



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	442 of 2021
Date of filing:	26.04.2021
Date of first hearing:	07.07.2021
Date of decision:	21.10.2024

Pratibha,

W/o Rajesh Gupta, House No.703,

Sector-13, UE, Kurukshetra-136118

.....COMPLAINANT

Versus

Green Space Infraheights Pvt. Ltd through its Director

306, 3rd Floor, Indraprakash Building,

21- Barakhamba Road, New Delhi-110001.

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: -Mr. Vivek Aggarwal, counsel for complainant through VC.

Ms. Priya Gola, proxy counsel for Mr. Dharamveer Singh, counsel
for the respondent through VC.

ORDER (NADIM AKHTAR -MEMBER)

1. Present complaint has been filed by the complainant on 26.04.2021 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 RERA, 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, sale consideration, 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 Green Space (Affordable Housing Colony)
2.	Name of the promoter	Green Space Infraheights Pvt. Ltd
3.	RERA registered/not registered	Registered (lapsed project)
4.	Flat No. allotted	0308, Tower-B, 3rd floor
5.	Date of Builder Buyer Agreement	07.06.2016



6.	Due date of offer of possession	15.03.2020
7.	Possession clause in BBA	Not given
8.	Total sale consideration	₹19,62,000/-
9.	Amount paid by complainant	₹17,33,265/-
10.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that complainant had applied for a unit in affordable group housing colony namely; "Shree Vardhman Green Space" being developed by the respondent Green Space Infraheights Pvt. Ltd at Village Billah, Sector-14, Panchkula Extension-II, District. Panchkula, Haryana. Draw of lots for allotment of units in the said project was held on 25.08.2015. Upon being successful applicant, complainant was allotted unit no. B-0308, 3rd floor in the said project.
4. That on 07.06.2016, a Builder Buyer Agreement (BBA) was executed between complainant and respondent for basic sale price of ₹19,62,000/- and same is with complaint book. Complainant made the payment of ₹17,33,265/- against the basic sale price. Copies of receipts are attached with complaint book.
5. It is alleged by the complainant that even after 5 years of booking, unit is not complete and possession has not been offered by the respondent



till date. The complainant had paid almost entire sale consideration to the respondent in the year 2018 and complainant is ready to make balance payment, if needed.

6. That project is still incomplete and despite repeated communication respondent has not apprised the complainant of the current status of the project. Feeling aggrieved, complainant has filed the present complaint seeking possession of the flat alongwith delay interest for delay caused in delivering of possession of the unit allotted to her.

C. RELIEFS SOUGHT

7. Complainant sought following relief and said relief is recorded in order dated 03.02.2022:
- (i) Possession of the unit alongwith delay interest in terms of RERA Act of 2016.

D. REPLY ON BEHALF OF RESPONDENT

8. As per reply dated 16.12.2021, following submissions had been made by the respondent:
- (i) That complainant submitted as application for booking of 2 BHK flat having built up area 780 sq. yard ft. in the project namely; "Shree Vardhman Green Space" being developed by respondent at Village Billah, sector-14, Panchkula Extension-II, District. Said application



form dated 31.05.2015 signed and submitted by the complainant and copy of application dated 31.05.2015 is attached as Annexure 2.

(ii) Complainant was one of the successful applicants in draw of lots and was allotted unit no. B-0308, 3rd floor in the said project. It is submitted that as per clause 4(a) of the Builder Buyer Agreement the timely payment of the installemnt of the basic price and other charges are the essence of the agreement. Further, submitted that as per clause 8(a) of the agreement date of delivery of possession is tentative and subject to force majeure circumstances. Construction of the project is hampered due to Covid-19. Copy of agreement is already on record.

(iii) That the complainant has so far paid an amount of ₹17,33,265/- and thereafter complainant had changed her mind and stopped making further payment to the respondent despite several demands and reminders dated 10.09.2018 and 21.10.2020. Complainant through final reminder was called upon to pay amount as per payment plan opted by the complainant. However, complainant did not pay any heed to the reminders. Copies of letters dated 10.09.2018 and 21.10.2020 are attached as Annexure 4.

(iv) That as per the agreement the respondent was to offer the possession of the unit within 4 years from the date of grant of environment clearance. The environment clearance was granted to the



respondent vide letter dated 15.03.2016. Copy of the same is attached as Annexure 5.

(v) Present complaint is not maintainable in law and facts. Complaint pertains to compensation and interest under section 12, 14, 18 and 19 of RERA Act of 2016 are requires to filed before Adjudicating officer under rule 29 HRERA ACT of 2017 read with section 31 and 71 and not before this Authority.

(vi) Authority does not have territorial jurisdiction to entertain and adjudicate upon the present complaint.

(vii) RERA is enacted for effective consumer protection and to protect the interest of consumers and not enacted to protect the interest of investors.

(viii) That due to force majeure conditions like lockdown due to Covid 19, labour shortage as entire labours migrated to their respective states, construction activities were permitted after months and later on second wave of Covid resulted in Lockdown from April 2021 till June 2021. That due to these factors completion of the project got delayed and respondent had no control over these conditions.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

9. Counsel for complainant reiterated the facts of the complaint and stated that complainant sought relief of possession alongwith delay



interest. Authority inquired from the respondent whether respondent had received the occupation certificate from the concerned Authority? In reply to this, Id counsel for respondent stated that she has no idea regarding the occupation certificate and requested for some time to seek instructions with regard to this.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

11. 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 submitted by both parties, Authority observes as follows:

- (i) With regard to objection by the respondent regarding jurisdiction of the Authority to adjudicate and grant relief of possession alongwith delay interest. In this regard, Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

A. Territorial Jurisdiction:

As per notification no. 1/92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices



situated in Panchkula. In the present case the project in question is situated within the planning area Panipat, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

B. Subject Matter Jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 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.

