastructural facilities like Electricity, Water, Sewerage and Road upto the periphery of said colony for being connected with internal lines/systems of said colony etc.”*

On perusal of the aforementioned clauses it is observed that deemed date of possession was 36 months from date of execution of agreement, i.e.,



11.12.2015, subject to conditions mentioned in clause 5(b), however, respondent has failed to prove by placing any document on record, that any force majeure condition occurred from the date of possession to the deemed date of possession. As per plot buyer agreement, respondent was under obligation to hand over possession till deemed date of possession, however, respondent failed to fulfill its obligations. Further, respondent had only made plain statements in reply regarding delay in handing over of possession due to force majeure, which are not substantiated by any documentary proof therefore this plea/averment of respondent that delay was not cause due to the default of respondent cannot be accepted. Also, respondent averred that delay in the delivery of plot was bonafide and was beyond the control of the respondent as he had applied before the concerned authorities for demarcation plan and zoning plan well on time, thus he is not liable to pay interest. To this Authority observes that project in question was for development of plotted colony. Necessary plan to undertake development work of internal services is demarcation plan which was duly approved by the department in 2012 itself. There is no relationship between approval of zoning plan and development of internal services. Zoning plan is meant for regulating the building block within premises of any plot. Therefore, respondent averment that correction in zoning plan delayed the development of internal services doesn't stand merit. He can't therefore be allowed to take benefit of force majeure



condition on the ground that department had finalized the revised zoning plan regarding numbering of plots in February 2016.

26. Further, Authority observes that deemed date of possession was 11.12.2015, however possession was offered on 15.06.2021. Complainant alleges that this offer of possession was not a valid offer of possession as same was accompanied by illegal demands in relation to EDC and increased area, and thus delay interest be granted till physical possession is offered to him. In order to adjudicate the issue whether said offer of possession was legally valid or not, Authority has referred to clause 2(e)(i) of plot buyer agreement which is as follow:

*Clause-2(e)(i)The External Development Charges (EDC) and Infrastructure Development Charges (IDC) has tentatively been fixed @ Rs.3200/- per Sq. Yard (Rs.3827/- per Sq.Mtr). This shall be payable by the Buyer(s) additionally according to the payment plan as mentioned in Schedule-I annexed to this Agreement. In case of any increase in the amount of external development charges and/or infrastructure development charges the same shall be payable by the Buyer(s) when demanded and the provision to this effect shall be incorporated in the sale / conveyance deed to be executed by the Company in favour of the Buyer(s) and shall be binding upon the Buyer(s). Such increased sum, shall be paid by the Buyer(s) to the Company on demand irrespective of the fact whether such liability*



*arises before or after execution and registration of sale deed in favour of the Buyer(s) in respect of the subject plot."*

And clause (7) of plot buyer agreement which is as follow:

*"The Company shall have the right to effect suitable and necessary alterations in the layout plan, if and when found necessary which alterations may involve all or any of the following changes namely change in position of the plot, change in the number of plots, change in its boundaries, change in its dimensions or change in its area. To implement any or all of the above changes an additional document if necessary will be executed and got registered. Any increase or decrease up to 10% of the originally allotted area shall be adjusted at booking rate. However, in case increase/decrease is more than 10% prevailing rate shall be applied for such differential area to determine the price payable by the Buyer(s)."*

On perusal of two relevant aforementioned clauses, Authority observes that since the plot buyer agreement executed between the parties is Pre-RERA agreement and accordingly parties are bound by the terms and conditions of said agreement. And as per terms and conditions specifically clause 2(c)(i) and clause 7, it is amply clear that buyer is liable to pay the extra EDC and also for enhanced area, meaning thereby that the said offer of possession is legally valid. Moreover, during the course of proceeding dated 09.03.2022, complainant submitted that complainant is ready to



accept possession and further sought only delay interest as relief from deemed date of possession, i.e., 11.12.2015 to offer of possession, i.e., 15.06.2021 and also ready to pay outstanding amount, if any along with enhanced cost on increased area. Hence, the complainant no.1 is entitled to the interest for delayed possession till the date of offer of possession, i.e., 15.06.2021.

