



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	168 of 2022
Date of filing:	08.02.2022
First date of hearing:	17.03.2022
Date of decision:	01.12.2025

Shreya Arora, D/o Late Sh. Prithvi Raj Arora,

Flat No. 501, Tower 08, Lotus Boulevard,

Sector-100, NOIDA, Uttar Pradesh

....COMPLAINANT

VERSUS

1. Shree Vardhman Developers Pvt. Ltd,

Regd. Office 301-311, 3rd floor,

Indraprakash Building, 21-Barakhamba Road,

New Delhi-110001

...RESPONDENT No. 1

2. Managing Director,

M/s Shree Vardhman Developers Pvt. Ltd.,

Regd. Office 301-311, 3rd floor,

Indraprakash Building, 21-Barakhamba Road,

New Delhi-110001

...RESPONDENT No. 2

Present: -Adv. Brijender Kaushik, Ld. counsel for the complainant through VC.
Adv. Vishwajeet Kumar, Ld. counsel for the respondent through VC.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainant on 08.02.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

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 given 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.	704, 7 th floor, Tower A3
4.	Flat area (Super built area)	2060 sq.ft
5.	Date of builder buyer agreement	02.07.2012



6.	Due date of offer of possession	02.07.2015
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 36 months from the date of booking. With a grace period of six months, on receipt of 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 courts/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 Price	₹43,26,000/-
9.	Amount paid by complainant	₹49,36,848/-
10.	Offer of possession	26.04.2017



B. FACTS OF THE COMPLAINT

3. Complainant made following submissions in her present complaint:
- a. That the respondent M/s. Shree Vardhaman Developers Pvt. Ltd., offered residential flat in the complex namely "Shree Vardhman Gardenia" to be constructed by the Respondent-Builder in the Revenue Estate of village Raipur, Sector 10, Tehsil and District Sonipat, Haryana. The respondent was granted license no. 269 of 2007 dated 04.12.2007 for construction of a group housing project upon the project land.
 - b. That on the basis of above projection by the respondent, father and mother of the complainant namely Late Sh. Prithvi Raj Arora and Late Smt. Raka Arora entered into an agreement with the respondent on 02.07.2012, according to which the respondent had offered a residential flat bearing no. 704 on 7th Floor, in Tower A3 having an approximate super built- up area of 2060 sq. ft., consisting of 4 bedrooms, 1 living room cum dining room, 1 kitchen, 4 toilets, 3 balconies in the complex named "Shree Vardhman Gardenia" to be constructed by the company on the project land. Copy of the agreement is annexed as Annexure C-1.
 - c. That the Basic Sale Price of the flat was ₹43,26,000/- plus EDC and IDC along with ₹2,00,000/- as parking charges and ₹75,000/- for club membership payable additionally as per the payment plan.
 - d. That as per the agreement, the construction was likely to be completed within a period of 36 months from the date of booking, with a grace



period of 6 months and the complainant had to pay 15% of the basic price which shall constitute the earnest money. In pursuance of the agreement, an amount of ₹4,45,968/- (including service tax) was paid to the company prior to entering into the agreement.

- e. That after the execution of the agreement, unfortunately, Sh. Prithvi Raj Arora expired on 04.10.2012, leaving behind the complainant and co-applicant Smt. Raka Arora as his legal heirs. Therefore, a request was submitted to the respondent to substitute the complainant for her father which was duly incorporated as per letter dated 16.05.2013. Copy of the letter is annexed as Annexure C-2.
- f. That an amount of ₹49,36,848/- was credited to the account of the respondent under bonafide belief that the construction is going on. Complainant and her mother (co- applicant) couldn't visit the construction site as the complainant was pursuing her studies and her mother was bed ridden due to paralysis, and thus, the complainant had to take care of her also. Copies of the receipts of payment against the flat are annexed as Annexure C-3 to C-12.
- g. That, unfortunately, mother of the complainant Smt. Raka Arora (co-applicant) expired on 12.06.2014 leaving behind the complainant as the sole legal heir. The said aspect was brought to the knowledge of the respondent, and the complainant became the sole allottee of the said flat.



