



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision

05.08.2024

Name of the Builder		M/s Green Space Infraheights Private Limited		
Project Name		Shree Vardhman Green Space		
Sr. no.	Complaint no.	Title of the case	Appearance on behalf of complainant	Appearance on behalf respondent
1.	1502 of 2023	Sangeeta Singhal and Raj Kumar Singhal Vs. M/s Green Space Infraheights Pvt. Ltd.	Adv. Satish Mishra, counsel for the complainants.	None appeared on behalf of respondent.
2.	1989 of 2023	Sanjiv Kumar and another Vs. M/s Green Space Infraheights Pvt. Ltd.	Adv. Saurabh Chawla, counsel for the complainants.	None appeared on behalf of respondent.
3.	2689 of 2023	Divya Jagota w/o Sidharth Verma Vs. M/s Green Space Infraheights Pvt. Ltd.	Adv. Rakshit Gupta, counsel for the complainant, through VC.	None appeared on behalf of respondent.

**CORAM: Nadim Akhtar
Chander Shekhar**

**Member
Member**

ORDER (NADIM AKHTAR-MEMBER)

1. This order shall dispose off all the above captioned three complaints filed by the complainants before this Authority 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.
2. The core issues emanating from the above captioned complaints are similar in nature. The complainants in the above referred Complaint No. 1502 of 2023 and all other captioned complaints are allottees of the project namely; Shree Vardhman Green Space; being developed by the same respondent/ promoter, i.e., M/s Green Space Infraheights Private Limited in the revenue estate of Village Billah, Sector-14, Panchkula Extension II, District Panchkula, Haryana being governed in terms of the provisions of Affordable Group Housing Policy, 2013 issued by the Government of Haryana. The fulcrum of the issue involved in all the above captioned cases pertains to failure on the part of the



respondent/promoter to deliver timely possession of the unit in question and all complainant(s) are now seeking refund of their paid amount along with the interest. Despite giving opportunities, respondent failed to file replies in all the above captioned matters.

3. The facts of all the complaints filed by the complainants/allottees are almost similar, however, these complaints can be broadly divided into following two categories:-

(A) Category I: Where Builder Buyer agreement is executed between the parties.

(B) Category II: Where only allotment letter is issued and same is placed on record but no Builder Buyer Agreement (BBA) is executed between the parties.

(A) CATEGORY I

4. The details of the complaints falling under category I, unit no., date of allotment letter, date of builder buyer agreement, total sale consideration and amount paid by the complainant, offer of possession and relief sought are given in the table below:

A handwritten signature in blue ink, appearing to be 'K. S. Reddy', with a horizontal line underneath it.

Shree Vardhman Green Space
(Affordable Group Housing Policy, 2013)

Possession Clause 8(a) in Builder Buyer Agreement:

"Subject to the force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under nay part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plan or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date")"

Sr. no.	Complaint no./Title/Date of filing	Reply Status	Flat no. and area	Date of execution of flat buyer agreement	Total sale consideration (TSC) and amount paid by the complainant (Paid amount)	Offer of possession given or not given	Relief sought
1.	1989 of 2023 Sanjeev Kumar and another Vs. Green Space Infraheights Pvt. Ltd. 01.09.2023	Not filed	1002, 10 th floor, Tower G with carpet area of 511 sq.ft	11.01.2016	TSC: ₹20,94,000/- Paid amount: ₹21,85,183/-	Not given	Refund of paid amount along with interest.
2.	2689 of 2023 Divya Jagota Vs. M/s Green Space Infraheights Pvt. Ltd 09.01.2024	Not filed	0005, Tower C with carpet area of 478 sq.ft	08.04.2016	TSC: ₹19,62,000/- Paid amount: ₹20,57,138/-	Not given	Refund of paid amount along with interest.

had

5. CATEGORY I: COMPLAINT NO. 1989 of 2023 IS TAKEN AS A LEAD CASE AND BRIEF FACTS OF THIS COMPLAINT ARE AS UNDER:

- (i) Complainants booked a residential flat in the project, “Shree Vardhman Green Space” at village Billah, sector-14 , Panchkula, Haryana and submitted an application form for allotment of residential flat by paying an initial amount of ₹1,07,935/- vide application no.2399 dated 28.05.2015 towards the basic sale price. In pursuance of the application dated 28.05.2015, the respondent allotted flat no. 1002, tower G, 10th floor having carpet area of 511 sq.ft and balcony area of 100 sq.ft in favour of complainants. Copy of acknowledgment of payment dated 28.05.2015 is annexed as Annexure C1.
- (ii) Thereafter, respondent demanded another instalment of ₹4,33,458/- from the complainants and same was duly paid by the complainants vide cheque no. 016781 dated 12.09.2015. Copy of cheque dated 12.09.2015 is annexed as Annexure C2.
- (iii) After receiving an amount of ₹5,41,393/- against the basic sale price of ₹20,94,000/-, respondent executed the flat buyer agreement with the complainants on 11.01.2016. As per clause 8(a) of flat buyer agreement, respondent undertakes that possession of the said flat will be given within 4 years from the date of approval of building plans or grant of environment



clearance, whichever is later. Pertinently, building plans were approved on 09.12.2014 and environment clearance was obtained by the respondent on 15.03.2016. Thus as per terms and conditions of the flat buyer agreement, respondent was bound to deliver possession of flat to the complainants by 15.03.2020. A copy of flat buyer agreement is attached as Annexure C-3.

