



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	143 of 2022
Date of filing:	10.02.2022
First date of hearing:	05.04.2022
Date of decision:	17.02.2025

1. Kant Kumar Mehta, S/o Late Sh. D.R Mehta

2. Meena Mehta, W/o Sh. Kant Kumar Mehta

Both R/o B-44, Kendriya Vihar-II, Sector-25, Panchkula.

.....COMPLAINANTS

Versus

Shree Vardhman Developers Pvt. Ltd, through its Managing Director

Regd. Office 301-311, 3<sup>rd</sup> floor,

Indraprakash Building, 21-Barakhamba Road,

New Delhi-110001

.....RESPONDENT

**CORAM:** Nadim Akhtar  
Chander Shekhar

Member  
Member

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

**ORDER (NADIM AKHTAR-MEMBER)**

1. Present complaint has been filed by the complainants on 10.02.2022 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 Gardenia", Sector-10, Sonipat
2.	Name of the promoter	Shree Vardhman Developers Pvt. Ltd.
3.	Flat no.	1004, 10 <sup>th</sup> floor, Tower A3
4.	Flat area (Super built area)	2145 sq.ft
5.	Date of builder buyer agreement	22.04.2017
6.	Due date of offer of possession	22.04.2018



7.	Possession clause in BBA	<p><i>"Clause 10 (a)</i>  <i>The construction of the Flat is likely to be completed within a period of 12 months from the date of agreement. With a grace period of six months, on receipt sanction of building plans/revised building plans and approvals of all concerned authorities including the Fire Service Deptt., Civil Aviation Deptt., Pollution Control deptt., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any court/authorities, non availability of building materials, disputes with contractors/work force, etc. and circumstances beyond the control of the Company and subject to timely payments by the Flat Buyers(s). No claim by way damages/ compensation shall lie against the Company in case of delay in handing over possession on account of any of such reasons and the period of construction shall be deemed to be correspondingly extended. The date of submitting application to the concerned authorities for issue of completion/part completion/ occupancy/ part occupancy certificate of the Complex shall be treated as the date of completion of the Flat for the purpose of this clause/agreement."</i></p>
8.	Basic sale consideration	₹60,91,392.45/-
9.	Amount paid by complainant	₹68,42,863/-
10.	Offer of possession	Given on 19.07.2017



**B. FACTS OF THE COMPLAINT**

3. Complainants made following submissions in their complaint as under:
- i. Complainants booked a 4 BHK flat in the project namely "Shree Vardhman Gardenia" located at Sector-10, Sonipat. The total area of flat is 2060 sq. feet for a consideration of ₹58,50,000/- and 10% amount was payable on or before 10 March 2017. Complainants had paid an amount of ₹1,80,000/- on 18.10.2016 as booking amount for the flat which had been duly acknowledged by the respondent vide receipt No.11825 dated 19.10.2016. Copy of the receipt dated 19.10.2016 is annexed as Annexure C-2.
  - ii. That on 20.01.2017, respondent sent a call notice and made a demand for ₹4,31,325/- against the due amount of ₹4,05,000/-. Copy of call notice dated 20.01.2017 is annexed as Annexure C-3. Since the amount of ₹1,80,000/- had already been paid at the time of booking of the flat, therefore the complainants paid ₹4,05,000/- to the respondent vide cheque No.751673 dated 28.02.2017, which was acknowledged by the respondent vide receipt No.11902 dated 01.03.2017. Copy of the receipt dated 01.03.2017 is annexed as Annexure C-4.
  - iii. On 09.03.2017, another amount of ₹26,325/- has been paid to the respondent vide cheque dated 04.03.2017 which finds mention in the





receipt No.11913 dated 09.03.2017 issued by the respondent, copy is annexed as Annexure C-5.

