

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no.: 4277 of 2024
Date of filing: 29.08.2024
Date of decision: 11.09.2025

1. Pankaj Aggarwal
2. Neeraj Aggarwal

Both RR/o:- 29, Green Avenue Colony, Jasran, Fatehgarh
Sahib, Punjab- 147301

Complainant

Versus

Shree Vardhman Infrahome Pvt. Ltd.

Regd. Office:- 301, 3rd floor, Indraparkash Building, 21-
Barakhamba Road, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Ankur Berry (Advocate)

Complainants

Shri Gaurav Rawat (Advocate)

Respondent

ORDER

1. This complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

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

S. N.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Flora", village Badshapur, Sector-90, Gurugram
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	23 of 2008 dated 11.02.2008 valid upto 10.02.2025
5.	Name of the Licensee	Moti Ram
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 88 of 2017 dated 23.08.2017 valid upto 30.06.2019
7.	Unit no.	803, Tower B3 (page 14 of complaint)
8.	Unit area admeasuring	1875 sq. ft. (super area) (Page 27 of complaint)
9.	Allotment letter	02.11.2011 (Page no. 22 of complaint)
10.	Date of execution of buyer agreement	02.02.2012 (Page 25 of complaint)
11.	Possession clause	14 (a) Possession <i>The construction of the flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from</i>

A

		<p>any authorities, non-availability of building materials or dispute with construction agency/workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex.</p> <p>(Emphasis Supplied)</p>
12.	Date of commencement of construction	<p>14.05.2012</p> <p>(taken form the complaint no. 125 of 2020 filed by the same complainant for the said unit decided on 08.10.2021)</p>
13.	Due date of possession	<p>14.05.2015</p> <p>(calculated from date of commencement of construction i.e. 14.05.2012 including grace period of 6 months being unqualified and conditional)</p>
14.	Total sale consideration	<p>Rs.64,93,989/-</p> <p>(taken form the complaint no. 125 of 2020 filed by the same complainant for the said unit decided on 08.10.2021)</p>
15.	Amount paid by the complainant	<p>Rs.58,18,086/-</p> <p>(taken form the complaint no. 125 of 2020 filed by the same complainant for the said unit decided on 08.10.2021)</p>
16.	Occupation certificate	<p>02.02.2022</p> <p>(Page 47 of reply)</p>
17.	Offer of possession	<p>11.04.2022</p> <p>(Page 50 of reply)</p>

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the residential unit no. 803, Tower B3, of super area 1875 Sq. ft. was allotted to the complainants vide allotment letter dated 02.11.2011 and the complainants chose a construction linked payment plan. The flat buyer agreement was signed and executed between the parties on 02.02.2012 whereby the unit no. 803, Tower B3, in the

project namely, "Shree Vardhman Flora" admeasuring 1875 sq. ft. was allotted in favour of the complainants. The total sale consideration was agreed at Rs.64,93,989.21/-. Further as per clause 14(a) of the buyer's agreement, the residential unit was to be handed over in 36 months from the date of commencement of construction i.e., by 14.05.2015.

- II. That the complainants after paying Rs.58,18,086/- for the residential continued to wait for possession failing which the complainants having no other option opted to file complaint No. 125 of 2020 before this Authority for the relief of delay possession charges. The respondent herein, appeared and took defence of no-fault delay. The respondents claimed that delivery of possession by a specified date was not the essence of the FBA and the delay was possible and the RERA registration of the project was valid till 30.12.2021. The respondents further claimed that the first phase of the project was completed and the OC had been applied for tower, B1, B2, and B3 on 18.11.2019. The Respondent had given multiple reasons for delay in the project, including Covid-19 pandemic, however the same were decided to be not-applicable since the due date of delivery was in the year 2015 and events occurring beyond the due date were not relevant.
- III. The said complaint of the complainants was duly adjudicate upon and decided by this Authority and the respondents were held liable for being in contravention of Section 11(4)(a) of the Act and delay in delivery of residential unit. The Authority also in para 22 of the order stated "The respondent has neither completed the construction of the subject unit nor has obtained the OC for the same from the competent authority till date i.e., even after a delay of more than 6 years from the promised date of delivery of the subject unit." Thus the respondents