- (iv) Complainants had opted for instalment linked plan for making payments towards the flat. Pursuant thereto, respondent had issued several demand letters on different dates and complainants complying with the same, have made each and every payments within time so specified by the respondent. Complainants had made total payment of ₹21,85,183/- towards the flat in favour of respondent. However, even after paying the entire amount as per demand notices raised by the respondent, possession of the said flat has not been delivered till date to the complainants.
- (v) After waiting for 4 years, complainants visited the office of the respondent and asked the respondent about the possession of the flat, whereby respondent orally assured the complainants that possession will be delivered to the complainants within a period of 1 year. Relying upon the assurances given by the respondent, complainants waited for the said period and thereafter complainants again visited the site to check the status of the project, but complainants were shocked to see that status of the project was same as in year 2017 and there was no development going on at the site.



- (vi) Due to failure on the part of the respondent to complete the project, complainants requested the respondent to refund the paid amount alongwith interest. Despite repeated requests by the complainants respondent failed to refund the paid amount with interest to the complainants.
- (vii) Aggrieved by the apathetic attitude of respondent, complainants issued a legal notice dated 05.06.2023 to the respondent seeking refund of the amount along with interest @15% per annum. However, no response has been received by the complainants till date. Copy of legal notice dated 05.06.2023 is annexed as Annexure C-10 and copy of postal receipt alongwith tracking report is annexed as Annexure C-11.
- (viii) That the respondent has committed various acts of omission and commission by making incorrect and false statements in the advertisement material as well as by committing other serious acts as mentioned in the preceding paragraph. The project's timely delivery was the essence of the contract and the respondent has made false commitments to the complainants and the respondent has resorted to misrepresentation.
- (ix) That, further the complainants have suffered harassment and mental agony on account of the non-delivery of possession of the unit despite repeated assurances by the respondent. As such respondent is liable to pay the amount for compensation on account of the above harassment and mental agony.



- (x) That, the respondent kept on delaying the payments of the complainants on one pretext or the other despite several requests made on the part of the complainants for a refund of the amount paid, along with the interest. The act on the part of the respondent clearly amounts to a wrongful loss to the complainants and wrongful gain to the respondent.
- (xi) That the complainants reserve their right to approach the Hon'ble Adjudicating Authority with regard to the plea of compensation in case the same is not awarded to the complainants in the present complaint by this Hon'ble Tribunal, due to the lack of jurisdiction.

6. RELIEFS SOUGHT

Complainants have sought following reliefs :

- (i) To direct the respondent to refund the amount of Rs.21,85,183/- paid by the complainants towards the Flat bearing No. 1002 in Tower No. G, 10th Floor, having a carpet area of 511 sq. ft. and balcony area of 100 sq. ft., situated at Village Billah, Sector-14, Panchkula Extension II, District Panchkula, Haryana, along with the interest at the rate of 15% per annum as per section 2(za) of the Real Estate (Regulation & Development) Act, 2016, from the respective date of deposit till its realization.

Or

In the alternate, the respondent may be directed to hand over the possession to the complainants alongwith delayed interest for possession.



- (ii) The respondent may kindly be restrained from taking any actions detrimental to the interest of the complainants, including cancellation of the unit of the complainants.
- (iii) Direct the respondent to pay the amount of rent to the complainants from the due date of possession up till the date of actual possession.
- (iv) Direct the respondent to pay a sum of Rs.5 Lakhs to the complainants towards undue hardship and injury, both physical and mental, caused due to the acts of omissions and commissions on the part of the respondent;
- (v) Allow the cost of the litigation;
- (vi) Pass such other and further order as this Hon'ble Authority may deem fit and proper in the present complaint.
- (i) Any other relief this Hon'ble Authority deems fit in view of the facts and circumstances of the present case.

7. REPLY ON BEHALF OF RESPONDENT

Notice was served to the respondent on 05.09.2023 which got successfully delivered on 06.09.2023. Despite giving four opportunities respondent failed to file his reply on time. Therefore, Authority deems it fit to struck off the defence of the respondent and decide it ex-parte, as per record available on the file.

8. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

Counsel for complainants reiterated the facts of the complaint and requested the Authority to grant the relief of refund of the paid amount



along with interest. None has appeared on behalf of respondent to assist the Authority.

(B) CATEGORY II

9. The details of the complaints falling under category B, unit no., date of allotment letter, date of builder buyer agreement, total sale consideration and amount paid by the complainant, offer of possession and relief sought are given in the table below:

Affordable Housing Scheme 2013								
<i>"Clause 5(iii) (b) : All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance. Any person interested to apply for allotment of flat in response to such advertisement by a coloniser may apply on the prescribed application form alongwith 5% amount of the total cost of the flat."</i>								
Sr. no.	Complaint no./Title/Date of filing	Reply Status	Unit no. and area	Date of allotment letter	Date of execution of builder buyer agreement	Total sale consideration (TSC) and amount paid by the complainant (Paid amount)	Offer of possession given or not givrn	Relief sought
1.	1502 of 2023 Sangeeta Singhal and Raj Kumar Singhal Vs. M/s Green Space Infraheights Pvt. Ltd. 18.07.2023	Not filed	206, 2 nd Floor, Tower D with carpet area of 511 sq.ft	26.08.2015	Not executed	TSC: ₹20,94,000/- (as per pleadings mentioned in para 5) Paid amount: ₹21,85,183/-	No	Complainant s prays for full refund of the amount invested in project so far along with interest as per stipulated RERA Rules.

10. CATEGORY II: BRIEF FACTS OF COMPLAINT NO. 1502 OF

2023 ARE AS UNDER:

- (i) Case of the complainants is that complainants applied for a residential flat by paying an amount of ₹1,07,935/- on 26.05.2015 in affordable group housing colony namely; "Shree Vardhman Green Space" being developed by respondent Green Space Infraheights Pvt. Ltd at Village Billah, sector-14, Panchkula Extension-II, District. Panchkula, Haryana. Complainants were allotted flat No.206, Tower No. D, 2nd floor in the project "Shree Vardhman Green Space" and allotment letter dated 26.08.2015 is annexed as Annexure-A-1.
- (ii) That the complainants have already paid an amount of Rs.21,25,183/- as per payment plan and the receipts of the same are annexed as Annexure A-2 (Colly).
- (iii) It is alleged by the complainants that no Builder Buyer Agreement/Flat Buyer agreement is executed by the respondent after the allotment of the said unit. Further, it is submitted by the complainant that as per precedents of RERA and Consumer Court judgements, the possession ought to have been given in 3 years from the date of allotment i.e. 26.08.2015 comes out to be 26.08.2018 but till date no offer for possession of the said unit has been given by the respondent.



11. RELIEFS SOUGHT

Complainants have sought following reliefs :

- (i) The complainants prays for full refund of the amount invested in project so far along with interest as per stipulated RERA Rules.
- (ii) The complainants further prays that respondent should share to the Hon'ble Court, if any, copy of Builder Buyer Agreement/Flat Buyer Agreement executed between the parties. Complainants have confirmed the same from respondent but no satisfactory response is forthcoming from them.
- (iii) The complainants further pray indulgence of this Hon'ble Authority in fair and transparent adjudication of this dispute so as the entire payment could be returned to the complainant along with interest from the date of payments.
- (iv) That further an administrative enquiry may be marked to look into the aspect that why the project is still abandoned and not reached to completion. Accordingly, any penalty, if any, may also be impose upon the respondent which will also bring in discipline to builder to finish projects on time. Also liberty to claim compensation before appropriate forum may kindly be reserved without prejudice to other rights at a later stage.



(v) Any other relief, which this Authority may deems fit in the present circumstances may also be awarded to the complainants.

12. REPLY ON BEHALF OF RESPONDENT

Notice was served to the respondent on 19.07.2023 which got successfully delivered on 20.07.2023. Despite availing four opportunities respondent failed to file reply on time. Therefore, Authority deems it fit to struck off the defence and decide it ex-parte, as per the record available on the file.

13. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

Counsel for complainant reiterated the facts of the complaint and requested the Authority to grant the relief of refund of the paid amount along with interest. None has appeared on behalf of respondent to assist the Authority.

14. ISSUE FOR ADJUDICATION

Whether the complainants in all the above captioned complaints are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of RERA Act of 2016?

15. OBSERVATIONS AND DECISION OF AUTHORITY

The Authority has gone through the facts of the complaints as submitted by the complainants. In light of the background of the matter, Authority observes as under:



- (i) **Category I:** That in complaint no. 1989 of 2023, complainants booked flat in the project "Shree Vardhman Green Space" which is an Affordable Housing Scheme being developed by the respondent/promoter namely; M/s Green Space Infraheights Private Limited and complainants were allotted flat no.1002, 10th floor, Tower G, in the said project at Sector-14, Panchkula, Haryana. The flat buyer agreement was executed between the parties on 11.01.2016. Complainants had paid a total sum of ₹21,85,183/- against the basic sale consideration price of ₹20,94,000/- .