- iv. That later on the respondent unilaterally enhanced the dwelling unit area to 2145 sq. feet in papers whereas in actual at site no area has been enhanced. It is as such as was offered initially, i.e, 2060 sq feet. On 22.04.2017, the respondent gave a demand notice to the complainants thereby enhancing basic price of the flat from ₹58,50,000/- to ₹60,91,392/-. Copy of the letter dated 22.04.2017 is herewith annexed as Annexure C-6.
- v. On 22.04.2017, builder buyer agreement was entered into between the complainants and respondent and a copy of the agreement dated 22.04.2017 is annexed as Annexure C-7.
- vi. That for purchasing the said flat the complainants had applied for a loan from the State Bank of India, RACPC, 11, Parliament Street, New Delhi and accordingly a loan of ₹48,73,000/- was sanctioned by RACPC, State Bank of India, New Delhi. On 25.04.2017, bank officials visited the site and found that 20% work at the site was not complete. Copy of the report given by the bank officials is herewith annexed as Annexure C-8.
- vii. That since the respondent had unilaterally enhanced the basic price of the flat in question, therefore the respondent insisted the complainants to deposit an amount of ₹25,226/- as difference before the next



- installment. On 16.05.2017 complainants deposited ₹25,226/- vide cheque dated 10.05.2017 and receipt No. 12211 dated 16.05.2017 issued by the respondent. Copy of the receipt dated 16.05.2017 is annexed as Annexure C-9.
- viii. That on 14.06.2017, the respondent sent a letter in favour of State Bank of India giving no objection in favour of the complainants to mortgage the above said property. To the utter surprise of the complainants the respondent in above mentioned letter increased the consideration price of the flat to ₹61,32,842/-. Copy of the letter dated 14.06.2017 is herewith annexed as Annexure C-10.
- ix. Then tripartite agreement dated 14.06.2017 was entered into between the complainants and the respondent in which it was agreed between the parties that the State Bank of India (SBI) should have the first lien over the said flat for the due repayment of the loan which SBI has granted to the complainants. Copy of this agreement dated 14.06.2017 is annexed as annexure C-11.
- x. That on 15.06.2017 the bank released the first installment of loan for ₹31,44,559/- (inclusive of buyer's share) to the respondent. This transaction has been acknowledged by the respondent vide receipt No. 12470 dated 15.06.2017, copy of the receipt No. 12470 dated 15.06.2017 is annexed as Annexure C-12.



- xi. That on 05.07.2017 respondent telephonically informed the complainants that ₹38,193/- was paid less by the bank at the time of release of first installment of loan and to complete the transaction another amount of ₹38,193/- was paid to the respondent through bank challan. Copy of the receipt issued by the bank dated 05.07.2017 is annexed as Annexure C-13.
- xii. On 19.07.2017, the respondent intimated the complainants to get the possession of the flat by clearing the outstanding dues of ₹35,35,925/- on or before 10th August 2017. Copy of the letter dated 19.07.2017 is annexed as Annexure C-14. The complainants immediately forwarded and handed over the demand letter issued by the respondent to the loan disbursing bank for the payment of next installment to the respondent.
- xiii. That on 10.08.2017, the complainants physically visited the site and found that the concerned unit A3/1004 was incomplete and complainants sent a letter on the same day to the respondent regarding the same. Copy of the letter dated 10.08.2017 is annexed as Annexure C-15.
- xiv. On 30.08.2017, the respondent sent a letter to the complainants for final payment of the flat and they themselves mentioned in it that finishing work in the flat was yet to be done. Copy of the letter dated 30.08.2017 is annexed as Annexure C-16. On 30.10.2017, the respondent intimated the complainants to get the possession of the flat by clearing the





outstanding dues of ₹35,35,925/- within 15 days. Copy of the letter dated 30.10.2017 is annexed as Annexure C-17.

xv. That on 11.11.2017, complainants sent a letter through registered post to the respondent in which it had been specifically mentioned that the said unit is incomplete and even the bank officials visited the site and found the unit was incomplete. Copy of the letter dated 11.11.2017 is annexed as Annexure C-18. On 14.11.2017 the respondent intimated the complainants to take the possession of the flat by clearing all the dues and had themselves stated that all shortcomings will be done/rectified and internal paint, toilet fittings & fixtures will be installed after the final payment will be done by the complainants. Copy of letter dated 14.11.2017 is annexed as Annexure C-19.

xvi. That on 19.02.2018, the complainants informed the respondent that they had submitted original demand notice issued by the respondent to the State Bank of India with a request to release the remaining amount. On 21.03.2018, the complainants requested the Manager of State Bank of India to release the final loan installment against their Home Loan account No.00000036946590781. On 27.07.2018, the complainants once again requested the Manager of State Bank of India to release the final loan installment against their Home Loan. That complainants had been making continuous requests to the bank for release of remaining loan amount. Copies of letters dated 19.02.2018, 21.03.2018, and





