



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	1253 of 2021
<b>Date of filing:</b>	25.11.2021
<b>First date of hearing:</b>	21.12.2021
<b>Date of decision:</b>	29.04.2024

**Mrs. Seema Singhal, W/o Sh. Vikas Singhal,**

R/o House no.4, Ward no.5, Opposite Haryana Filling Station,

Radour Road, Ladwa, Dist. Kurukshetra, Haryana-136132

.....COMPLAINANT

Versus

Shree Vardhman Township Pvt. Ltd

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

Indraprakash Building, 21-Barakhamba Road,

New Delhi-110001

.....RESPONDENT

**CORAM: Nadim Akhtar**  
**Chander Shekhar**

**Member**  
**Member**

**Date of Hearing: 29.04.2024**

**Present:** - Mr. Prashant Gupta, Id counsel for the complainant.  
Mr. Dharamveer, learned counsel for the respondent through VC.

**ORDER (NADIM AKHTAR-MEMBER)**

1. Present complaint has been filed on 25.11.2021 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	“Shree Vardhman My Homes” in Shree Vardhman City, Kurukshetra
2.	Name of the promoter	Shree Vardhman Township Pvt. Ltd.
3.	RERA registered/not registered	HRERA-PKL-KUK-147-2019 (Lapsed Project)
4.	Flat no.	B-70, Ground Floor
5.	Flat area (Super built area)	1410 sq.ft
6.	Date of builder buyer agreement	14.05.2013



7.	Due date of offer of possession	29.04.2015
8.	Possession clause in BBA	<i>"Clause 10 (a) The Company shall endeavor to complete the construction of the Flat within twenty four (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 six (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 Buyers. For the purposes of this clause/agreement the date of submission of application with the competent authority for obtaining completion/part completion/occupancy certificate in respect the Scheme shall be reckoned as the date of completion of the Flat. No claim by way damages/compensation shall lie against the Company in case of delay in handing over possession on account of force majeure, reasons, restraints or restrictions from any courts/authorities, circumstance beyond the control of the Company and delay in payments by the Company and the period of construction in such events shall be deemed to be correspondingly extended."</i>
9.	Total sale consideration	₹32,30,000/-
10.	Amount paid by complainant	₹31,76,496/- (as per receipts and customer ledger)
11.	Offer of possession	05.07.2022



**B. FACTS OF THE COMPLAINT**

3. That complainant booked a residential flat with the respondent and respondent allotted flat no.B-70 (GF) on plot no.B-70, having approximately 1410 sq. ft of super built up area in the scheme as “Shree Vardhman My Homes” to be developed by the company in the said colony named as “Shree Vardhman City” at Kuruskshetra, located at Village Umri, Thanesar, Sector-30, District Kurukshetra, Haryana. Copy of builder buyer agreement dated 14.05.2013 is attached as Annexure C-1.
4. That total price of unit/flat was ₹35,61,000/- which includes basic sale price of ₹32,30,000/- and additionally PLC, EDC & IDC charges which have been calculated ₹2290.78 per sq.ft ( equivalent to ₹24648.96/-) of the super built up area of the flat as per clause 2(a) of Builder Buyer Agreement. Out of which, till date complainant has paid a total amount of ₹31,76,206/- to the respondent.( However as per receipts attached and customer ledger ₹31,76,496/-)
5. Complainant opted for Construction Linked Payment Plan (CLPP) and complainant has made the payment at the time of booking, after execution of builder buyer agreement and as per payment plan receipts of which are attached as Annexure C-2 (colly).



6. As per clause 10 (a) of the Builder Buyer Agreement, respondent was under an obligation to hand over the possession of unit by 14.11.2015, which is 24 months + 6 months grace period from the date of execution of BBA.
7. That complainant tried to seek the possession of the flat/unit as well the status of the flat vide email communication dated 04.01.2020, but to their despair no reply has been received from the end of the respondent. True copy of email dated 04.01.2020 is attached as Annexure C-3. Complainant being aggrieved person is filing the present complaint before the Authority.