As per clause 8(a) of the agreement respondent/developer was under an obligation to hand over the possession to the complainant within 4 years from the date of approval of building plans or grant of environment clearance whichever is later.

- (ii) **Category II :** In complaint no.1502 of 2023, complainant booked unit in the project "Shree Vardhman Green Space" which is an Affordable Housing Scheme being developed by the respondent/promoter namely; M/s Green Space Infraheights Private Limited and complainant was allotted flat no. 206, 2nd floor, Tower D, in the said project vide allotment letter dated 26.08.2015 and complainant had paid a total sum of ₹21,85,183/- (as per receipts attached) against the basic sale consideration price of ₹20,94,000/-.

As no builder buyer agreement was executed between the parties,



but the fact remains that respondent allotted the unit in favour of complainant and said allotment was governed by "Affordable Housing Policy- 2013" of Govt. of Haryana. As per clause 5 (iii) (b) of said policy, possession is to be offered within 4 years from date of sanction of building plans or receipt of environmental clearance whichever is later.

(iii) As per the pleadings mentioned in para no.4 of the complaint, respondent/ developer received approval of building plans on 09.12.2014 and got the environment clearance on 15.03.2016. That means, as per possession clause, a period of 4 years is to be taken from 15.03.2016 and therefore, date of handing over of possession comes to 15.03.2020.

(iv) Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottee, however, respondent failed to hand over possession to the complainants. After paying their hand earned money, legitimate expectations of the complainant(s) would be that possession of the flat will be delivered within a reasonable period of time. However, respondent has failed to fulfill its obligations as promised to the complainant(s). Thus, complainant(s) are at liberty to exercise their right to withdraw from the project on account of default on the part



of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

- (v) Further, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."



The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainants wishes to withdraw from the project of the respondent, therefore, Authority finds it fit cases for allowing refund in favour of complainant.

- (vi) 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;

- (vii) 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".

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., 05.08.2024 is 9%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11%.

(viii) From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant(s) are entitled for refund of deposited amount along with interest. Thus, respondent is liable to pay the complainants interest from the date the amounts were paid till the actual realization of the amount.

(ix) Therefore, Authority allows refund of paid amount along with interest to the all the complainants at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11% (9% + 2.00%)



from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amounts along with interest as per detail given in the table below:

Sr. no.	Complaint no.	Amount paid	Interest	Total amount to be given to complainant
1.	1502 of 2023	₹21,85,183/-	₹17,62,026/-	₹39,47,209/-
2.	1989 of 2023	₹21,85,183/-	₹18,15,560/-	₹40,00,743/-
3.	2689 of 2023	₹20,57,138/-	₹16,93,721/-	₹37,50,859/-

(x) It is pertinent to mention that in complaint no.1989 of 2023, complainants claimed refund of ₹21,85,183/- alongwith interest. To substantiate the amount of ₹21,85,183/-, complainants have filed incomplete receipts. Vide order dated 29.01.2024, complainants were directed to file affidavit alongwith statement of account or complete receipts. In compliance of said order, complainants have filed an affidavit dated 22.04.2024 alongwith statement of account mentioning the details of payments. Today, during the course of hearing, counsel for complainants stated that said affidavit alongwith statement of account be taken to record to substantiate the amount of ₹21,85,183/-.

(xi) Reliefs under clauses (ii), (iii) and (iv) in complaint no.1502 of 2023 and clauses under (ii) and (iii) in complaint no.1989 of 2023

were neither argued nor pressed upon. Therefore, no direction is passed in this regard.

(xii) Further, complainants in complaint nos. 1989, 2689 of 2023 are seeking compensation on account of mental agony, litigation cost and physical harassment caused to the complainants. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

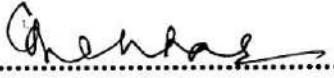
16. DIRECTIONS OF THE AUTHORITY

Hence, the Authority hereby passes this order and issue 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 refund the amount to the complainants as specified in the table provided in para (ix) of this order. It is further clarified that respondent will remain liable to pay the interest to the complainants till the actual date of realization of the amount.
- (ii) Respondent is also directed to deposit the costs of ₹5000/- payable to the Authority and ₹2000/- payable to the complainants in complaint nos. 1502 of 2023, 1989 of 2023 and 2689 of 2023 (Total cost of ₹15,000/- payable to the Authority and ₹6,000/- payable to the complainants).
- (iii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017, failing which legal consequences would be taken against the respondent.

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


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CHANDER SHEKHAR
[MEMBER]


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NADIM AKHTAR
[MEMBER]