27.07.2018 annexed are annexure as C-20. Ultimately, on 04.08.2018, State Bank of India, New Delhi released the second and final loan installment of ₹22,97,315/- (inclusive of buyer's share) through RTGS in favour of the respondent. The respondent has duly acknowledged this payment in receipt No. 12957 dated 04.08.2018. Copy of receipt dated 04.08.2018 is annexed as Annexure C-21.

xvii. That the complainants have paid a total sum of ₹61,16,618/- to the respondent against the cost of the flat but yet the respondent did not handover the possession of the flat to the complainants. Copy of payment schedule paid by the complainants to the respondent is annexed as Annexure C-22.

xviii. On 11.08.2018, respondent made a demand of a sum of ₹16,15,514/- which is totally unethical and unjustified. Copy of the letter dated 11.08.2018 is annexed as Annexure C-23.

xix. On 14.07.2020, the respondent demanded ₹27,61,542/- and other charges to the tune of Rs.4,09,500/- thereby making a total of Rs.31,71,042/- which is totally unjustified. Copy of the letter dated 14.07.2020 is annexed as Annexure C-24. On 30.11.2020, instead of handing over the possession of the flat, respondent asked the complainants to deposit Rs.33,44,824.87/- vide letter bearing Ref. No. 15597 to be paid on or before 10th December 2020. Copy of the letter dated 30.11.2020 is annexed as Annexure C-25.



- xx. Complainants remitted ₹7,26,245.87/- demanded as basic + others by the builder, in which ₹1,26,246/- was remitted on 08th December 2020 and ₹6,00,000/- through RTGS on 3rd February 2021 by way of borrowing of Gold/Pension loans. Copy of receipts no. 13811 and 13812 dated 04.02.2021 are annexed as Annexure C-26.
- xxi. That on 02.03.2021, complainants requested the respondent to hand over the possession of the flat and requested to waive of all the accumulated interests/holding charges. On 29.05.2021, the complainants again requested the respondent to hand over the possession of the flat and requested to waive of all the accumulated interests/holding charges.
- xxii. On 07.10.2021, complainants wrote to respondent for an appointment at their New Delhi office to amicably resolve the outstanding matter of long-awaited possession of flat A-3/1004 and to obviate unnecessary correspondence and avoidable litigation. Copy of the letters dated 02.03.2021, 29.05.2021, and 07.10.2021 are annexed as Annexure C-27.
- xxiii. On 02.11.2021, in response to letter dated 07th October 2021, the respondent forwarded the last letter received by complainants on November 2021, demanding a huge amount of ₹29,58,813.41/- within 15 days with a repeated threat for cancellation of our flat. Copies of the letter dated 02.11.2021 is annexed as Annexure C-28.



- xxiv. That complainants communicated to the respondent vide letters dated 15.11.2021 and 22.11.2021 to amicably resolve the matter but the respondent not even bothered to reply the complainants. Copy of letters dated 15.11.2021 and 22.11.2021 are annexed as Annexure C-29.
- xxv. That the respondent since 19.07.2017 is asking the complainants to take over the possession of incomplete flat. Respondent has itself admitted that the construction and furnishing work in the flat is incomplete. Despite that being so, the respondent is adamant to enhance the price of flat under the grab of enhanced area, interest and other charges.
- xxvi. That the respondent has charged Service Tax (now GST), Value Added Tax (VAT) and TDS. Respondent is also asking the complainants to deposit above mentioned taxes which is totally illegal and arbitrary. Demand of GST, TDS, taxes and charges as made by the respondent is also totally against the mandate of law.
- xxvii. That in the present case respondent had made a false offer of possession to the complainant though at the time of offer, the flat was not ready for possession. That's why complainant's loan disbursing bank did not release the second and final installment of loan, which was released later on at persistent requests of the complainants. There was no delay on the part of the complainants in making the payment of consideration of flat, yet the respondent is levying penal interest and penalty and other





charges upon the complainants. Respondent is making illegal demand of ₹29,58,813.41/- beyond sale price of the flat.