In view of the provisions of the Act of 2016 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 learned Adjudicating Officer if pursued by the complainant at a later



stage. Therefore, plea of respondent that Authority has no jurisdiction to decide the complaint is rejected. As, Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

(ii) With respect to the objection raised by the respondent that complainant herein is an investor, it is observed that the complainant herein is the allottee/homebuyer who has made a substantial investment from her hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit in terms of buyer's agreement dated 07.06.2016 but her bonafide belief stood shaken when the promoter failed to handover possession of the booked floor till date without any reasonable cause. Complainant has approached this Authority for possession alongwith delay interest in terms of provisions of RERA Act, 2016 being allottee of respondent-promoter. As per definition of 'allottee' provided in clause 2(d) of RERA Act, 2016, present complainant is duly covered in it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act, 2016 is reproduced for reference:-

"Allottee-in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter and



includes the person who subsequently acquires the said allotment through sale, transfer, or otherwise but does not include a person to whom such plot, apartment or building as the case may be, is given on rent”.

Complainant has been allotted unit in the project of respondent by the respondent/promoter itself and said fact is duly revealed in builder buyer agreement dated 07.06.2016. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for consumption/self-utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainant herein is investor does not hold merit and same is rejected.


(iii) Admittedly, complainant booked a flat in the real estate project, “Shree Vardhman Green Space” being developed by the promoter namely; Green Space Infraheights Pvt. Ltd and complainant was allotted flat no.0308, 3rd floor, Tower B, in said project at sector-14, Panchkula Extension II, District Panchkula, Haryana. The builder buyer agreement was executed between the parties on 07.06.2016. Complainant had paid a total of ₹17,33,265/- against the basic sale price of ₹19,62,000/-.

(iv) 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. Respondent/ developer 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. Respondent had taken plea of force majeure conditions like lockdown due to Covid 19, labour shortage as entire labours migrated to their respective states, construction activities for not performing the obligations as per terms and conditions of the agreement. Now, the question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not? The obligation to deliver possession within a period of 4 years was not fulfilled by respondent. There is delay on the part of the respondent. The reason given by the respondent is ceasement of construction activities during the COVID-19 period .

As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s*



Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr.
bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-
3697/2020 dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.”

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 15.03.2020 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself. To conclude, Authority observes that mere averment of force majeure without any relevant proof of the same for causing delay in offering the possession is not sufficient to justify the delay caused.



(v) Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottee. The project of the respondent is of an affordable group housing colony and allottees of such project are supposed to be mainly middle class or lower middle class persons. After paying their hand earned money, legitimate expectations of the complainant would be that possession of the unit will be delivered within a reasonable period of time. 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 ₹17 lacs for the booked unit. 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 unit supported with occupation certificate.



(vi) Thus, the Authority finds, it a fit case to allow delayed possession charges from the deemed date, i.e., 15.03.2020 to the date on which a valid offer is sent to her 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”.*

(vii) 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;



(viii) 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".

(ix) 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. 21.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

(x) Authority has got calculated the interest on total paid amount from the deemed date of possession i.e., 15.03.2020 till the date of this order, i.e, 21.10.2024 at the rate of 11.10% 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 21.10.2024
1.	₹17,33,265/-	15.03.2020	₹8,86,586/-
2.	Monthly interest		₹15813/-



12.It is pertinent to mention here that complainant submitted that she had paid total amount of ₹17,33,265/-, however, had not placed on record receipt of ₹170134/- and ₹236000/-. But complainant had attached cheques with respect to above said amounts. Respondent in para no.10 of its reply admitted that complainant had paid amount of ₹17,33,265/-.

13.Accordingly, the respondent is liable to pay the upfront delay interest of ₹8,86,586/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹17,33,265/-, monthly interest of ₹15813/- 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.

14. It is pertinent to mention here that in the order dated 26.04.2022, complainant had made submission that as per clause 4 of BBA respondent had agreed to reimburse monthly instalment of interest paid by the complainant to bank, while the respondent reimbursed the amount till May 2019, but stopped paying thereafter. These are now being paid by the complainant to bank. Therefore, Authority directs the respondent to clear outstanding monthly interest from



May 2019 till date immediately because that is causing additional hardship to the complainant. Thereafter vide order dated 20.07.2022, Authority directed the respondent to reimburse an outstanding EMI amount of ₹4,61,633/- from 10.06.2019 till 11.07.2022. After that, Authority on 29.04.2024 in compliance of order of Hon'ble Appellate Tribunal dated 24.08.2023, Authority directs office of the Authority to disburse the amount of ₹4,61,633/- from 10.06.2019 till 11.07.2022 to the complainant. In compliance to this, office disbursed the said amount to the complainant as per the account details provided by the complainant. Today, during the course of hearing also, counsel for the complainant stated that complainant had received the said EMI amount.

H. DIRECTIONS OF THE AUTHORITY

15. 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 ₹8,86,586/- 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 ₹17,33,265/-




monthly interest of ₹15813/- 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 her. Respondent shall not charge for anything more which is not part of the buyer's agreement.

(iii) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate, i.e, 11.10% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottee.

16. **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]