



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

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| Complaint no.: | 607 of 2022 |
| Date of filing: | 09.05.2022 |
| First date of hearing: | 12.07.2022 |
| Date of decision: | 23.11.2023 |

Sangeeta Sharma

W/o Sh. Sanjay Kumar

#839, Sector-3, Urban Estate

Kurukshetra, Haryana

.....COMPLAINANT

Versus

Shree Vardhman Township Pvt. Ltd

Regd. Office 301, 3rd floor,

Indraprakash Building, 21-Barakhamba Road,

New Delhi-110001

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 23.11.2023

Present: - Mr. Arun Sharma, Id counsel for the complainant.

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

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint has been filed on 09.05.2022 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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:

| Sr. No. | Particulars | Details |
|---------|---------------------|---|
| 1. | Name of the project | “Shree Vardhman My Homes” at Shree Vardhman City sector-30,Kurukshetra, |



| | | |
|----|---------------------------------|--|
| | | Haryana. |
| 2. | Name of the promoter | Shree Vardhman Township Private Limited |
| 3. | RERA registered/not registered | Registered (lapsed project) |
| 4. | Unit no. | B-59GF |
| 5. | Unit area | 1410 sq ft |
| 6. | Date of Builder Buyer Agreement | 14.05.2013 |
| 7. | Due date of offer of possession | 18.04.2015 including grace period |
| 8. | Possession clause in BBA | <i>Clause 10(a) The company shall endeavour to complete construction of the flat within 24 months from the date of commencement of construction on the individual plot on which the flat is located or from the date of booking, whichever is later, with a grace period of 6 months, after receipt of all requisite approvals as may be required for commencing and carrying on construction, circumstances beyond the control of the company and subject to timely payments by the complainant. No claim by way of damages/compensation shall lie against the respondent in case of delay in handing over possession on account of force majeure, reasons, restraints or restrictions from any courts, circumstances beyond the control of the respondent and delay in</i> |



| | | |
|-----|----------------------------|---|
| | | <i>payments and period of construction in such events shall be deemed to be correspondingly extended.</i> |
| 9. | Total sale consideration | ₹32,90,000/- |
| 10. | Amount paid by complainant | ₹3,00,000/- |
| 11. | Offer of possession | No |

B. FACTS OF THE COMPLAINT

3. Complainant got to know about the respondent upcoming project in Kurukshetra namely; "Shri Vardhman City" Sector-30, Kurukshetra, Haryana. Complainant was in need of a flat for herself, therefore, she invested in this project.
4. That complainant booked a flat in the project of respondent and was allotted flat no. B-59, GF, measuring 1410sq. ft. of the super area consisting of 3 bedrooms, drawing/dining, Kitchen, toilets with verandas and lawn in the scheme given by the respondent for a sum of Rs.32,90,000/-. An agreement was executed on 14.05.2013. A copy of agreement is annexed as Annexure C-1.
5. After getting assurance and promises from the opposite party, complainant paid a sum of Rs.2,91,008/- to the respondent on 14.05.2013. Copy of statement of account of payment is annexed as Annexure C-2.



6. As per agreement, the respondent was bound to complete the construction of the entire project and hand over the physical possession within 24 months from the date of execution of the flat buyer's agreement. That means, possession was to be handed over on or before 14.05.2015.
7. That the complainant had paid sum a of Rs.2,91,000/- and remaining payments were to be made as per the demand by the respondent as payment plan was construction linked, but after first installment made by the complainant, there was no demand of payment raised by the respondent.
8. That when no demand was raised by the respondent, the complainant visited the site in the month of June 2017, and after inspecting the site was shocked to see that the bare structure of the project was also not ready, and construction is stopped and there is no progress at all. Since then it appears that the respondent has no intention to complete the project.
9. It is pertinent to mention here that a flat in above said project was also purchased by the father of the complainant. As the bare structure of the project was not ready, therefore, he withdraws from the project and after settlement an amount of Rs.1,90,000/- of the said flat is adjusted in present flat no.B-59 GF. Thus total paid amount is Rs.4,80,000/- (as claimed against a total of Rs.4,81,000/-)



10. Complainant sent a legal notice on 16.01.2018 and also reminder notice dated 02.04.2019. But respondents miserably failed to reply to the legal notices and reminder notice which manifests that the respondent has no intention to refund the money paid by the complainant. Copies of the legal notices are annexed as annexure -C-3.
11. That the complainant has suffered immense mental and financial losses due to the above-mentioned delay. Despite having paid the cost of said residential unit to the respondent, the physical and legal possession of the unit has not been handed over till date. Thus, the respondent had caused hardship, mental agony and financial loss to the Complainant.

C. RELIEF SOUGHT

12. Complainant sought following relief :

- i. The registration, if any, granted to the respondent for the project "Shri Vardhman Township Pvt. Ltd." may be revoked under Section 7 of the RERA, Act of 2016 for violating the provisions of the RERA;
- ii. In exercise of powers under Section 35 of the Act, direct the respondent to place on record all statutory approvals and sanctions of the project;



- iii. Direct respondent to refund entire payment of Rs.4,80,000 done so far, paid by the complainant, in accordance with the provisions of unfair practices from the respondent.
- iv. Direct the respondent to additionally pay appropriate interest for unfair trade practices of the project to the complainant, at the rate of 24% compound interest from the date of handover of cheques, to accord due compensation for the financial agony suffered by the complainant.
- v. Direct the respondent to pay compensation of Rs.10,00,000/- on account of harassment, mental agony and hospitalization, caused to the complainant on account of deficiency in service and unfair trade practices.
- vi. Allow any other relief which this Hon'ble Authority may deem fit and appropriate under the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

13. Respondent had filed its reply on 22.11.2022, wherein it is mentioned that respondent is engaged in the business of Real Estate Development, and it proposed to develop residential housing scheme/colony namely; "Shree Vardhman My Homes" situated at Shree Vardhman City, Sector 30, Kurukshetra, Haryana which has been developed by the respondent on a piece of land measuring 50.125 acres situated in the revenue estate



of Village Umri, Tehsil Thanesar, Sector-30, District Kurukshetra, Haryana under License No. 15 of 2012 dated 29.02.2012 granted by Director General, Town & Country Planning, Haryana under the provisions of the Haryana Development and Regulation of Urban Area Act, 1975.

14. That complainant submitted an application form to the respondent for booking/allotment of a flat bearing no.B-59, Block No. B, Ground Floor in the project. The said flat was allotted to the complainant vide letter dated 22.11.2012. Copies of application form and allotment letter dated 22.11.2012 are annexed as Annexure-2 and Annexure-3 respectively.
15. That respondent then executed the flat buyer agreement on 14.05.2013. Copy of the flat buyer's agreement is already annexed with complaint.
16. That complainant has to make payment of the installment as per the agreed payment plan though the date of payment of the same was specifically made as the essence of the said agreement. Even as per Clause 6 (a), the obligation of the respondent to complete the project within the time mentioned in the said period was subject to timely payments of all the installments by the complainant and other allottees of the said project. That complainant had intentionally and utterly failed to make the payments of the installments on time, therefore, the complainant is not entitled to claim any compensation or relief.



17. That as per Clause 10 (a) of the agreement, the respondent was to complete the construction of the flat within 24 months from the date of commencement of construction on the individual plot on which the flat is located or from the date of booking, whichever is later, with a grace period of 6 months, after receipt of all requisite approvals as may be required for commencing and carrying on construction, circumstances beyond the control of the company and subject to timely payments by the complainant. No claim by way of damages/compensation shall lie against the respondent in case of delay in handing over possession on account of force majeure reasons, restraints or restrictions from any courts, circumstances beyond the control of the respondent and delay in payments and period of construction in such events shall be deemed to be correspondingly extended.
18. That the complainant has opted for Plan-B, i.e., construction linked payment plan and the respondent accordingly raised bills for payment to the complainant.
19. That the complainant had not made the payment as per the agreed payment schedule. Therefore, the respondent had issued a call notice dated 26.11.2012 for payment of the balance amount. The complainant again failed to make the agreed payment and the respondent again issued a call notice dated 20.12.2012. Copies of call-notices dated 26.11.2012 and 20.12.2012 are attached as Annexure - 4 (Colly).



20. That the complainant had not paid any heed to the requests of the respondent. Therefore, the respondent vide letter bearing reference no. 1653 dated 03.12.2013 had sent a reminder to the complainant. A copy of the letter dated 03.12.2013 is annexed herewith as Annexure - 5.
21. Further, respondent had issued call notices vide letter dated 17.12.2013 and 10.02.2014. Copies of call notices dated 17.12.2013 and 10.02.2014 are attached herewith as Annexure - 6 (Colly).
22. That again the respondent after waiting for a considerable period of time and as per the payment plan vide its letter bearing reference no. 2036 dated 15.02.2014 sent a reminder letter to the complainant requesting to remit the balance due payment of Rs.13,06,642/- which was still pending. A copy of the letter dated 15.02.2014 is annexed herewith as Annexure - 7.
23. That respondent sent final reminder letter bearing reference no. 2110 dated 21.03.2014 for clearing of all the pending payments which was pending since a long time and finally requested the complainant to remit the balance due payment of Rs.16,35,642/- as per the payment plan against the provisional booking of the said flat. Copy of letter dated 21.03.2014 is annexed herewith as Annexure - 8.
24. At last, respondent finally vide letter bearing reference no. SVTPL/2149 dated 14.04.2014 sent a cancellation letter referring various communications sent earlier and further stated that various



opportunities were given to the complainant to clear all its dues with interest, but the complainant neither remit the outstanding payments nor responded to the various letters. The respondent was therefore constrained to cancel the provisional booking/ allotment on account of non-compliance of timely payment. Copy of the letter dated 14.04.2014 is annexed herewith as Annexure – 9.

25. That the respondent had not committed any default and/ or breach of any of the provisions of the agreement. It is the complainant who herself has breached the terms of the agreement by non-payment of the outstanding dues as per the payment plan.
26. It is also apparent from the facts stated herein above that it is the complainant who herself had breached her contractual obligations and therefore, she is not entitled to invoke the jurisdiction of the Hon'ble Authority and do not deserve any relief from the Hon'ble Authority.
27. That the present complaint is not maintainable in law or facts. The Complaint pertaining to compensation and interest for a grievance under section 12, 14, 18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filled before the Adjudicating Officer under Rule 29 of the Haryana Real Estate (Regulation and Development) Act, 2017 read with Section 31 and Section 71 of the said act.



28. That due to the abovementioned intervening circumstances and non-payment of the scheduled payments as noted above, which were in complainant control, the schedule as agreed disrupted due to huge financial liability on the respondent.

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

29. Vide order dated 17.08.2023, detailed submissions of complainant counsel were recorded and certain directions were issued to complainant. Relevant order is reproduced for reference:

1. Ld counsel for complainant submitted that complainant had booked a flat in project namely Shree Vardhman City, Sector -30 Kurukshetra, Haryana. Complainant had been allotted flat no. B-59 admeasuring 1410 sq.ft and builder buyer agreement of total sale consideration of ₹ 32,90,000/- was entered on 14.05.2013. As per the agreement possession was to be handed over within 24months from date of agreement, i.e., 14.05.2015. Complainant had paid an amount of ₹2, 91,000/- and no demand thereafter was even made by the respondent. Complainant visited the site in the month of June-2017 and observed that there was no structure and no development works were carried out at the site. He stated that complainant's father had also purchased a flat in said project. As structure was not ready and no progress was made, complainant's father withdrew



from project and after settlement an amount of ₹1,90,000/- of the said flat was adjusted in present flat no. B-59. Thus, total amount paid by complainant against flat no. B-59 is ₹4,80,000/-. Respondent failed to hand over the possession till date. Therefore, he claims relief of refund of amount ₹4,80,000/-with interest.

- 2. On perusal of file, it is revealed that no receipts of amount of ₹4,80,000/-, as claimed by the complainant, are attached. Complainant claims to have paid an amount of ₹4,80,000/-, however on adding upon the claimed amount of ₹ 2,91,000/- and ₹1,90,000/- (mentioned at para no. 4.12 and 4.14 of page no. 9 of pleading) total paid amount comes out to ₹4,81,000/- . Accordingly, Authority directs complainant to clarify the amount claimed by the complainant and submit the bank statement of amount of ₹ 2,91,000/- which is given to respondent. Complainant is also directed to provide proof of payment of an amount of ₹ 1,90,000/- which is adjusted against flat no. B-59 between complainant's father and respondent. Complainant is further directed to provide copy of details to be submitted to Authority as per above direction to the opposite party atleast 15 days before next date of hearing.*
- 3. Case is adjourned to 23.11.2023 for arguments."*



30. Today, during the course of hearing, ld counsel for complainant reiterated the facts of case and stated that against the amount of ₹ ₹4,81,000/-, proof of ₹3,00,000/- is with the complainant which can be ascertained from statement of account at page no.46 of complaint. However, no proof with respect to remaining amount of ₹1,90,000/- could be provided by the complainant counsel. Therefore, his only claim is for refund of ₹3,00,000/-. On the other side, ld counsel for respondent stated that as per company records, only ₹3,00,000/-(i.e.2,91,008 basic amount and ₹8,992/- service tax) is paid by the complainant with respect to said unit and same is not denied.

F. ISSUE FOR ADJUDICATION

31. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of RERA, Act of 2016?

G. OBSERVATIONS AND ORDERS OF THE AUTHORITY

32. 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 unit no.B-59, Ground floor was allotted to Mrs. Sangeeta Sharma in the project namely; “Shree Vardhman My Homes” at Shree Vardhman City, Sector-30, Kurukshetra, Haryana; the plot buyer agreement was executed on 14.05.2013 and the complainant has paid ₹3,00,000/- on 30.10.2012 against the basic sale price of



₹32,90,000/- as admitted by the respondent in its written statement. As per clause 10(a) of flat buyer agreement, respondent was under an obligation to hand over possession of flat within 24 months from the date of commencement of construction or from date of booking whichever is earlier. Therefore deemed date of possession comes to 18.04.2015 including 6 months grace period from date of booking, i.e.,18.10.2012. Plea of the complainant is that despite receipt of payment of ₹3,00,000 against the basic sale price way back in year 2012, respondent failed to hand over possession of unit and therefore, he seeks the relief of refund.

33. Respondent averment is that respondent had sent various call notices dated 26.11.2012, 20.12.2012, 17.12.2013 and 10.02.2014 and reminders dated 03.12.2013, 15.12.2014 and 21.03.2014 to the complainant. In spite of above mentioned reminders complainant failed to make the required payments on time and therefore, respondent sent cancellation letter dated 14.04.2014.

34. None of the parties has submitted anything regarding stage of construction of flat. After issuing various reminders and call notices respondent was constrained to issue cancellation letter dated 14.04.2014 for cancellation of allotted rights.

35. At this stage, question arises as to whether said cancellation is valid or not? In this regard, Authority observes that complainant made payment



of ₹3,00,000/- on 30.10.2012 and thereafter no payment had been made by the complainant. Moreover, complainant did not respond to the various reminders or call notices issued by the respondent nor responded to the cancellation letter dated 14.04.2014 sent by the respondent. Also, as per clause 6(a) of agreement timely payment of the installment is the essence of flat buyer agreement. It is the duty of buyer to comply with the terms of payment and other terms and conditions of agreement. In case buyer defaults in making timely payment and commit breach of any other terms and conditions, agreement is liable to be terminated by the company/respondent. Flat buyer agreement in this case was executed much prior to coming into force of Real Estate (Regulation and Development) Act,2016,therefore, terms and conditions of the agreement will prevail. As per terms and conditions of agreement buyer/complainant defaulted in making payments without any justifiable reasons.

36. Further, reliance be placed on para 2 of clause 6(a) of agreement regarding forfeiture. Relevant portion of clause 6(a) is reproduced below:

“In the event of buyer withdrawing from the agreement for any reasons, whatsoever the Buyer agrees not to challenge the forfeiture of earnest money and abandons and surrender rights, if any, to see accounts and prove of loss suffered by the company on account of such action. Such actions also be a



breach of the agreement and buyer shall be liable to forfeiture of the amount of earnest money being 15% of the basic price.”

As per said clause of the flat buyer agreement buyer shall be liable to forfeiture of the amount of earnest money being 15% of the basic price in case of breach of agreement. Here the complainant has breached agreement as she has not paid her due installments even after receiving several reminders. Considering the said clause, respondent had forfeited the said amount of ₹3,00,000/- paid by the complainant and cancelled the unit vide cancellation letter dated 14.04.2014. The amount forfeited by the respondent is well within the range of 15% as agreed in the BBA by the complainant. Complainant did not take any steps nor raised any objection regarding the alleged cancellation. At that time complainant had the cause of action against the respondent and she could have approached the appropriate forum then only, however, complainant chooses to remain silent for almost 4 years from date cancellation and sent legal notice in the year 2018. Now in year 2022 complainant filed the present complaint seeking refund. Accordingly, at this juncture, after almost 8 years from date of cancellation, complainant cannot be allowed to awake and agitate the non-existent issues. Consequently said cancellation dated 14.04.2014 stand legally valid as per terms of agreement.



37. Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that present complaint is nothing but a ill-advised luxurious litigation and a classic example of litigation to enrich oneself at cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act, 2016 is a beneficial /social legislation enacted by the Parliament to put check on the malpractices prevailing in the real estate sector and to address the grievance of the allottee who have suffered due to the dominant position of the promoter. However, it a moral obligation on the part of complainant to invoke the provisions of the Act with a clear and bonafide intent and not as a tool/instrument for enrichment.

38. The Authority is of view that this tendency needs to be curbed with iron hands and as such, this Authority observes that no cause of action survives in favour of the complainant and therefore, present complaint is **dismissed**. File be consigned to record room after uploading on the website of the Authority.


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


.....
NADIM AKHTAR
[MEMBER]