27. Respondent further averred that that complainant no.1 had made default in making payments despite issuance of reminder letter dated 15.04.2014 for an amount of ₹10,47,298/- and call notice dated 19.08.2014, cancellation letter dated 28.08.2014, and was constrained to issue final cancellation letter dated 17.09.2014, whereby the plot allotted to complainant was cancelled. In this regard Authority observes as per the customer ledger dated 13.07.2021, complainant no.1 including transfer amount of ₹ 15,11,336/- from the plot no. D-037 of complainant no.2 had paid an total amount of ₹ 31,18,685/- upto 31.12.2015 and thereafter offer of possession dated 15.06.2021 has been issued, meaning thereby that after issuance of cancellation letter dated 17.09.2014, respondent and complainants were in contact and respondent accepted the transfer amount paid by complainant no.2 in favour of plot no. D-038 of complainant no.1. Therefore, cancellation stands null and void.

28. Another peculiar fact which came to light before this Authority during course of hearing that the complaint has conjointly been filed by two





complainants, i.e., Mr. Shashank Garg and Mr. Nishant Garg seeking relief of delay interest along with possession. On perusal of record Authority observes that plot buyer agreement dated 11.12.2012 annexed with the complaint at Annexure C-2 was executed between complainant no.1 Shashank Garg and respondent promoter namely. There is no mention of name of complainant no.2 Nishant Garg in plot buyer agreement. Furthermore, complainant no. 2 Nishant Garg had sent letter dated 22.12.2015 to respondent for cancellation of his plot no. D-037 in Shree Vardhamn City, Kurukshetra and transfer and adjust the refundable amount of ₹ 15,11,336/-(out of the total paid amount of ₹16,07,341/)against plot no. D-038 which is booked in the name of Mr. Shashank Garg i.e. complainant no.1. Also, complainant no.1,i.e., Mr. Shashank Garg had signed an no objection certificate, annexed as annexure R8 on page 38 dated 22.12.2015, mentioning that he has no objection on receiving adjusted amount of ₹15,11,336/- from plot no. D-037 in name of Mr. Nishant Garg to plot no. D-038 in his name. In view of the facts captured in this paragraph this Authority has no hesitation in concluding that complainant no. 2 had already withdrawn from the project of respondent and got the amount paid for his plot transferred/adjusted towards the amount forthe plot of complainant no. 1. It clearly established that there is no relation of builder and allottee between complainant no. 2 i.e. Nishant Garg and respondent. Thus, complainant no.2 does not come under



definition of allottee. Therefore complainant no. 2 has no cause of action or right to claim delay interest pending against the respondent. Hence, no relief is granted in favour of complainant no. 2.

29. In view of the above observations and reasons, Authority is of the considered view that complainant no.1 is well within his rights to claim the delay interest from respondent for the amount paid by him and thus deems fit to allow interest for delay in handing over of possession till the date of offer of possession, i.e., till 15.06.2021. Such interest shall be calculated at the rate prescribed in 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”.*

Authority directs respondent to pay an amount of ₹ 18,40,990/- 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 10.75% (8.75% + 2.00%).



Authority has got calculated interest at the rate of 10.75% and total amount works out to ₹18,40,990/-as per detail given below:

Sr. No	Principal Amount	Decmed date of possession or date of payment whichever is later	Interest Accrued till 15.06.2021
1.	16,07,349/-	11.12.2015	9,53,422/-
2.	15,11,336/-	31.12.2015	8,87,568/-
Total	₹31,18,685/-		₹18,40,990/-

30. With respect to relief (b), it has neither been pressed upon nor argued during course of hearing.

#### **H. DIRECTIONS OF THE AUTHORITY**

31. 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 pay the interest to complainant no.1 of ₹18,40,990/- on amount paid. Also, respondent is directed

to pay already imposed cost of ₹5000/- payable to the Authority and cost of ₹2000/- payable to the complainant vide order dated 02.05.2023.

(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.

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



.....  
NADIM AKHTAR  
[MEMBER]



.....  
DR. GEETA RATHEE SINGH  
[MEMBER]