



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

<b>Complaint no. :</b>	<b>4166 of 2022</b>
<b>Date of Filing Complaint:</b>	<b>10.06.2022</b>
<b>Order Reserve On:</b>	<b>08.08.2023</b>
<b>Order Pronounced On:</b>	<b>17.11.2023</b>

<b>Girish Chandra Jain</b> R/O: AE-7, Shalimar Bagh, New Delhi-110068	<b>Complainant</b>
Versus	
M/s Shree Vardhamn Infraheights Pvt. Ltd. <b>Regd. office:</b> 302, 3 <sup>rd</sup> Floor, Indraprakash Building, 21, Barakhambha Road, New Delhi	<b>Respondent</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Hemant Phogat (Advocate)	Complainant
Sh. 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 provision 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, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Victoria" at village Badshahpur, sector 70, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	10.9687 acres
4.	DTCP license no.	103 of 2010 dated 30.11.2010 valid upto 29.11.2020
5.	Name of licensee	Santur Infrastructures Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 70 of 2017 dated 18.08.2017 valid upto 31.12.2020
7.	Unit no.	704, Tower H (page no. 23 of complaint)
8.	Unit area admeasuring (super area)	1950 sq. ft. (page no. 23 of complaint)
9.	Allotment letter	25.12.2012 (page no. 19 of complaint)
10.	Date of flat buyer agreement	14.05.2013 (page no. 26 of complaint)
11.	Change of right in ownership	26.10.2016



		From original allottee i.e., Siddharth Jain to present complainant Mr Girish Chandra Jain (subsequent allottee) (page no. 17 of complaint)
12.	Payment Plan	Construction linked payment plan (page no. 39 of complaint)
13.	Date of commencement of construction	25.11.2014 (As stated by respondent on page 8 of reply)
14.	Possession clause	<b>14 (a)</b> <i>The construction of the flat is likely to be completed within a period of 40 months of commencement of construction of the particular tower/block in which the subject flat is located with a grace period of 6 months on receipt of sanction 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>
15.	Due date of possession	25.09.2018  (calculated from the date of commencement of construction including grace period of 6 months)
16.	Basic Sale Consideration	1,01,08,800/- (page no. 24 of complaint)
17.	Total sale consideration	Rs. 1,28,60,501/-



		(page no. 41 of reply)
18.	Amount paid by the complainants	Rs. 1,17,45,626/- (page no. 41 of reply) Rs. 1,17,46,160/- (page no. 13 of complaint)
19.	Occupation certificate	13.07.2022 (page no. 122 of reply)
20.	Offer of possession	18.08.2022 (page no. 125 of reply)

**B. Facts of the complaint:**

3. That, after going through advertisement published by respondent in the newspapers and as per the brochure /prospectus provided by respondent, the son of the complainant Mr. Siddharth Jain had applied for the allotment of a unit/flat bearing no. 704, tower – H, super area 1950 Sq. Ft., in the upcoming project named, Shree Vardhman Victoria, sector-70, Gurugram, for basic sale consideration of Rs.1,01,08,800/-. That the above said flat was transferred in the name of the complainant by his son Mr. Siddharth Jain vide transfer letter dated 26-10-2016 which was also acknowledged by the respondent.
4. That the complainant had paid a sum of Rs. 10,00,000/- as booking amount to the respondent on 14.06.2012 and the allotment letter was issued by the respondent on 25.12.2012 in favour of the complainant and further builder buyer's agreement was executed on 14.05.2013.
5. That the respondent is in right to exclusively develop, construct and build residential building, transfer or alienate the unit's floor space and



- to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.
6. That, as per clause-14-a of the builder buyer's agreement, the respondent was under legal obligation to handover the possession of the above said flat within 46 months from the date of approval of building plan and all other approvals.
  7. That the complainant visited the site during the course of construction and noticed and found that the construction work is delayed beyond the possession date and since then they have been trying to communicate to the respondent by visiting their offices and through various modes including but not limited to telephonic conversations and personal approach etc.
  8. That the complainant has made and satisfied all the payments against the demands raised by the respondent and as on the date of filing of the present complaint, the complainant has abided by all the payments plan of the builder buyer's agreement without any delay and default.
  9. That, till today the complainant had not received any satisfactory reply from the respondent regarding completion of the project the complainant has been suffering a lot of mental, physical and financial agony and harassment.
  10. That the respondent has not completed the construction of the said real estate project till now and the complainant has not been provided with the possession of the said flat despite several and repeated promises and representation made by respondent. By committing delay in delivering the possession of the aforesaid flat, the respondent has violated the terms and conditions of the builder buyer's agreement and promises made at the time of booking of said flat.