- h. That after the delay of two years, the respondent offered possession of the flat on 26.04.2017 and demanded an amount of ₹10,27,130/- from the complainant. Further, the amount of ₹42,54,920/- was wrongly shown as the credited amount, although ₹49,36,848/- was already paid to the respondent in advance, which was more than the agreed amount. The amount included demand on account of EEC/FFC, power backup, and electric meter charges, which the complainant was not liable to pay, thus the amount being illegal. The complainant was not in a position to pay such a huge amount, therefore, complainant requested the respondent for some time to make the payment. Copy of offer of possession is annexed as Annexure C-13.
- i. That during this period, complainant was hardly earning to survive and making her ends meet, thus was not able to take possession of the residential flat, which is still with the respondent.
- j. That the complainant was directed to pay an amount due against the flat vide cancellation notice issued on 26.10.2020, with the averment that in spite of a number of notices, the complainant has failed to make the payments which were due at the time of possession. The complainant in pursuance of the notice approached the respondent to know about the amount due as well as requested to allow her to make the payments in installments. The complainant was told that they will apprise her by their



- notice. A copy of the letter dated 26.10.2020 is annexed as Annexure C-14.
- k. That the complainant was shocked to receive a notice dated 30.11.2020 from the respondent, wherein complainant was informed that an amount of ₹36,60,000/- was due as on date, and failure to make the said amount by 10.12.2020, the flat will be considered cancelled. Copy of letter dated 30.11.2020 is annexed as Annexure C-15. The complainant, thereafter, approached the respondent and apprised them that a substantial amount has already been paid and that, too, in excess. The complainant requested the respondent to handover the possession of the flat and allow her to make payments in installments.
- l. That respondent neither handed over the possession to the complainant, nor permitted the complainant to make the payment in installments, rather, cancelled the allotment vide letter dated 24.12.2020, for the reasons of non-payment of dues. Copy of letter dated 24.12.2020 is annexed as Annexure C-16.
- m. That nothing is due, and only charges on account of registration is to be paid. Though, a substantial amount has already been paid and the respondent has illegally and unilaterally raised the amount that the complainant is not liable to pay, thus, the cancellation is liable to be set aside.



C. RELIEFS SOUGHT -

4. Complainant sought following reliefs in the present complaint:

- a. That the letter dated 24.12.2020, whereby allotment of flat no. 704 on 7th floor in tower No. A3 having an approximate 2060 sq. ft. (equivalent to 191.44 sq. m) of super built-up area consisting of 4 bedrooms, 1 living room cum dining room, 1 kitchen, 4 toilets, 3 balconies, in the complex named "Shree Vardhman Gardenia", sector-10, Sonipat has been cancelled be declared as illegal, null and void and set aside and the allotment be restored in favour of the complainant;
- b. Respondent be directed to pay interest @ 24% per annum from the date of payment till offer of possession as the possession was not delivered well within time and also to refund the excess amount paid over and above the agreed price along with interest;
- c. Respondent be directed to withdraw the illegal demand of ₹36,60,342/- demanded vide letter dt. 30.11.2020, as the same is illegal and unlawful;
- d. Respondent be directed to pay an amount of ₹5,00,000/- on account of damages;
- e. Complainant be awarded an amount of ₹1,00,000/- on account of litigation and other miscellaneous charges;



- f. Any other relief, which this hon'ble authority may deem fit under the facts and circumstances of the present case be awarded/granted to the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent had made following submissions in its reply dated 25.11.2022:

- a. The Respondent is engaged in the business of Real Estate Development, and it proposed to develop residential housing scheme/colony namely "Shree Vardhman Gardenia" (Herein referred to as "Complex") situated at the revenue estate of Village Raipur, Sector 10, Tehsil and District Sonapat, Haryana (Herein referred to as Project Land"). The said project was Group Housing Project.
- b. The parents of the Complainant who were the original allottee(s) booked a Unit/Flat no. 704 on 7th Floor in Tower- A3 having Super Area (Approx.) of 2060 square feet in the said "Complex" along with one covered car parking. The Application Form dated 25.05.2012 signed and submitted by the parents of the complainant, which had all necessary particulars of the residential scheme, salient terms and conditions on which the allotment was to be made to the complainant is annexed as Annexure - 2.
- c. The complainant also read and understood the terms and conditions of the Flat Buyer Agreement and signed the same. The Flat Buyer Agreement also contained the payment plan in accordance with which



the complainant was to make the due installments as specified. That the parents of the complainant, being original allottee(s) chose "Construction Linked Payment Plan". That the said payment plan clearly stated milestones of various payments. The payment plan was in accordance with the payment plan prescribed in the said Policy and as per the desire of the parents of the Complainant who were the original allottee(s) of the said Flat. Also, the flat buyer agreement contains the specifications such as description of the structure, license and building plans granted by DTCP Haryana.

- d. That as per Clause 5(a) of the Flat Buyer Agreement, 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.
- e. That as per Clause 6, the Allottee(s) herein referred as 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.

- f. That as per clause 12 (b) of the Agreement the date of delivery of possession of the Flat to the Buyer was only on receipt of the entire amount due in terms of the Agreement and registration of sale Deed in favour of the Buyer.
- g. That according to the Indemnity bond dated 26.08.2014, after the death of Applicant no. 1, Mr. Prithvi Raj Arora and Applicant no. 2, Mrs. Raka Arora, the indemnifier, i.e., Mr. Prithvi Raj Arora has bound complainant and her heirs, successors, and administrators etc., to keep the beneficiary fully and completely harmless, and indemnified against any type of claim or demand that might be made or raised by any other person claiming through or under late Mrs. Raka Arora, with reference to the right to purchase the said flat from the Beneficiary or with reference to any amount now standing credited in the record of the Beneficiary towards payments against the said flat. A copy of the Indemnity Bond dated 26th August 2014 is annexed as Annexure- 3.



- h. That the Occupancy Certificate in the above said project has been granted by the competent authority on 02.03.2017. A copy of the Occupancy Certificate is annexed as Annexure- 4.
- i. That the offer of possession was offered vide possession letter dated 26.04.2017, through which the Complainant was requested to clear the outstanding payment as per the terms of the Agreement within 30 days. The complainant was also informed that in case of failure to clear her financial dues as per the offer of possession, overdue charges @ 24% PA along with holding charges @ Rs. 5/- per sq. ft. per month shall be payable in terms of the Flat Buyer's Agreement. A copy of the offer of Possession Letter dated 26.04.2017 is annexed as Annexure-5.
- j. That the Complainant has so far made only a payment of ₹49,36,848/- (Rupees Forty-Nine Lakhs Thirty-Six Thousand Eight Hundred and Forty-Eight only) and thereafter, the complainant due to her personal incapability had stopped making further payments as per the schedule of the agreement.
- k. That the respondent, after waiting for almost 4 months for the payment of the outstanding dues by the complainant even after providing an offer of possession letter, sent a reminder letter dated 21.08.2017, again requesting the complainant to clear all her pending



dues as per the terms of the Agreement. A Copy of Final Reminder dated 21.08.2017 is annexed as Annexure -6.

- l. That in between, the respondent tried to communicate with the complainant through various telephonic communications as well as through letters, but in vain, as the complainant was out of India due to her personal work. The respondent, through email dated 27.06.2019 apprised the same to the complainant and further requested the complainant that if there is any change in the address, then the same shall be informed to the respondent. A Copy of email dated 27.06.2019 is annexed as Annexure - 7.
- m. That the Respondent again sent an email attaching the Reminder Letter dated 23.08.2019 pertaining to long standing payment dues as per offer of possession dated 26.04.2017. The Complainant in reply to the aforementioned email, sent an email dated 23.08.2019 in which she informed that as she is out of India, she is unable to take the possession of the said Flat at that time. She further informed that she would only be available in India in December 2019 and further directed the respondent to wait. Copies of both emails dated 23.08.2019 and reminder letter dated 23.08.2019 are annexed as Annexure-8 (colly).
- n. That the Respondent again informed the Complainant that the payments are due for the last 2 years and requested the complainant to



remit their account through RTGS so that further interest, holding charges and penalties could be avoided. A Copy of email dated 24.08.2019 is annexed as Annexure - 9.

- o. That the respondent after waiting for considerable time, again in the month of October 2020 sent a letter to the Complainant requesting to clear all the outstanding dues as per the offer of possession and terms of the Flat Buyer's Agreement. The respondent further informed the complainant that as the offer of possession was offered back in 2017 and several reminder letters were sent since then, the Complainant had still not remitted the accounts of the respondent Company. As a last and final opportunity, the respondent again by way of the letter requested the complainant to take necessary steps for taking possession of the said Flat and any further delay shall attract interest, holding charges and maintenance charges. The respondent, at last, informed the complainant that on failure of clearing the outstanding amount and further to take possession of the said Flat within 10 days from the issuance of the letter dated 27.10.2020, would amount to cancellation of the said Flat as per the terms of the Flat Buyer's Agreement. A Copy of letter dated 27.10.2020 is annexed as Annexure -10.
- p. That the respondent with reference to complainant's email dated 29.10.2020 regarding extension of time for taking possession of the



said Flat, informed the complainant that the possession was offered back in 2017 and thereafter, various communication have been sent to the complainant pertaining to clearing of all outstanding dues and taking the possession of the said flat. The respondent, therefore, through letter dated 30.11.2020, informed the complainant, that on complainant's request the respondent had held the said flat for almost 4 years from the date of offer of possession and now they are not in a condition to wait any longer. Therefore, the respondent requested the complainant to remit all the outstanding dues mentioned in the letter dated 30.11.2020 on or before 10.12.2020 and in case of failure to do so, the respondent will be forced to cancel the said flat. Copy of the letter dated 30.11.2020 and email dated 29.10.2020 are annexed as Annexure - 11(Colly).

- q. That finally when the Complainant neither responded to the letter dated 30.11.2020, nor cleared all her dues, the respondent cancelled the allotment of the said flat by sending final cancellation letter dated 24.12.2020, enclosed with cheque after deducting the dues as per the terms of the Agreement. Copy of letter dated 24.12.2020 along with copy of cheque is annexed as Annexure - 12 (Colly).
- r. That the Respondent finally on 08.06.2022, wrote an email informing the Complainant about closure of her rights in the said flat and further requested to send all the original documents executed in favour of the



said flat and to collect the refundable amount. A Copy of email dated 08.06.2022 is annexed as Annexure- 13.

- s. That it is clear from the aforesaid facts and circumstances, that the respondent has neither indulged into any unfair trade practice nor committed any deficiency in service. Rather, it is the complainant who has breached her obligations to make the timely payment of the amount causing losses to the respondent, as the respondent had to reserve one of the flats for the complainant for a considerable period of time without payment. In the Real Estate Projects, like the project in question, the development being multi-storey 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 and the pace of the project gets adversely affected, thereby, causing impediment in the development and overall work of the project.
- t. That the claims as raised by the complainant are not maintainable before the Hon'ble Authority. The complainant cannot be allowed to reap the benefits out of her own breaches, causing loss to the respondent and then walk out of the same at any time as per her will and desire.
- u. That as per the agreement, the allottee was to be handed over with the possession of the said flat only after receipt of the entire amount due



in terms of the Agreement and registration of Sale Deed in favour of the Buyer.

- v. 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.
- w. It is specifically pointed out that the complainant is defaulter, having deliberately failed to make the payment of installments within the time prescribed. It is an admitted fact by the complainant herself that the amounts are still pending with the complainant. It 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 itself clearly states that the complainant had to pay the payment as per the payment plan.
- x. 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.

- y. That the complainant has not approached this Hon'ble Authority with clean hands and has attempted to mislead this Hon'ble Authority by putting an incorrect, incomplete, and distorted version of the facts and circumstances. On this ground, the complainant does not deserve any indulgence from this Hon'ble Authority and the present complaint deserves to be dismissed.
- z. That the relief(s) prayed by the complainant being ambiguous and not clear as per the RERA Act are liable to be dismissed as threshold.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

- 6. Ld. counsel for complainant reiterated the facts and stated that complainant had already paid an amount of ₹49,36,848/- against the BSP



of ₹43,26,000/-. After a delay of 2 years, possession of the flat was offered on 26.04.2017 with direction to pay an amount of ₹10,27,130/-. He further stated that BBA was executed on 02.07.2012, and within a small span of time complainant lost her parents. Being the only girl child, she was unable to pay the said amount and requested the respondent for some time for registration of flat. Later, complainant was shocked to receive a notice dated 30.11.2020 from the respondent, wherein the complainant was informed that an amount of ₹36,60,000/- was due and failure to make the said amount will lead to cancellation. The respondent vide letter dated 24.12.2020 cancelled the allotment for reasons of non-payment. Though a substantial amount already stands paid, the respondent again is raising the demands for payment of unjustified amounts and making cancellation. It shows illegal conduct of the respondent and therefore, the cancellation notice dated 24.12.2020 is liable to be set aside.

7. Ld counsel for respondent reiterated the pleadings as mentioned in his reply and stated that all the demands raised by the respondents are as per the terms and conditions of the agreement, so all the demands are valid and ledged. He further stated that a valid offer of possession was given after getting the Occupation certificate. Various reminder letters, thereafter, were sent to the complainant to pay the outstanding dues and take the possession, but in vain. Also, final cancellation was made after



waiting for 4 years, enclosed with a cheque after deducting the dues as per the Agreement.

F. ISSUE FOR ADJUDICATION

8. The main issue for adjudication is as under:

Whether the complainant is entitled to get possession of a 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 the parties, Authority observes as follows:

A. JURISDICTION-

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. STATUS OF COMPLAINANT AS AN ALLOTTEE-

With respect to the objection raised by the respondent that complainant herein is an investor, it is observed that the complainant herein is an allottee/homebuyer who has made a substantial investment from her hard earned savings. 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 complainant is very much 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 02.07.2012. 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 the same is rejected.

C. VALIDITY OF THE OFFER OF POSSESSION-

Admittedly, flat no.704, 7th floor, in Tower A3 having an approx. super built up area of 2060 sq.ft was allotted to complainant in the project namely; "Shree Vardhman Gardenia". The builder buyer agreement was executed on 02.07.2012. As per pleadings of complainant, complainant had paid an amount of ₹49,36,848/- against the basic sale price of ₹43,26,000/-. It is also an undisputed fact that the respondent had received the Occupation Certificate from the Competent Authority on 02.03.2017. Thereafter, respondent had issued an offer of possession of the concerned flat to the complainant on 26.04.2017 along with statement of accounts. It is a well settled law that an offer of possession accompanied with a valid Occupation Certificate is a valid offer of possession. Therefore, Authority holds that the offer of possession dated 26.04.2017 was a valid offer of possession.



D. ISSUE REGARDING ARBITRARY DEMANDS RAISED WITH
OFFER OF POSSESSION AND THEREAFTER-

During the course of hearing, when the Authority asked the complainant as to how the demands raised by the respondent were illegal, Ld. counsel for the complainant stated that after delay of 2 years, possession was offered on 26.04.2017 with directions to pay an amount of ₹10,27,130/- by adding extra charges like Electric Meter Charges, EEC/FFC, etc, which are illegal and arbitrary. Further, it was wrongly shown that ₹42,54,920/- was credited to the account of the respondent, though the complainant had paid a total sum of ₹49,36,848/- against the BSP of ₹43,26,000/-. Later, the demands were further raised with a final reminder letter dated 30.11.2020 for payment of unjustified amounts and making cancellation, thereafter. Authority deals with cases in summary manner so documentary evidence is required in support of each of the claims made by the parties. Authority observes that there is nothing on record that shows that the complainant has ever protested regarding the illegal demands raised by the respondent and no evidence regarding the same is placed on record by the complainant. Perusal of the file reveals that the only communication made by the complainant is regarding seeking extra time to take possession and nothing w.r.t to illegal demands has been raised. Further, the details of receivables filed by the respondent are



neither stamped nor signed by the respondent. Also, no details are mentioned as to how the said calculations are arrived at. In the absence of documentary evidence and requisite justification, at this stage, Authority deems it fit to adjudicate on each of the demands/charges by referring to the statement of account attached with a letter of possession along with the Builder Buyer agreement.

Demands regarding EEC/FFC- Clause 2(g) of the Builder Buyer Agreement is reproduced below for reference-

"The Basic Price includes the cost of providing electric wiring and switches in the Flat but does not include electric connection charges, electricity consumption meter cost, etc."

Perusal of the said clause reveals that EEC, i.e., External Electrification Charges forms the part of the Basic Sales. Therefore, the complainant is not liable to pay the same as it is already included in the basic sales price.

Further, according to Clause (h), the cost of providing and installing the Fire Fighting Equipment/ Preventive measures in the building shall be charged additionally and paid by the buyer as and when demanded by the company. Therefore, the complainant is liable to pay FFC.

Demands regarding Power Backup and Electrical Meter Charges-

Clause 2(g) (i) reveals that cost of installation of electrical meter and



cost of providing and installing the Power Backup Facility, respectively, shall be charged additionally and is to be paid by the buyer as and when demanded by the company. Therefore, the complainant is liable to pay the said charges.

Demands regarding EDC/IDC- As per clause 2(f) of the Builder Buyer Agreement, EDC and IDC as demanded by DTCP/HUDA or any other authorities shall be payable in addition to the basic price including interest thereof. Provision to this effect shall be incorporated in the sale/ conveyance deed to be executed in favour of the Buyer. Therefore, complainant is liable to pay the said charges at the time of execution of conveyance deed.

Stamp Duty amount: As per clause 12(c) of builder buyer agreement, all cost on account of stamp duty shall be borne and paid by the buyer. Therefore, complainant is liable to pay the said charges at the time of execution of conveyance deed.

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, complainant is 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.

Demands regarding interest and holding charges: Authority observes that the offer of possession was issued to complainants on 26.04.2017 and against said offer, complainants have already made substantial payments of ₹49,36,848/-. Respondent vide final reminder dated 30.11.2020 had raised demand of interest + GST of ₹12,14,456/- and holding charges of ₹5,06,220.50/- 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 constitutes approximately ₹17 lacs out of total demand of ₹30 lacs. Majority of the amount is charged/raised by the respondent on these accounts without clarifying/justifying the same. Further, in spite of giving various opportunities by the Authority, fresh details have not been filed by the respondent till date. 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.

E. VALIDITY OF THE CANCELLATION-

Now the issue which needs to be adjudicated is whether the letter dated 24.12.2020, whereby the allotment that has been cancelled

unilaterally, is valid or not? In this regard, Ld. counsel for the complainant pleaded that cancellation has been made by the respondent for the reasons of non- payment of dues, though a substantial amount has already been paid, and only charges on account of registration are to be paid. On the other hand, Ld. counsel for the respondent stated that respondent had given enough opportunities by sending various reminders to pay the outstanding dues to the complainant and waited for 4 long years by holding the said flat. It was the complainant's own financial inability to pay and take the possession, whereby, the respondent was constrained to cancel the allotment. The Authority observes that respondent issued a valid offer of possession dated 26.04.2017 to the complainant along with demand of ₹10,27,130/- which was to be paid on or before 26.05.2017. Thereafter, respondent has placed on record several reminder letters dated 21.08.2017, 23.08.2019, 27.10.2020 and 30.11.2020, repeatedly requesting the complainant to clear the outstanding dues and to take possession of the flat. Once a valid offer of possession is made, the obligation shifts upon the allottee to comply with statutory duties under the Act. Section 19 (6) (7) (10) of RERA Act, 2016 is reproduced for reference:-

Section 19(6) : Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make



necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

Section 19(7) : The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

Section 19(10) : Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

The Authority observes that instead of complying with the statutory mandate, the complainant only responded through an e-mail stating that she was out of India. She neither made the required payments, nor took any steps to take the possession within the prescribed time. It is further noted that the complainant herself has admitted having financial constraints and difficulties during the relevant period. Thus, non-acceptance of possession is attributable solely to the complainant's personal circumstances and not to any fault of the promoter. It is also undisputed that the respondent kept the unit reserved for the complainant for nearly four years after issuance of valid offer of possession without receiving the outstanding dues. Further, respondent has placed on record the cheque enclosed with cancellation notice in the



name of the complainant refunding the amount after deducting the dues as per the Agreement. Therefore, the Authority is of the view that the promoter cannot be compelled to indefinitely keep the unit blocked in the absence of payments and in violation of statutory obligations imposed by the RERA ACT, 2016. Accordingly, the cancellation of the allotment vide dated 24.12.2020 cannot be termed arbitrary or illegal, and thus, it stands valid and requires no interference.

10. It is further observed that the respondent, in its written submission, has enclosed a cheque with the final cancellation notice purportedly towards refund of certain amounts to the complainant. However, it has been noted that no supporting details have been filed by the respondent to demonstrate as to how the said refund amount has been arrived at. In spite of giving various opportunities, fresh details regarding receivables/payables have not been filed by the respondent till date. It is pertinent to mention here that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest.

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".

Therefore, Authority observes that any refund due to the complainant shall be recalculated strictly as per Rule 15 of HRERA Rules, 2017, and the respondent shall provide to the complainant a detailed calculations/statement of account clearly justifying the proposed amount to be refunded to the complainant.

11. As per reliefs under clause (d) and (e), Complainant seeks compensation of ₹5,00,000/- on account of damages and ₹1,00,000/- 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

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

(i) In view of the foregoing observations, the prayer of the complainant seeking restoration of the allotment in favour of the complainant is hereby declined.

(ii) The respondent is directed to provide to the complainant a detailed calculations/statement of accounts clearly justifying the proposed amount to be refunded to the complainant.

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



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NADIM AKHTAR
[MEMBER]