**C. RELIEFS SOUGHT**

8. Vide application dated 18.11.2022, complainant sought following relief:
  - (i) Direct the respondent that possession of the booked unit shall be delivered by the respondent to the complainant.
  - (ii) Direct the respondent to pay delay interest to the complainant from the respective dates of the payments till the date of realization.
  - (iii) Any other relief/order or direction, which this Hon'ble Authority may, deems fit and proper considering the facts and circumstances of the present complaint.



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

9. Respondent filed its reply on 01.08.2023, vide which respondent states that flat no.70 GF, Block no. B was purchased by complainant vide registration form dated 29.10.2012. Copy of registration form attached as Annexure 2 and builder buyer agreement attached as Annexure 3.
10. That complaint is barred by limitation and hence this Hon'ble Authority has no jurisdiction to decide and adjudicate the present complaint.
11. That the delay in the delivery of the said flat to the complainant was bonafide and was beyond the control of the respondent and further submitted that the respondent immediately after executing the collaboration agreement of the land had applied for license before the Haryana Government, (i.e. Town and Country Planning Department) for setting up of residential plotted colony on the land measuring 50.125 acres situated in the revenue estate of village Umri, Tehsil- Thanesar, Sector-30, Distt. Kurukshetra, Haryana.
12. That the Haryana Government, Town and Country Planning Department vide its letter dated 29.02.2012 issued a License bearing no. 15 of 2012 to the respondent. Vide order dated 10.07.2012 license was transferred in the name of the respondent by the Haryana Government, Town and Country Planning Departments. Copy of order dated 10.07.2012 is annexed as Annexure - 5.



13. That Hon'ble Prime Minister introduced a Deen Dayal Jan Awas Yojana (DDJAY) Affordable Plotted Housing Policy-2016 and respondent in order to allot plot/flat under said DDJAY, applied for renewal of license and submitted revised plan before the authority. Town & Country Planning vide letter dated 25.09.2018 renewed the license of the respondent upto 28.02.2020.
14. That demarcation plan of the project was submitted by the respondent after getting the license in February 2012, to the District Town Planner (DTP) Kurukshetra, which was approved and sent by DTP to the Senior Town Planner, Panchkula, then after approval from the concerned official it was sent to DTCP. On the basis of the demarcation plan, which was approved by the Town and Country Planning Department (T&CP), the respondent had got the Zoning Plan. However, the Zoning Plan which was provided and approved by the T&CP depicted numerically wrong plot numbers which were not in accordance with the Demarcation Plan approved by the T&CP. Thereafter, respondent made communications with the T&CP regarding correction of the Zoning Plan and it was only in 2016, i.e., 05.02.2016 that the corrected Zoning Plan was issued by the T&CP. Copies of letters dated 13.02.2013, 25.10.2013 and 21.12.2015 requesting the corrected zoning plan are appended as Annexure 7 (colly).
15. That by the time respondent received the corrected Zoning Plan from T&CP, the license for the project, i.e., the License No. 15 of 2012 had



expired on 28.02.2016 and therefore on 02.04.2016 respondent applied to the T&CP Department for renewal of license along with all requisites. However, in September, 2018 that the license of the respondent, bearing No. 15 of 2012 was renewed. That means there was no wilful default on the part of respondent. Copies of communications dated 02.04.2016, 30.04.2016, 27.12.2016, 21.07.2017, 24.01.2018, 17.07.2018, 07.08.2018 and 25.09.2018 exchanged with T& CP are annexed as annexure -8 (colly).

16. Respondent has enumerated the reasons which have caused delay in offering possession of the said flat. It is specifically submitted that such reasons are attributed to the Govt. Departments.
17. The said BBA executed between the parties did not provide any definite date or time frame for handing over of possession to the complainant and on this ground alone the relief claimed by the complainant is not maintainable.
18. It is stated that time period provided in said agreement was tentative time period and was subjected to various conditions such as timely payment by the allottee of the project and was also subject to force majeure conditions including delay in receiving necessary permission/ sanction approval from the Government Authorities and conditions beyond the control of respondent.





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

19. Ld counsel for the complainant reiterated the facts of the complaint and stated that respondent failed to handover possession of flat to the complainant. He alleged that offer of possession issued on 05.07.2022 was accompanied with illegal charges. By referring to the Appendix A, B at page no.5 and 6 respectively of written submissions dated 08.05.2023, he stated that following charges are not justified and arbitrary:

Interest upto 30.06.2017	26632.90/-
Interest amount due from 01.07.2017 to 05.07.2022	406370.58/-
CGST on Interest	36573.35/-
SGST on Interest	36573.35/-
Value Added Tax (VAT)	136166.00/-

Further, counsel or complainant stated that respondent had taken the PLC charges from the complainant. However, construction is going on in the park area which can be ascertained from the photographs annexed as Annexure C-7 at page 8 of written submissions.

20. On the other hand, ld. counsel for respondent stated that charges are levied as per agreement and if any charges are paid to the govt. authorities by the respondent then same has to be charged from the allottee. Regarding the Park area, he mentioned that respondent is not



going away from his liability of developing park area and assured that same will be develop within next 3 months.

21. Authority put a specific query to the respondent that whether respondent had received the occupation certificate? In reply to this, ld counsel for respondent stated that respondent has not received the occupation certificate till date due to some technical reasons and respondent has offered “fit out offer of possession” to the complainant. He further referred to clause 10(a) of builder buyer agreement and mentioned that no damages will be awarded for delay to the complainant as delay is not on part of the respondent.

**F. ISSUE FOR ADJUDICATION**

22. Whether the complainant is entitled to get possession of booked flat alongwith delay interest in terms of Section 18 of RERA Act of 2016?

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

23. 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 as under:

- i. **Maintainability of complaint:** With regard to the contention of the respondent that complaint is barred by limitation, hence complaint is liable to be dismissed on this ground, it is observed that since, the promoter till date has failed to fulfil his obligations to hand over the possession of the booked flat in its project as per agreement for sale,



the cause of action is re-occurring and the ground that complaint is barred by limitation stands rejected. Further, in this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as "**M.P Steel Corporation v/s Commissioner of Central Excise**" has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

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

RERA is a special enactment with particular aims and objects covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not a Court.

- ii. **On merits:** Authority observes that there is no dispute regarding the fact that flat no.B-70 (GF) was allotted to complainant in the project namely; "Shree Vardhman My Homes"; the builder buyer agreement was executed on 14.05.2013 and the complainant has paid an amount of ₹31,76,496/- against the basic sale price of ₹32,30,000/-. It is observed that complainant has alleged that possession was to be handed over within 24 + 6 months from the

date of execution of the plot buyer agreement, i.e., by 11.12.2015. The respondent has failed in its obligation to hand over possession of flat within the time stipulated in the builder buyer agreement. Clause 10(a) of the builder buyer agreement mentions that company shall endeavor to complete the construction of flat within 24 months from the date of commencement of construction on individual plot on which flat is located or from the date of booking whichever is later, with grace period of 6 months. Relevant clause is reproduced for reference:

*“Clause 10 (a) The Company shall endeavor to complete the construction of the Flat within twenty four (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 six (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 Buyers. For the purposes of this clause/agreement the date of submission of application with the competent authority for obtaining completion/part completion/occupancy certificate in respect the Scheme shall be reckoned as the date of completion of the Flat. No claim by way damages/compensation shall lie against the Company in case of delay in handing over possession on account*



*of force majeure, reasons, restraints or restrictions from any courts/authorities, circumstance beyond the control of the company and delay in payments by the Company and the period of construction in such events shall be deemed to be correspondingly extended."*

Neither of the parties have mentioned the date of start of construction. Therefore, deemed date of possession is to be calculated from date of booking. Respondent in its reply has mentioned that complainant applied for flat vide registration form dated 29.10.2012. That means the deemed date of possession is to be calculated from 29.10.2012, which comes to 29.04.2015 including grace period. However respondent has failed to handover possession of flat till date.

With regard to delay in handing over of flat, respondent has averred that there has been no delay in handing over of possession, since possession clause 10(a) of builder buyer agreement was subject to the conditions mentioned in said clause. Also, respondent averred that delay in the delivery of flat was bonafide and was beyond the control of the respondent as he had applied before the concerned authorities for demarcation plan and zoning plan well on time, thus he is not liable to pay interest. In this regard Authority observes that as per builder buyer agreement, respondent was under an obligation to



hand over possession till deemed date of possession, however, respondent failed to fulfill its obligations. Further, that project in question was for development of plotted colony, necessary plan to undertake development works of internal services, is demarcation plan which was duly approved by the department of Town & Country Planning in the year 2012 itself. There is no relationship between approval of zoning plan and development of internal services. Zoning plan is meant for regulating the building block within premises of any plot. Therefore, respondent averment that correction in zoning plan delayed the development of internal services doesn't stand merit. He can't therefore be allowed to take benefit on the ground that department had finalized the revised zoning plan with corrected numbering of plots in February 2016.

- iii. **Regarding interest and charges:** Authority observes that deemed date of possession was 29.04.2015, however fit out possession was offered on 05.07.2021 and complainant alleges that this offer of possession was not a valid offer of possession as same was accompanied by some arbitrary charges. In this regard Authority observes as follows:

**CGST and SGST on Interest:** Amounts against said interest demanded by the respondent is arbitrary because GST cannot be levied on the interest. Hence, said amount is not justified.



**Interest amounts:** As per clause 6 (b) of builder buyer agreement, respondent can condone delay in payment by charging an interest @of 24 % on delayed payment. As per section 19 (7) of RERA Act of 2016 read with Rule 15 of HRERA Rules, 2017, such interest shall be calculated at the rate prescribed in Rule 15 of HRERA Rules, 2017. Therefore, complainant can be made liable to pay interest only to the extent as prescribed in RERA Act of 2016.

**VAT:** As per clause 4 (ix) of builder buyer agreement, complainant is liable to pay the VAT. As the builder buyer agreement executed between the parties is Pre-RERA agreement and accordingly parties are bound by the terms and conditions of said agreement.

**PLC:** As per clause 2(d) of builder buyer agreement, complainant is liable to pay the preferential location charges. Further, respondent is directed to remove the temporary construction, if any, in the said area.

24. In view of the above observations and reasons, Authority observes that the builder buyer agreement was executed between the parties on 14.05.2013 and as per clause 10 (a), possession was to be delivered upto 29.04.2015. Fact remains that possession has been offered to complainant, however said offer is not valid for the reason that occupation certificate has not been received from the competent Authority. In present situation, it is apparent that respondent failed to



honour its contractual obligations without any reasonable justification. Facts also remains that complainant-allottee has duly paid the demanded amount to the respondent to the tune of ₹31,76,496/- for the booked flat. As per section 18 of the RERA Act,2016, if the promoter fails to complete or give possession of an apartment, plot or building in accordance with terms of agreement for sale or as the case may be, duly completed by the date specified therein, the allottee may demand the refund of amount paid and in case the allottee do not wish to withdraw from the project, then he shall be entitled to interest for every month of delay till handing over of possession. As of today, complainant-allottee wants to stay with the project and respondent is duty bound to deliver possession of apartment supported with occupation certificate.

25. Thus, the Authority finds it a fit case to allow delayed possession charges from the deemed date, i.e., 29.04.2015 to the date on which a valid offer is sent to the complainant after obtaining completion/occupation certificate as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under :-

*“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”.*





26. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

*(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;*

27. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".*



28. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 29.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

29. Authority has got calculated the interest on total paid amount from the deemed date of possession i.e., 29.04.2015 till the date of this order, i.e., 29.04.2024 at the rate of 10.85% as per detail given in the tables below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 29.04.2024
1.	₹30,09,059/-	29.04.2015	₹2941924/-
2.	₹167437/-	30.10.2015	₹154543/-
	Total=₹31,76,496/-		₹30,96,467/-
3.	Monthly interest		₹28,327/-

30. Accordingly, respondent is liable to pay the upfront delay interest of ₹30,96,467/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹31,76,496/-, monthly interest of ₹28,327/- shall be payable up to the date of actual handing over of the possession after obtaining completion certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.



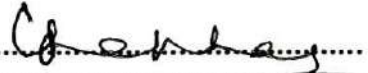
#### **H. DIRECTIONS OF THE AUTHORITY**

31. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest of ₹30,96,467/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹31,76,496/- monthly interest of ₹28,327 /- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.
- (ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.
- (iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate, i.e, 10.85% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.



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

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
.....  
NADIM AKHTAR  
[MEMBER]