**C. RELIEFS SOUGHT**

4. Complainants sought following relief:

- (i) Allow the present complaint in favour of the complainants and against the respondent.
- (ii) Direct the respondent to withdraw the unreasonable demand notice of ₹29,58,813.41/- which has been sent by the respondent despite of the fact that there is no increase in area of the said flat and no prior notice or intimation was sent to the complainants.
- (iii) Direct the respondent to refund an amount of ₹7,51,472.16/- along with interest @24% which have been taken in excess than the consideration price.
- (iv) Direct the respondent to pay an interest of 24% on the amount deposited for the delay in possession.
- (v) To hand over the possession of the said flat to the complainants.
- (vi) Direct the respondent to pay an amount of Rs.10,00,000/- as compensation for mental and physical trauma suffered by the complainants.



- (vii) Direct the respondent to pay an amount of ₹10,00,000/- to the complainants for deficiency in service for indulging into unfair trade practice by the respondent.
- (viii) Direct the respondent to pay penalty at the rate of Rs.5 per square feet of the total super area of the floor.
- (ix) Direct the respondent to pay ₹2 lakhs as the cost of this litigation.
- (x) This Hon'ble Authority may pass any such order or orders as are deemed fit and proper in the facts and circumstances of present case and in interest of justice.

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

5. Respondent had made following submissions in its reply dated 22.03.2022:

- i. That the complainants had read and understood the terms and conditions of the Flat Buyer Agreement and signed the same. The Flat Buyer Agreement contained the payment plan in accordance to which the complainant was to make the due installments as specified. That the payment plan clearly stated at the time of application/booking payment of ₹1,72,249/- of the basic sale price (hereinafter BSP), 10% of the BSP + Service Tax on or before 10.03.2017, 50% of the total BSP Service Tax on or before 31.05.2017, and 40% of the BSP Stamp Duty Charges + Other Charges + Service Tax at the time of offer of Possession was to be paid respectively. The payment plan was in accordance with the



payment plan prescribed in the said Policy. Also, the flat buyer agreement contains the specifications such as description of the structure, license and building plans granted by DTCP Haryana.

- ii. That as per Clause 5(a) of the Flat Buyer Agreement, the timely payment of the installments of the basic price and other charges is the essence of the Agreement. That as per clause 5(b) in exceptional circumstances, the company may, in their sole discretion, condone the delay in payment by charging interest at the rate of 24% per annum on the amount in default but shall not be bound to do so.
- iii. That as per Clause 6, the complainant had agreed and undertaken to pay any municipal tax, property tax, service tax, VAT, GST and/or any enhancement thereof including but not limited to enhanced development charges (EDC), or any other tax or charges, the government levies including any fresh incidence of tax or compensation as may be levied, charged or imposed by the Government of Haryana/competent authority/ Central Government, retrospectively or prospectively. If such charges are increased with retrospective or prospective effect after conveyance/sale deed has been executed, then the Allottee (Complainant) undertakes to pay the same upon the intimation by the Developer.
- iv. That as per clause 11 (b) of the agreement, the date of delivery of possession of the flat to the Buyer is only on receipt of the entire amount due in terms of the agreement and registration of sale Deed in favour of





the Buyer. A copy of the flat buyer agreement dated 22.04.2017 is already on record.

- v. That the complainants have so far made only a payment of ₹37,81,109/- and thereafter the complainants had stopped making of payment as per the schedule of agreement and suddenly due to change of mind, stopped making further payments to the respondent.
- vi. In the aforesaid facts and circumstances, it is amply clear that the respondent has neither indulged into any unfair trade practice nor committed any deficiency in service. It is the complainants only who breached obligation to make the entire and timely payment of the installments and caused losses to the respondent as it kept reserved one of the flat for the Complainant for a considerable period of time without payment of the agreed instalments. In the real estate projects like the project in question the development being multi-storied group housing development, the default in payment committed by even one allottee adversely affect the development of the other units as well as the financial planning, the pace of the project etc. gets adversely affected thereby causing impediment in the development and overall delay in delivery of the project.
- vii. It is relevant to mention here that from January 2020 onwards things have started moving out of control of the respondent. A major force majeure event, situation and circumstances emerged and occurred that



made the construction at site impossible for a considerable period of time. Such events, situations and circumstances included inter-alia,