- were directed to pay delay possession charges and were directed to hand over the possession within 2 months of receipt of OC.
- IV. That the respondent however chose to ignore the order of the Authority, thus the complainants on 01.04.2022 filed the execution of the order. That at the time of filing of the execution the complainants had neither received the possession nor the delay possession charges.
- V. That to the utter surprise of the complainants, the respondent issued email to the complainants claiming that the OC for the project had been received and the complainants were directed to clear dues for taking possession. That along the offer of possession the respondent also sent the Appendix-A, a statement of accounts wherein the size of the unit of the complainants was increased from 1875 sq. ft. to 1950 sq. ft. The said demand/statement of account was absolutely illegal since the respondents claimed escalation charges @ 4%, even though the escalation was a direct result of delay of 7 years in completion of project, further the respondent had imposed illegal interest under 2 heads being, up to 30.06.2017 and from 01.07.2017 to 11.04.2022. The Offer of possession was also accompanied with Appendix-B wherein large sum of money was claimed for GST and EDC and IDC for alleged increased area. Thus, the same was protested against by the Complainants.
- VI. That after receiving the illegal demands and illegal offer of possession, without adjusting the already accrued DPC, the complainants visited the office of the respondents but all in vain as the respondent failed to resolve the issue as the amount of delay possession charges were much higher than the illegal demand. That the respondent instead of correcting the demand continued with their illegal demands and on

25.12.2022 again an email was sent to the complainants to clear the outstanding payment.

- VII. That the complainants being troubled by the respondents were already in execution of the order dated 08.10.2021 in Execution No. 647 of 2022 for compliance and execution of the order. That after pursuing the execution for over a year finally on 14.03.2023, the Respondent finally handed over the keys of the unit before the forum but failed to get conveyance deed or show the occupation certificate and altered building plans to justify the increase in the size of the residential unit.
- VIII. That on 24.07.2024, the execution was listed before the Adjudicating Officer, HARERA, Gurugram wherein the respondent cleared the delay possession charges, due upto 30.06.2023 however no one from the Respondent company appeared to clarify on the illegal demands or the due date of conveyance deed. The complainants who still await the execution of conveyance deed, finally issued email dated 30.07.2024 to the respondent since the telephonic discussion and personal visits were being ignored by the respondent. In the said email the complainants for correction of the demand and agreed to pay all payments due as per the terms of the FBA. They have also again requested for execution of the conveyance deed.
- IX. The respondent failed to respond to the email of the complainants, thus a letter and email dated 09.08.2024 was issued by the complainants to the respondent along with cheque no. 501431 dated 09.08.2024 for Rs.3,39,531.25/- and cheque No. 501432 dated 09.08.2024 for Rs.1,74,114.21/-. The said amounts were paid in terms of Appendix-A and Appendix-B of the offer of possession after removing all illegal charges.

A

- X. That the respondents are in complete violation of Section 17 of the Act, 2016 for not executing the conveyance deed for the allotted unit of the complainants as per buyer's agreement and the provisions of law. Even after 13 years continue to yearn for their residential property and have already paid Rs.63,31,731.46/- till date. They have been left in the dark for many years and even after 13 years since booking the conveyance deed for the residential unit has not been executed. The respondent company is intentionally bloating the size of the unit without any change in actual unit size and the false claims of the respondents can only be set-aside if a local commissioner is appointed to visit the project and the residential unit is measured. The respondents in an attempt to earn extra bucks have illegally claimed that the unit size has increased by 75 sq. ft. The complainants have no other option than to come before this Authority to get the conveyance deed executed since even after payment of all the installments, the respondent are attempting to evade its duty to transfer the title of the residential unit.
- XI. That the complainants are being stone walled by the respondent and its representatives and hence have come before the Authority requesting and praying to get conveyance deed executed and direction to raise correct demand by removal of the following:-
- The increased unit size be changed to original in terms of FBA.
 - The GST charges be removed since the due date of the unit was in 2015 whereas the GST regime began in 2017.
 - Illegal interest amounts be removed along with interest from the date of deposit till the date of realisation.
- XII. That the respondent has violated several provisions of the Act, 2016 and Rules, 2017 and is liable for the violation of the same. It is submitted that as per Section 18 of the Act, 2016, the



respondent/promoter is liable to return the amount and pay compensation to the complainant. They have prayed herein for the relief to get the conveyance deed executed and for direction to remove illegal charges from demand letter dated 04.04.2022. That the present complaint squarely falls within the ambit of the relief giving sections of the Act, 2016 thus is a fit case to be adjudicated upon by the Authority. That the main relief claimed by the complainants being relief of registration of conveyance deed, the Authority has the jurisdiction to entertain.

