

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

Date of decision: 18.01.2024

| NAME OF THE BUILDER |             | M/s Shree Vardhman Infraheights Private Limited                               |  |
|---------------------|-------------|---|--|
| PROJECT NAME        |             | Shree Vardhman Victoria, Sector 70 Gurgaon, Haryana                           |  |
| S. No.              | Case No.    | Case title  | Appearance   |
| 1.                  | CR/983/2022 | Shelendra Rajput<br>Vs.<br>M/s Shree Vardhman Infraheights<br>Private Limited | Shri Shashi Bhushan Prasad<br>(Advocate for complainant)<br><br>Shri Gaurav Rawat<br>(Advocate for respondent) |
| 2.                  | CR/982/2022 | Pravin Rajput<br>Vs.<br>M/s Shree Vardhman Infraheights<br>Private Limited    | Shri Shashi Bhushan Prasad<br>(Advocate for complainant)<br><br>Shri Gaurav Rawat<br>(Advocate for respondent) |

**CORAM:**

Shri Vijay Kumar Goyal

**Member****ORDER**

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant in the above referred matters are allottees of the project, namely, Shree Vardhman Victoria, Sector 70 Gurgaon, Haryana being developed by the same respondent/promoter i.e., M/s Shree Vardhman Infraheights Pvt. Ltd. The terms and conditions of the registration form and fulcrum of the issue involved in both cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, and complainant seeking refund of the paid up amount along with interest.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

|                                      |  |
|--------------------------------------|--|
| <b>Project Name and Location</b>     | "Shree Vardhman Victoria", Sector-70, Gurugram   |
| <b>Project area</b>                  | 10.9687 acres  |
| <b>DTCP License No. and validity</b> | 103 of 2010 dated 30.11.2010 valid up to 29.11.2020  |
| <b>HRERA Registered</b>              | Registered<br>Vide 70 of 2017 dated 18.08.2017 valid up to 31.12.2020  |
| <b>Possession Clause</b>             | NA   |
| <b>Due date of possession</b>        | 11.06.2015<br>(calculated from the date of advance registration form)<br><i>(Due date calculated in accordance with Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018)</i> |
| <b>Occupation certificate</b>        | 13.07.2022   |

| Sr. No. | Complaint No., Case Title, and Date of filing of complaint  | Unit no. & size | Date of execution of BBA | Basic Consideration / Total Amount paid by the complainant   | Offer of possession |
|---------|---|-----------------|--------------------------|--|---------------------|
| 1.      | <b>CR/983/2023</b><br><br>Shelendra Rajput<br>Vs.<br>M/s Shree Vardhman Infraheights Private Limited.<br><br><b>DOF: 16.03.2022</b><br><br><b>Reply: 07.10.2022</b> | NA              | Not executed             | <b>TSC- Rs. 91,41,120/-</b><br><br><b>AP- Rs.10,00,000/-</b> | Not offered         |
| 2.      | <b>CR/982/2023</b><br><br>Pravin Rajput<br>Vs.<br>M/s Shree Vardhman Infraheights Private Limited.<br><br><b>DOF: 16.03.2022</b><br><br><b>Reply: 07.10.2022</b>    | NA              | Not executed             | <b>TSC- Rs.91,41,120/-</b><br><br><b>AP - Rs.10,00,000/-</b> | Not offered         |

**The complainant has sought following relief(s):**

1. Direct the respondent to refund the paid-up amount along with interest.

**Note:** In the table referred above certain abbreviations have been used. They are elaborated as follows:

| Abbreviation | Full form                     |
|--------------|-------------------------------|
| DOF          | Date of filing of complaint   |
| DPC          | Delayed possession charges    |
| TSC          | Total sale consideration      |
| AP           | Amount paid by the allottee/s |
| CD           | Conveyance deed               |

4. The aforesaid complaints were filed by the complainant-allottees against the promoter on account of respondent fault for not handing over the possession of the unit and are seeking the refund of the paid-up amount along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case *CR/983/2023 titled as Shelendra Rajput Vs. M/s Shree Vardhman Infraheights Pvt. Ltd.* is being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