**C. Relief sought by the complainants:**

11. The complainants have sought following relief(s):

- (i) Direct the respondent to pay delay possession charges till offer of possession of the said flat along with prevailing rate of interest.
- (ii) Direct the respondent to handover the possession of the said flat.
- (iii) Direct the respondent to pay Rs. 50,000/- as the litigation expenses.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:

12. The present complaint filed under Section 31 of the Real Estate Regulation and Development) Act, 2016 (hereinafter "RERA Act) is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act.
13. The complainant has sought reliefs under section 18 of the RERA Act but the said section is not applicable in 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 the same cannot be applied to the transactions that were entered prior to the RERA Act came in to force. The parties while entering into the said transactions could not have possibly taken into account the provisions of the Act and as such cannot be burdened with the obligations created therein. In the present case also, the flat buyer agreement (hereinafter "FBA) 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. Any other interpretation of the RERA Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very



purpose of the RERA Act nugatory. The complaint as such cannot be adjudicated under the provisions of RERA Act.

14. That the respondent vide its letter dated 18.08.2022 offered possession of the flat in question i.e., H-704 to the complainant calling upon him to clear the outstanding dues as mentioned in Appendixes A to C attached to the said letter and to take possession after getting the conveyance deed registered in his favour. However, the complainant has not responded to the said offer till date.
15. That a flat buyer agreement dated 14.05.2013 was executed in respect of flat H-704 between the complainant and the respondent.
16. It is submitted that the tentative period mentioned in the FBA for completion of construction was subject to and dependent upon, inter-alia, timely payments of the installments by the allottee/complainant. As submitted in the preliminary submissions, the allottee/complainant failed to make timely payment of the installments and as such the allottee/complainant was not left with right to seek possession within the time/period specified in the FBA. As such the allottee/complainant cannot seek refund on the ground that the construction was not completed within the time indicated in the FBA. The Contract within the parties contained reciprocal promises and the promise to complete construction within the tentative time frame given in the contract was dependent upon the promise of the allottee to make timely payments of the installments.
17. That the FBA executed in the present case did not provide any definite date or time frame for handing over of possession of the apartment to the complainant and on this ground alone the refund and/or compensation and/or interest cannot be sought under RERA Act. Even



the clause 14 (a) of the FBA merely provided a tentative/estimated period for completion of construction of the flat and filing of application for occupancy certificate with the concerned authority. After completion of construction the respondent was to make an application for grant of occupation certificate (oc) and after obtaining the OC, the possession of the flat was to be handed over.

18. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

19. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

20. 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 entire Gurugram District for all purpose 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**

21. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 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.*

22. So, in view of 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.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.**

23. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyers agreement was executed between the complainants and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
24. The authority is of the view 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. 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 would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The 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 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."*

25. Further, 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."*

26. 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 above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

**G. Entitlement of the complainant:**

- (i) Direct the respondent to pay delay possession charges till offer of possession of the said flat along with prevailing rate of interest.
- (ii) Direct the respondent to handover the possession of the said flat.
27. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 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."*

28. Clause 14(a) of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"14(a).

*"The construction of the flat is likely to be completed within a period of 40 months of commencement of construction of the particular tower/block in which the subject flat is located with a grace period of 6 months on receipt of sanction 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 .."*

29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, 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 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.*



30. 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.
31. 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., 17.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75% per annum.
32. The definition of 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 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;"*
33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

34. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is a matter of fact that buyer's agreement executed between the parties on 14.05.2013, the possession of the booked unit was to be delivered within a period of 40 months from the date of start of construction including grace period of 6 months. The date of commencement of construction is 25.11.2014 and the due date comes out to be 25.09.2018.

35. Accordingly, 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 complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by her to the respondent from the due date of possession i.e., 25.09.2018 till the offer of possession i.e., 18.08.2022 plus two months i.e., 18.10.2022 as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

**(iii) Direct the respondent to pay Rs. 50,000/- as the litigation expenses.**

36. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in



section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the Authority:**

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

- i) The respondent is directed to handover physical possession of the subject unit within 60 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- ii) The complainant is entitled to delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.75%p.a. for every month of delay on the amount paid by him to the respondent from the due date of possession i.e., 25.09.2018 till the offer of the possession i.e., 18.08.2022 plus two months i.e., till 18.10.2022 as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
- iii) The promoter shall not charge anything which is not part of the buyer's agreement
- iv) The respondent is directed to pay arrears of interest accrued, if any after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.



- v) The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act

38. Complaint stands disposed of.

39. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 17.11.2023**