- XIII. That no other complaint or legal proceedings are pending before any court of law or forum between the parties. The complainants had filed a previous complaint no. 125 of 2020 before the Hon'ble Authority for delay possession charges. The same shall not restrain the complainants from filing the present complaint since at the time of filing the previous complaint the OC was not received by the respondent and the relief of conveyance deed under Section 17 of the Act, 2016 comes into play after the receipt of OC. That the project and the subject matter property lies within the territorial jurisdiction of this Adjudicating Officer and thus the present complaint be entertained and adjudicated upon.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to execute the conveyance deed in favour of the complainant.
 - Direct the respondent to remove illegal GST charges imposed in the offer of possession.
 - Direct the respondent to remove/justify the increase in the unit size from 1875 sq. ft. to 1950 sq. ft. leading in change to total sale consideration and new demand of EDC/IDC.



- iv. Direct the respondent to remove/justify the escalation charges when the due date of possession was in 2015.
 - v. A local commissioner be appointed to visit the project site to verify the actual size of the residential unit.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint by filing reply on the following grounds: -
- I. That the complainants have earlier filed a complaint bearing no. 125 of 2020 before this Authority seeking possession of flat and interest/DPC for delay in delivery and certain other reliefs. The said complaint was decided by this Authority by its final order dated 08.10.2021, whereby this Authority, inter-alia, awarded DPC/interest @ 9.30% from 14.05.2015 till offer of possession after obtaining OC plus two months or handing over of possession whichever is earlier.
 - II. The occupation certificate for the project was obtained on 02.02.2022 and thereafter the possession of the unit/flat was offered to the complainants on 11.04.2022. The complainants filed execution petition bearing no. EA/ 647 of 2022 for enforcement of the aforesaid final order. During pendency of the said execution petition the possession of the unit was taken over by the complainants on 14.03.2023 which is recorded in the order of the said date passed by the executing court.
 - III. The executing court also issued a recovery certificate and the said RC was wrongly prepared for Rs.47,93,394/- though the DPC payable as per the final order was Rs.37,81,197/-. The respondent filed an application for correction of recovery certificate on 12.06.2024. However the registry did not list the said application despite follow

A

ups. In the meantime the amount of Rs.47,93,394/- was recovered through RC and paid to the complainants. The execution petition was accordingly disposed of.

IV. That an amount of Rs.10,12,197/- was received in excess by the complainants and the complainants are liable to refund the said amount to respondent. In addition, the complainants are liable to pay Rs.12,78,641/- towards unpaid amount as per the aforesaid offer of possession. The respondent through the said offer of possession dated 11.04.2022 has raised the final demand of the unpaid amount but the complainant till date has not fully paid the same. The complainants need to revert the aforesaid amount received in excess and also to fully pay the demands raised by the respondent before conveyance deed of flat is executed.

7. All other averments made in the complainant were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District.

A✓

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter Jurisdiction:

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

11. So, in view of the provisions of the Act 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 the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

- F.I Direct the respondent to remove illegal GST charges imposed in the offer of possession.**
- F.II Direct the respondent to remove/justify the increase in the unit size from 1875 sq. ft. to 1950 sq. ft. leading in change to total sale consideration and new demand of EDC/IDC.**
- F.III Direct the respondent to remove/justify the escalation charges when the due date of possession was in 2015.**
- F.IV A local commissioner be appointed to visit the project site to verify the actual size of the residential unit.**
12. The above-sought relief(s) by the complainants are taken together being inter connected.