**A. Project and unit related details.**

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

*CR/983/2022 titled as Shelendra Rajput Vs. M/s Shree Vardhman Infraheights Pvt. Ltd.*

| S. No. | Particulars           | Details   |
|--------|-----------------------|---|
| 1.     | Name of the project   | "Shree Vardhman Victoria", Sector- 70, Gurugram |
| 2.     | Project area          | 10.9687 acres                                   |
| 3.     | Nature of the project | Residential apartment                           |
| 4.     | DTCP license no. and  | 103 of 2010 dated 30.11.2010                    |

|     |                                     |  |
|-----|-------------------------------------|--|
|     | validity status                     | Valid up to 29.11.2020   |
| 5.  | RERA Registered/ not registered     | Registered vide no. 70 of 2017 dated 18.08.2017 valid upto 31.12.2020  |
| 6.  | Advance registration form           | 11.06.2012<br>(page 05 of reply)   |
| 7.  | Builder buyer agreement executed on | Not executed   |
| 8.  | Unit no.                            | NA   |
| 9.  | Unit admeasuring                    | 1800 sq. ft. to 1900 sq. ft.   |
| 10. | Possession clause                   | NA   |
| 11. | Due date of possession              | 11.06.2015<br>(calculated from the date of advance registration form)<br><i>(Due date calculated in accordance with Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018)</i> |
| 12. | Total sale price                    | Rs.91,41,120/-<br>(as alleged by the respondent during proceedings dated 18.01.2024)   |
| 13. | Amount paid by the complainant      | Rs.10,00,000/-<br>(page 27-28 of complaint)  |
| 14. | Occupation certificate              | 13.07.2022<br>(page 15 of reply)   |
| 15. | Offer of possession                 | Not offered  |

### B. Facts of the complaint

8. The complainant has made following submissions in the complaint:

- i. That the respondent in the year 2012, through its agent/sales person approached the complainant and canvassed for the booking and purchase of a unit in their project namely "Shree Vardhman Victoria" Sector - 70, Gurugram, Haryana. The complainant discussed the project details with the

respondent, who claimed to have obtained all necessary approvals and permissions for the project. The respondent led the complainant to believe that construction had commenced and would be completed within three to four years. Relying on the representation of timely completion, the complainant agreed to book a unit in their project. Subsequently, the complainant booked a flat and paid Rs.10,00,000/- as an advance towards the total cost of Rs.91,41,120/- in June and July 2012. During the unit booking, the respondent explicitly stated that construction will commence soon and assured that it would be completed within the promised timeframe.

- ii. That on 07.11.2012, the respondent issued an offer of allotment for a residential apartment in the project along with a demand for Rs.10,62,924/- without specifying the unit details. Further, upon visiting the project site, the complainant discovered that no construction work had commenced and on inquiring about same with the respondent/builder's representative, it was informed that construction would start soon and the complainant was urged to immediately pay the demanded amount. The builder also refused to proceed with the builder-buyer agreement until the amount demanded in the allotment letter dated 07.11.2012 is deposited.
- iii. That even after paying a substantial amount of Rs.10,00,000/- to the respondent, the complainant kept visiting the respondent's offices and reminding them about the execution of the builder-buyer agreement. However, the respondent did not pay heed to the requests, neither refunded the paid amount nor started the construction work on the site.
- iv. That the complainant is in employment and as a result couldn't visit the respondent's office to enquire about the status of the construction. Instead,

the complainant made inquiries telephonically or via emails. However, every time complainant was asked to deposit the amount without executing the builder buyer agreement.

- v. That the complainant was unable to make any payment as there was no sign of work progress on the project site. In pursuit of this, the complainant conducted a general inquiry and searched through the respondent's website, where it was discovered that no construction activity had commenced until 2016. The complainant visited the respondent's office and expressed their anxiety and concerns. However, the respondent refused to refund the amount paid or proceed with the execution of the builder-buyer agreement.
- vi. That as a matter of fact from 11.06.2012 to 10.06.2016 (i.e., 4 year time for handing over of possession from the date of booking) there were no progress of construction on the project. Accordingly, the complainant anticipated that the respondent had defrauded the him by accepting the booking amount of Rs.10,00,000/- without executing the builder buyer agreement or refunding the deposited amount.
- vii. That the respondent had continuously engaged in cheating and fraudulent practices with the complainant since the date of booking, aiming to unlawfully obtain money. Consequently, the complainant was compelled to issue withdrawal notices dated 09.09.2021 and 20.10.2021 and requested for the refund of the paid amount.
- viii. Accordingly, due to delay in providing possession of the unit to the complainant, respondent is liable to refund the entire amount paid to them by complainant along with interest.

### **C. Relief sought by the complainant**

9. The complainant has sought the following relief:

- I. Direct the respondent to refund the paid-up amount along with interest.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

### **D. Reply by the respondent**

11. The respondent has contested the complaint on the following grounds.

- i. That the present complaint filed under section 31 of the Act of 2016 is not maintainable under the said provision. The respondent has not violated any of the provision of the Act.
- ii. That in the present complaint neither a buyer's agreement was executed nor any date for delivery of possession of the subject unit was given to the complainant.
- iii. That in June 2012 the complainant made an advance registration form for allotment in project of the respondent vide application form dated 11.06.2012. The application form contained the terms and conditions of the proposed allotment and same was agreed by the complainant.
- iv. That as per clause 1 of the said application form the allotment of the unit was to be made within a period of 9 months from the said registration and further the flat buyer agreement was to be executed after the said allotment.
- v. That as per the agreed payment plan 20% of the basic sale price plus service tax was to be paid at the time of allotment. The complainant paid Rs.10,00,000/- at the time of allotment. Thereafter, the respondent vide



letter dated 07.11.2012 offered allotment of a unit in the subject project and called upon the complainant to remit the balance amount of Rs.10,62,924/- as per the agreed terms of allotment. However, the complainant neither paid the raised demand nor responded to the said letter.

- vi. That no allotment was made in favor of the complainant nor any buyers agreement executed with the complainant. So, the complainant cannot be termed as allottee in the subject project. The registration made by the complainant stood lapsed and the amount paid by the complainant stood forfeited as per the clause 3 of the said application of form.
  - vii. That the complainant sought relief under section 18 of the Act of 2016, but the said section is not applicable in the present complaint and the complaint deserves to be dismissed. Also, the complaint is barred by time.
12. Copies of all the relevant documents have been filed and placed on the 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's**

13. 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**

14. 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**

15. 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) The promoter shall-

(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.

16. 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 complainant at a later stage.

**F. Findings on the relief sought by the complainant.**

**F.I Direct the respondent to refund the entire paid-up amount along with interest.**

17. On consideration of documents available on record and submissions made by both the parties, the authority observes that the complainant submitted an advance registration form dated 11.06.2012 to the respondent-builder to reserve a 3BHK unit admeasuring 1800 sq. ft. to 1900 sq. ft. at a basic sale

price of Rs.5078.40/- per sq. ft. in the project to be developed by the respondent. Subsequently, the complainant paid Rs.10,00,000/- to the respondent as an advance booking amount. In response, the respondent issued a letter dated 07.11.2012 acknowledging the payment of Rs.10,00,000/- made by the complainant.

18. Before coming to the facts of the case, it is to be seen that advance registration form issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

*"Every promise and every set of promise forming the consideration for each other is an agreement."*

19. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

*"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."*

20. There are large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. The holders of those receipt/allotments are harassed lot failing to act on the basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre-RERA cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and

follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

21. But the document/receipt so issued in favor of a person can be termed as an agreement for sale to drag the developer before RERA Authority and compelling him to fulfil his obligations against the holder of that document. It is also pertinent to mention in many cases that the allottee has been sleeping over his rights which are evident from the fact that after payment of an amount, he did not make any effort to get the agreement executed; and having no proof of any request or reminder in this regard made by the allottee to the promoter. However, the promoter is duty bound to explain the reasons for which he has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non- banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.
22. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"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.-*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available,***

*to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*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."*

**(Emphasis supplied)**

23. The case of the respondent is that as per the payment plan 20% of the basic sale price was to be paid at the time of allotment. The complainant paid only Rs.10,00,000/- against the reserved unit and a letter dated 07.11.2012 was issued to the complainant to pay the balance payment of Rs.10,62,924/- for the allotment of the unit. However, the complainant neither made the payment for the allotment of the unit nor responded to the said letter and accordingly no allotment was made in favor of complainant. Also, as per the clause 3 of the registration form the amount paid by the complainant stands forfeited.
24. In the present case, no builder buyer agreement was executed between the parties, there exists ambiguity regarding the timeframe for handover of possession of the unit. The authority relying on the judgement of Hon'ble Supreme Court case titled as **Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**, where the Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them. Although we are aware of the fact that when there is no delivery period agreed between the parties, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. In view of the above-mentioned reasoning, the date of the advance registration form dated 11.06.2012 ought

to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 11.06.2015.

25. As noted above, the unit was supposed to be handed over to the complainant by 11.06.2015. However, the complainant requested a refund of the paid amount from the respondent on 09.09.2021 and 20.10.2021, and filed the present complaint on 16.03.2022. There has been complete inaction on the part of the complainant for over six years until the filing of the present complaint in March 2022. Furthermore, the complainant failed to provide evidence of any communication with the respondent expressing unwillingness to pay the raised demand before the execution of the buyer's agreement or objecting to the same. Conversely, the complainant remained passive regarding his rights for an extended period, neglecting to assert objections or seek resolution within a reasonable timeframe.

26. In accordance with clause 1 of the advance registration form dated 11.06.2012, both parties mutually agreed that if the complainant fails to make the required payment at the time of allotment within the agreed timeframe, the respondent, at their sole discretion, may cancel the complainant's registration and refund the entire registration amount without any interest. The clause 1 of the advance registration form dated 11.06.2012 is reiterated below for reference:

*Clause 1*

*"The intending applicant(s) have understood that if for any reason, the company does not allot an apartment within nine months of this application, then intending applicant is entitled to a simple interest @ 12% p.a. on the account deposited for the delayed period beyond nine months and till the date of allotment. Allotment against this registration form shall be made at the sole discretion of company, which shall be final and binding and the intending applicant(s) will not make any objection for the same. **In case the intending applicant(s) fails to make the payment at the time of allotment, as per Annexure-A,***

*within the time frame given by the company, in that case the company may, in its sole discretion cancel this Registration and the intending applicant(s) shall be entitled to the refund of registration amount without any interest or compensation whatsoever"*

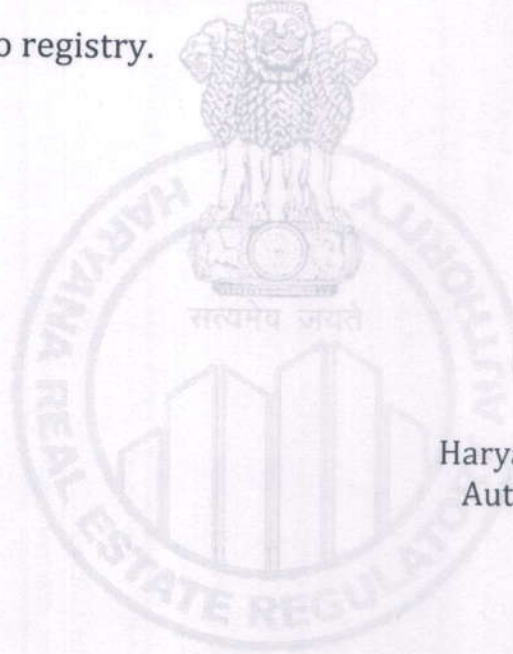
27. The authority holds the view that the complainant's request for interest on the amount paid by him is not sustainable in light of the mutually agreed terms between the parties back in 2012, as per clause 1 mentioned above. Since the complainant has never raised any objection to the same, the responsibility is placed upon the respondent to act upon the agreed terms and refund the registration amount without interest.
28. In the present matter, where both parties have shown a lack of action and communication, leading to shared fault, herein applying the principle of "*Aequitas sequitur legem*" becomes crucial. Despite the respondent's failure to take definitive steps such as cancelling the unit or issuing further demands, and the complainant's prolonged passivity in asserting objections or seeking resolution, a shared responsibility is evident for the current deadlock. To ensure fairness, granting a refund to the complainant without additional interest is appropriate. This decision aligns with principles of equity and natural justice, aiming to treat both parties fairly amidst their collective fault and inactivity. Embracing "*Aequitas sequitur legem*," the Authority emphasizes the importance of maintaining balance and fairness in resolving disputes arising from shared fault and prolonged inactivity.

#### **G. Directions of the authority**

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

- i. The respondent/promoter is directed to refund the paid-up amount to each complainant received by it within a period of 90 days from the date of this order, failing which legal consequences would follow.
30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
32. File be consigned to registry.

**Dated: 18.01.2024**



*V.1-3*  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory  
Authority, Gurugram

**HARERA**  
GURUGRAM