- Nationwide lock-down, due to the emergence of COVID-19 pandemic,
- Massive nationwide migration of labourers from constructions sites to their native villages, creating an acute shortage of labourers in the Project site region,
- Disruption of supply chains for construction materials and non-availability of them at construction sites due to Covid-19 pandemic,
- Ban on non-essential services which included the real estate and construction sector.
- Closure/restricted functioning of various offices i.e. private and public/government offices, disrupting the various approvals required for the real estate projects.
- Resultant in sudden financial distress financial instability and imbalance,
- These repeated and continuous bans forced the migrant labourers to return to their native states/villages creating an acute shortage of labourers. Due to the said shortage, the construction activity came to complete halt and could not resume at full throttle as the whole world was hit by the Covid-19 pandemic. The unprecedented situation



created by the Covid-19 pandemic presented yet a grave force majeure event that brought to halt all activities related to the project including the construction of remaining phase, processing of approval files, procurement of construction related material and movement of labour force etc.

- The Ministry of Home Affairs, GOI vide its notification dated 24 March, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a for an initial period of 21 complete lockdown in the entire country days which started from March, 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various state governments, districts including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, restricting all non-essential commercial activities.
- Even before the nation could recover fully and properly from the impact of the first wave of Covid-19, the second wave hit the entire country very hard and badly which resulted in another lockdown from April 2021 till June 2021 and further the threat of 3rd wave was looming at large.

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- That apart from every difficulties the possession of the said flat A3/1004 has been offered to the complainants vide letter dated 19.07.2017 and it had also notify to the complainant through the same letter that the respondent have received the Occupancy Certificate from the DGTCP Haryana, also all the dues that the complainant has to clear for taking the possession of the flat and every relevant information related to the same has been informed to the complainant through the letter dated 19.07.2017. A copy of the letter dated 19.07.2017 is annexed hereto as Annexure 2.
- viii. That the statement of objects and reasons as well as the preamble of the said Act clearly states that RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore, the definition of consumer as provided under the Consumer Protection Act has to be referred for adjudication of the present complaint.
- ix. It is submitted that the purpose of the RERA Authority is to balance the interests and protect the rights of the key allottees who needs flat for their dwelling/residential purposes.
- x. It is specifically pointed out that the complainants are defaulter, having deliberately failed to make the payment of installments within the time prescribed. It is further stated and an admitted fact by the complainants



themselves that amounts are still pending with the complainants which has caused financial instability to the respondent in executing the said project at the time of COVID-19 pandemic, which itself had caused huge irreparable loss to the respondent as the payment plan/schedule as submitted by the complainants (vide Annexure-A) itself clearly states that the complainant had to pay the payment as per the payment plan till December 2019. Therefore, claiming of possession prior to the said payment plan somewhere shows the wrong intention and mala fide motive of the complainant who in the garb of the present complaint wants to grab the money in the form of interest from the respondent.

- xi. It was agreed and understood between the parties through para 5(a) of the flat buyer agreement that in case the payment is not made within the period stipulated and or the Buyer commits breach of any of the terms and conditions of the agreement, then this agreement shall be liable to be cancelled and the Buyer shall thereafter be free to deal with the said premises/flat. The company shall thereafter be free to deal with the said Premises/flat in any manner, whatsoever, at its sole discretion. In the eventuality of cancellation of the Agreement, the buyer shall also be liable to reimburse to the company the amount of brokerage paid, if any, by the company towards the booking of the Flat by the Buyers. In any case all the dues, whatsoever, including interest, if any, shall be payable before taking possession of the Flat by the Buyer.



- xii. Complainant is seeking the relief from the respondent to withdraw the demand notice of ₹29,58,813.41/-, to refund of the sum of ₹7,51,472.16/- along with 24% interest, to pay an interest of 24% on the amount deposited for the delay in possession, to hand over the possession of the said flat to the complainants, to pay an amount of ₹10,00,000/- to the complainants for deficiency in service for indulging into unfair trade practice by the respondent, to pay penalty at the rate of ₹5 per square feet of the total super area of the floor. To pay ₹2 lakhs as the cost of this litigation. The Hon'ble Authority does not have jurisdiction to decide upon the said relief therefore, the present complaint is liable to be dismissed at threshold on this very ground.
- xiii. That it was agreed between the parties in agreement dated 22.04.2017 that the area of the property (flat) is tentative and as per clause 2(a) of the flat buyer agreement super built area of the flat to be reduced or increased corresponding to actual super area of the flat at the time of final measurement on completion of the flat. Therefore, the averments of the complainants that no area has been enhanced is denied and the complainants have to put strict proof to prove his contentions.
- xiv. On 19.07.2017, the respondent intimated the complainants to get the possession of the flat by clearing the outstanding dues on or before 10th august 2017 vide the possession offer letter dated 19.07.2017.