A

13. On the basis of the documents placed on record and submissions made by both the parties, the Authority observes that the complainants were allotted a unit bearing no. 803, in Tower- B3, in project of the respondent named "Shree Vardhman Flora" situated in Sector-90, Gurugram. An apartment buyer's agreement was executed between the parties herein regarding the subject unit on 02.02.2012. As per clause 14(a) of the buyer's agreement, the respondent company was under an obligation to handover the possession within a period of 36 months from the commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure. Therefore, the due date of possession comes out to be 14.05.2015 (decided in earlier complaint no. 125 of 2020 filed by the same complainant for the said unit decided on 08.10.2021). The occupation certificate was received from the competent authority on 02.02.2022 and possession of the unit was offered to the complainants/allottees vide offer of possession letter dated 11.04.2022.
14. It is within knowledge of the Authority that the complainants have filed a previous complaint bearing no. 125 of 2020 on 16.01.2020 decided by the Authority on 08.10.2021 wherein the respondent was directed to pay delay possession charges @ 9.30% from 14.05.2015 till the date of offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per section 19(10) of the Act, 2016. Thereafter, the complainants filed an execution petition before the executing court to execute the order dated 08.10.2021, passed by the Authority. In

compliance of the said order dated 08.10.2021, the key of the unit was handed over to the DH, before this Forum (as mention in the order dated 14.03.2023, passed by the Adjudicating officer of the Authority) and accordingly, the respondent paid an amount of Rs.47,93,394/- to the complainants. In these terms the said execution petition was disposed of.

15. As far as relief with respect to removal of illegal GST charges, increase in the unit size from 1875 sq. ft. to 1950 sq. ft., and removing the escalation charges and appointing the local commissioner to visit the project site to verify the actual size of the unit of the complainants, the Authority observes that it cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue between the same parties has been heard and decided by this Authority in the former complaint bearing no. 125 of 2020. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by Order 2 Rule II of the Code of Civil Procedure, 1908 (CPC). Order 2 Rule II of the CPC is reproduced as under for ready reference:-

Suit to include the whole claim.—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

16. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 are, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the Authority being bound by the principles of natural justice, equity and good conscience has to consider

and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the Act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the above mentioned relief sought claimed by the complainants stand dismissed being not maintainable.

F.V Direct the respondent to execute the conveyance deed in favour of the complainant.

17. As per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant(s). Whereas as per section 19(11) of the Act of 2016, the allottee(s) are also obligated to participate towards registration of the conveyance deed of the unit in question. The complainants had taken the physical possession of the unit on 14.03.2023. As per clause 17 of the buyer's agreement, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favour of the allottee but only after receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference: -

17. (a) The Sale/Conveyance Deed of the Flat as well as proportionate undivided share of the land underneath as permissible as per applicable laws shall be executed in favour of the Buyers). The stamp duty, registration fee and other incidental expenses for execution and registration of Sale/Conveyance Deed shall be borne and paid by the Buyer(s). The company shall continue to be the owner and in full control of the flat, till the execution of Sale/Conveyance Deed and handing over the possession of the flat.

(b) The Buyers) shall have no right in the land underneath the Said Complex except the indivisible, impartiable, unidentified rights in the Project land proportionate to the area of the Flat hereto agreed to be sold and necessary easementary rights pertaining to that flat. All the common areas and facilities and residuary rights in the Said Complex shall continue to vest in the Company till such time as the same or a part thereof are not finally allotted, sold or otherwise transferred to any particular Buyer and/or to any body or Association of the Buyers

or to maintenance agency nominated by the Company for upkeep and maintenance of the Said Complex."

18. It is to be further noted that section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC.
19. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17(1) of the Act provide for transfer of title and the same is reproduced below:

"Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

20. As OC of the project in which unit of the complainant is situated has been obtained from the competent authority on 22.02.2022, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority hereby directs the respondent/promoter to execute the conveyance deed in favour of the complainant after payment of stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

G. Directions of the authority

A

21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent/promoter is directed to execute the registered conveyance deed in favour of the complainants/allottees within 3 months as per Section 17 of the Act, 2016 upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.
 - A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
22. Complaint as well as applications, if any, stands disposed of accordingly.
23. File be consigned to registry.

Dated: 11.09.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram