

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

Complaint no.: 5246 of 2022
Date of filing: 09.08.2022
Order pronounced on: 22.02.2024

1.Naresh Kumar Garg
2.Madhu Garg

R/o :- NS-33, 2nd floor, Mianwali Nagar, New Delhi- 110087

Complainants

Versus

Shree Vardhman Infrahome Pvt. Ltd.

Regd. Office at:- 301, 3rd floor, Indraparkash Building, 21-
Barakhamba road, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Harshit Goyal (Advocate)

Shri Gaurav Rawat (Advocate)

**Complainants
Respondent**

ORDER

1. This complaint has been filed by the complainant/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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

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A. Unit and project related details.

2. The particulars of unit details, 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 tabular form:

S.No.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Flora", village Badshapur, Sector-90, Gurugram
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	23 of 2008 dated 11.02.2008 valid upto 10.02.2025
5.	Name of the Licensee	Moti Ram
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 88 of 2017 dated 23.08.2017 valid up-to 30.06.2019
7.	Unit no.	1103, tower-B5 (page 25 of complaint)
8.	Unit area admeasuring	1875 sq. ft. (super area) (page 25 of complaint)
9.	Allotment letter	28.12.2011 (page 44 of complaint)
10.	Date of buyer agreement	25.02.2012 (page 23 of complaint)
11.	Possession clause	14 (a) Possession <i>The construction of the flat is likely to be completed within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex. (Emphasis Supplied)</i>
12.	Letter of addition of Co-	09.05.2019

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	applicant (Madu Garg) by respondent	(page 64 of complaint)
13.	Date of commencement of construction	10.03.2012 (page 65 of complaint)
14.	Due date of possession	10.09.2015 (calculated from date of commencement of construction i.e. 10.03.2012 including grace period of 6 months being unqualified and conditional) <i>(*Note: inadvertently mentioned due date of possession as 31.11.2015 vide proceedings dated 22.02.2024)</i>
15.	Basic sale consideration	Rs.45,93,750/- (page 26 of complaint)
16.	Amount paid by the complainant	Rs.56,53,439/- (as per payment receipts page 49-63 of complaint)
17.	Occupation certificate	02.02.2022 (As per DTCP Website)
18.	Offer of possession	18.04.2022 (page 44 of complaint)
19.	Cancellation letter	21.06.2022 (page 88 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants are allottee of the real estate project "Shree Vardhman Flora" by M/s. Shree Vardhman Infrahome Pvt. Ltd., entered into a builder buyer agreement with the respondent on 25.02.2012 for unit no. 1103, tower B5 admeasuring 1875 sq. ft.
- II. That as per clause 14 (a) of the agreement respondent was obligated to hand over the possession of the allotted unit within 36 months from the commencement of construction of tower B5, which began on 10.03.2012, setting the possession deadline as 10.03.2015.
- III. Despite this, the respondent company issued the offer of possession on 18.04.2022, a delay of 7 years, 1 month and 8 days. Furthermore, the

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respondent failed to pay the delayed possession charges or execute the conveyance deed for the unit.

- IV. That the complainants have paid Rs.56,53,439/- out of the total sale consideration of Rs.55,71,875/- as and when demanded by the respondent.
- V. That the complainants invested their hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent in order to allure the complainant. However, the respondent failed to abide all the obligations of him stated orally and under the builder buyer agreement duly executed between both the parties. Consequently, feeling aggrieved by the actions of the respondent company, the complainant has resorted to file complaint under Section 31 of the Real Estate Regulation and Development Act, 2016, along with rule 28 of Haryana Real Estate (Regulation and Development) rules, 2017, seeking redressal for their grievances before the authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to pay delayed possession charges at the prescribed rate accrued from due date of possession till offer of possession.
 - Direct the respondent to execute and register the conveyance deed of the booked unit.
 - To restrain the respondent company from creating third-party rights in respect of booked unit and maintain status quo.
5. The present complaint was filed on 09.08.2022 in the Authority. On 18.10.2022, 15.02.2023 and 08.08.2023 the counsel for the respondent put in appearance and was directed to file the reply within 2 weeks in the registry of the Authority. However, despite specific directions and providing an opportunity of being heard, no written reply has been filed by the

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respondent. Thus, keeping in view the opportunity given to the respondent, despite lapse of more than one year the respondent failed to file the reply in the registry. Therefore, in view of order dated 09.11.2023, the defence of the respondent was struck off. Nonetheless, on 22.02.2024 the respondent appeared along with reply and requested to put reply on record and the Authority acceded to his request, in order to go through relevant documents and gather important facts for fair adjudication of the case.

6. 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 submissions made by the parties.

E. Jurisdiction of the Authority:

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial Jurisdiction:

8. 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:

9. 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

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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.

10. 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 pay delayed possession charges at the prescribed rate accrued from due date of possession till offer of possession.

11. Upon persual of documents and pleadings made by the respondent in his reply, it has been found that allotment of booked unit was cancelled by the respondent on 21.06.2022 due to non-payment of amount as per demand issued along with offer of possession dated 18.04.2022. At the time of cancellation of allotment of unit, respondent was already in receipt of Rs.56,53,439/- which is more than the basic sale price of unit i.e. Rs.45,93,750/-. The complainant's inability to pay the requested amount due to the non-adjustment of delay interest was justifiable. So, the promoter's conduct in asking the complainants to meet additional demands was not justifiable because they had already paid more than basic sale consideration. Alleged cancellation for this reason is not tenable and is therefore, quashed.
12. In the present complaint, the complainants intend to continue with the project and are 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

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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."

13. Clause 14(a) of floor buyer's agreement provides for handing over of possession and is reproduced below:

"Clause 14(a)

The construction of the flat is likely to be completed within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex....."

(Emphasis supplied)

14. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

15. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are

protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

16. Due date of possession and admissibility of grace period: The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The construction of the subject tower commenced from 10.03.2012 as per the customer ledger dated 07.12.2018 issued by the respondent. Therefore, the due date of possession comes out to be 10.09.2015 including grace period of six months being unqualified and unconditional.

17. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges however, 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.

18. 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.
19. 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., 22.02.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
20. 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;"*

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21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
22. 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 provisions of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 25.02.2012, the possession of the said unit was to be delivered within a period 36 months from the date commencement of construction i.e. 10.03.2012 and it is further provided in agreement that promoter shall be entitled for a grace period of six months. As far as grace period is concerned, the same is allowed being unconditional and unqualified. Therefore, the due date of handing over of possession comes out to be 10.09.2015. In the present complaint the complainants were offered possession by the respondent on 18.04.2022 after obtaining occupation certificate dated 02.02.2022 from the competent authority. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 25.02.2012 executed between the parties.
23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 02.02.2022. The respondent offered the possession of the unit in question to the complainants only on 18.04.2022, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest

of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (18.04.2022) which comes out to be 18.06.2022.

24. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. 10.09.2015 till expiry of 2 months from the date of offer of possession (18.04.2022) i.e., up to 18.06.2022 as per provisions of Section 18(1) of the Act read with rule 15 of the rules.

F.II. Direct the respondent to execute and register the conveyance deed of the booked unit.

25. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

26. Since the possession of the subject unit has already been offered after obtaining occupation certificate on 02.02.2022. The respondent is directed to get the conveyance deed executed within a period of three months as per the terms of Section 17 of the Act of 2016 from the date of this order.

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F.III. To restrain the respondent company from creating third-party rights in respect of booked unit and maintain status quo.

27. In view of the findings of the authority at pt. 1 the respondent shall not create any third-party rights upon the unit and shall hand over the possession of the unit to the complainants after payment of the balance amount by the complainants, if any.

H. Directions of the authority

28. 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 is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 10.09.2015 till expiry of 2 months from the date of offer of possession (18.04.2022) i.e., up to 18.06.2022 or till actual handover of possession whichever is earlier. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days.
- iv. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement. The respondent is also not



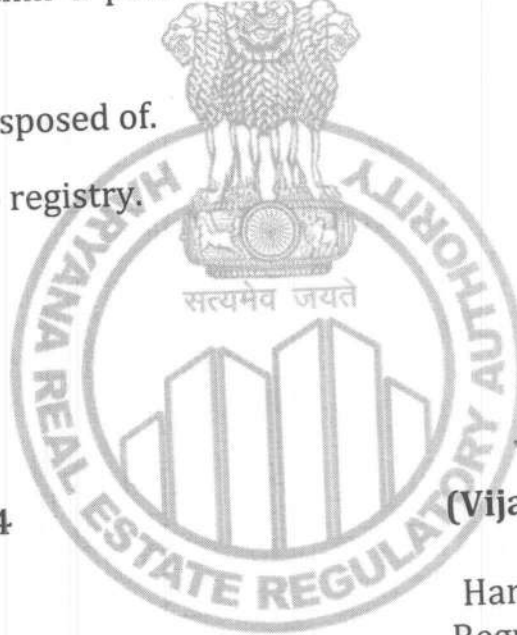
entitled to claim holding charges from the complainant/allottees at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

v. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Therefore, the respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

29. Complaint stands disposed of.

30. File be consigned to registry.

Dated: 22.02.2024



Vijay Kumar Goyal
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

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