- xv. That the respondent had intimated to offer the possession of the said flat to the complainants in the year 2017 but it was the complainants who failed to pay the outstanding payments.
- xvi. As per the clause 6 of the flat buyer agreement that it become necessary to provide for any further equipment/facilities etc. or there be any demands of levies by any authorities then the cost of such additional provisions, installations, demands of levies, taxed like service tax, turn over tax, VAT or other taxes imposed by Central and / or State Government or any other authorities shall be charged additionally, proportionate to the area of the Flat.

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

6. Ld counsel for the complainants reiterated the facts of the compliant and stated that complainants are seeking possession of flat alongwith delay interest. By referring to the final demand letter dated 02.11.2021, he stated that complainants are not liable to make the payments as mentioned in the final reminder letter. Complainants are only liable pay stamp duty and registration charges which are to be paid on execution of conveyance deed. Further, respondent offered the possession of the flat on 19.07.2017, however, complainants refused to accept the said offer of possession being accompanied with illegal demands and charges. Therefore, complainants did not accept the said



offer of possession. On one side respondent had obtained the occupation certificate on 02.03.2017, and on the other side, respondent is taking the plea that construction of the project got affected due to Covid 19 meaning thereby, respondent itself contradicting its stand.

7. Ld counsel for respondent reiterated the pleadings mentioned in his reply and stated that all the demands raised by the respondent are as per the terms and conditions of the agreement, so all the demands are valid and ledged. Regarding the Covid plea, he stated that project of the respondent is complete in all terms and is in habitable conditions as families are residing there, only one tower A4 is not complete. As standard replies are made from the company, therefore said plea is incorporated in the reply. However, respondent rejects the said submission made in the reply that project is not complete due to Covid-19 situations.

#### **F. ISSUE FOR ADJUDICATION**

8. The main issue for adjudication is as under:

Whether the complainants are 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**

9. 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:
- a. With regard to objection raised 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 of Sonipat, 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 complainants at a later stage. Therefore, plea of respondent that Authority has no jurisdiction to decide the complaint is rejected. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

- b. With respect to the objection raised by the respondent that complainants herein are investor, it is observed that the complainants herein are the allottees/homebuyers who have made a substantial investment from their 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 22.04.2017 but their bonafide belief stood shaken when the promoter failed to handover possession of the booked floor till that date without any reasonable cause. Complainants have 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".*

Complainants have been allotted unit in the project of respondent by the respondent/promoter itself and said fact is duly revealed in builder buyer agreement dated 22.04.2017. 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.

10. Admittedly, flat no.1004, 10<sup>th</sup> floor, in Tower A3 having an approx. super built up area of 2145 sq.ft was allotted to complainants in the project namely, "Shree Vardhman Gardenia"; the builder buyer agreement was executed on 22.04.2017. As per pleadings of complainants, complainants had paid an amount of ₹68,42,863/- against the basic sale price of ₹60,91,392/-. Contention of the complainants that at the time of booking area of flat was 2050 sq. ft which, later on respondent arbitrarily increased the area to 2145 sq.ft., does not hold good as both the parties agreed and signed the builder buyer agreement dated 22.04.2017 and as per builder buyer agreement agreed area of flat is 2145 sq.ft. It is also not a disputed fact that respondent had received the occupation certificate from the concerned department on 02.03.2017. Thereafter, respondent had issued offer of possession of the concerned flat to the complainants on 19.07.2017 along with statement of accounts. It is a well settled law that offer of possession accompanied with occupation certificate is valid offer of possession.

11. Now the issue which remains is that complainants had not accepted the offer of possession as said offer of possession accompanied with





illegal demands and arbitrary charges. Authority observes that respondent issued offer of possession dated 19.07.2017 to the complainants along with demand of ₹35,35,925.07/- which was to be paid on or before 10.08.2017. After issuing of the offer of possession, complainants visited the flat and found that completion work will take 2 more months and sent a letter dated 10.08.2017 to the respondent in this regard. Contents of said letter are as follows: "*...the remaining payment of concerned unit is likely to be paid subject to completion state of dwelling Unit A3/1004. On physical verification it was found that the concerned dwelling Unit A3/1004 may take more than 2 months from completion as on date. Being a defence officer I am liable to intimate the real facts to my department about completion of ibid dwelling Unit and transactions made by me from time to time in regard to immovable property.*" Thereafter, respondent issued letters dated 30.08.2017, 30.10.2017 and 14.11.2017 requesting the complainants to pay the outstanding dues against the flat and all the shortcomings in the flat will be done by the respondent once complete payments are made by the complainants. Thereafter complainants requested the bank officials of SBI vide letters dated 19.02.2018, 21.03.2018 and 22.07.2018 to disburse the loan amount against the flat. In compliance of same, loan amount of ₹22,97,315/- was



disbursed by the bank and respondent issued the receipt dated 04.08.2018 with regard to the said amount.

12. Again respondent sent reminder dated 14.07.2020 demanding total outstanding due of ₹31,71,042/-. Another reminder dated 30.11.2020, demanding dues of ₹33,44,824.87/- to be paid on or before 10.12.2020. Complainants paid an amount of ₹7,26,246/- and receipts dated 04.02.2021 were issued by the respondent. Final reminder dated 02.11.2021 was issued by the respondent to the complainants demanding ₹29,58,813.41/- mentioning the details of amount like holding charges, maintenance charges, IFMs etc. Sequence of these events clearly reveals that though the complainants disputed offer of possession dated 19.07.2017 but substantial payment of ₹30,23,561/- was made by them after offer of possession till the filing of the present complaint. This conduct of the complainants shows that complainants were always ready to take the possession of the flat but were not satisfied with the demands raised with offer of possession. However, to save themselves from cancellation of unit, complainants made payments which according to them were justified. That means the offer of possession dated 19.07.2017 issued by the respondent was not completely acceptable to the complainants as some demands raised were not acceptable to the complainants.



13. Now the issue which needs to be adjudicated is whether the demands raised by the respondent in final reminder dated 02.11.2021 were illegal and unjustified? In this regard, during the course of hearing, Ld counsel for complainants referred to the demands raised with final reminder letter dated 02.11.2021 stating that demands of stamp duty and registration charges are only payable and all other demands are not justified. On the other hand, Ld counsel for respondent referred to the final statement of account and stated that all the demands are raised as per terms and conditions of the builder buyer agreement. At this stage, Authority deems it fit to adjudicate on each of the demands/charges by referring to the final reminder dated 02.11.2021.

**Demands regarding interest and holding charges:** Authority observes that the offer of possession was issued to complainants on 19.07.2017 and against said offer, complainants have already made substantial payments of ₹30,23,561/- till the filing of the present complaint. Respondent vide final reminder dated 02.11.2021 had raised demand of interest of ₹13,84,814.07/- (₹11,78,446.25 + GST@18%-₹2,06,367.82/-) and holding charges of ₹6,45,430.50/- (₹5,46,975/- + ₹98,455/-). No justification of any sort has been provided by respondent as to how said figure is arrived at and on what basis said amount has been charged/raised towards complainants. It is pertinent to mention here that interest and holding charges together are





Rs 20 lacs approximately out of total demand of Rs 29 lacs. Majority of amount is charged/raised by respondent on these accounts without clarifying/justifying the same. It is not disputed that complainants had not accepted the possession till date. However, demands raised with offer of possession have been settled by the complainants as per their acknowledgement and for the remaining disputed demands they have challenged the offer and final demand notice 02.11.2021 vide present complaint. Authority deals with cases in summary manner so documentary evidences are required in support of each of the claim made by the parties. In absence of documentary evidence and requisite justification, these charges cannot be imposed upon the complainants. For holding charges, reliance is placed upon judgement dated 15.03.2022 passed by Hon'ble Real Estate Appellate Tribunal, Chandigarh in Appeal no. 299/2020 titled as Emaar MGF Land Limited vs Vinay Naik.

*"Regarding holding charges, the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for short, 21 Appeal No.299 of 2020 'NCDRC') in Consumer Case No.351 of 2015, Capital Greens Flat Buyer Associations and others vs. DLF Universal Ltd. and another has held as under: "As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale*



*consideration, the developer shall not be entitled to any holding charges through it would be entitled to interest for the period the payment is delayed." The Hon'ble Supreme Court of India in Civil Appeal Nos.3864-3889 of 2020 titled as "DLF Home Developers Ltd. (Earlier Known as DLF Universal Ltd) and another vs. Capital Greens Flat Buyers Association Etc. Etc." has upheld that above said findings regarding holding charges of the Hon'ble NCDRC. In view of the above the appellant is not entitled to any holding charges. However, the appellant is allowed to charge maintenance charges in accordance with provisions in the agreement and as per law. In case of any dispute regarding maintenance charges, either party is at liberty to claim relief by filing a fresh complaint."*

Therefore, it is not justified on the part of the respondent to impose interest and holding charges on complainant. Similarly, GST on these charges cannot be levied as charges itself are not justified. There is no occasion with respondent to claim payment of GST on these charges.

**IFMS:** In clause 3 (a) (ix) of builder buyer agreement, it is mentioned that Interest Free Maintenance Security Deposit is payable to the company/nominee of the company as mentioned in clause 2(j). However, said clause 2(j) is not present in the builder buyer agreement signed by the parties, hence, Authority cannot adjudicate upon the amount of IFMS.

**Maintenance charges:** As per clause 16 (a) of the builder buyer agreement, buyer/complainants undertakes and agrees to execute a



separate agreement with maintenance agency. Buyer/complainants shall pay such charges for the first one year in advance from the date of offer of possession of the flat. Thereafter, such charges shall be paid quarterly. So, complainants are liable to pay the charges w.e.f from execution of maintenance agreement. As such no maintenance agreement is placed on record by either of the party and hence Authority cannot adjudicate on this issue.

**Stamp Duty and Registration amount:** As per clause 12(c) of builder buyer agreement, all cost on account of stamp duty, registration fee and other miscellaneous expenses for execution and registration of sale deed of flat shall be borne and paid by the buyer. Therefore, complainants are liable to pay the said charges at the time of execution of conveyance deed.

14. As per clause (iii) of reliefs sought, complainants are seeking refund of ₹7,51,472.16/- alongwith interest. Complainants nowhere in their pleadings have mentioned as to how complainants are seeking refund of said amount. During the course of hearing also, complainants simply stated that complainants had already paid an amount of ₹68,42,863/- over and above the basic price, therefore, complainants are seeking refund of ₹7,51,472.16/-. Complainants have not been able to prove on record as to why alleged amount is not payable. Hence, no direction is passed against said relief.





15. Further, as per clause (iv) of the reliefs, complainants are seeking delay possession charges @ 24% on the amount deposited with the respondent. In this regard, Authority observes that as per clause 10(a), construction of the flat was to be completed within period of 12 months from the date of execution of agreement along with grace period of 6 months on receipt of sanction of building plans/revised plans and approval of concerned authorities, etc. In present case, deemed date of possession comes to 22.04.2018 (12months). However, facts remains that respondent had offered possession of flat on 19.07.2017 alongwith statement of account and that too after receiving occupation certificate on 02.03.2017. Therefore, there is no delay on the part of respondent in offering the possession of flat. Hence, no delay interest can be granted to the complainants.

16. Reliefs under clause (vii), (viii) were neither argued nor pressed upon, hence, no direction is passed against said reliefs.

17. Complainants are seeking compensation of ₹10,00,000/- on account of mental and physical trauma and ₹2,00,000/- as cost of litigation. 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.

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

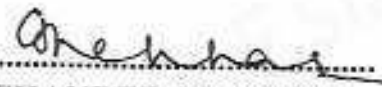
18. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to give physical possession of flat with issuance fresh statement of account in terms of aforesaid order within 30 days from uploading of order. Complainant are directed to make payments in accordance of statement of account and get the conveyance deed executed from the respondent within next 90 days.
- (ii) Complainants 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, 11.10% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

**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]