



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1345 of 2023
Date of filing:	19.06.2023
First date of hearing:	27.07.2023
Date of decision:	27.10.2025

1. Manish Varshney

S/o Mr. Raj Kumar Gupta,

R/o Flat no. 1102, T-2, DevikaSkyper Society, Raj Nagar Extension
Gautam Buddha Nagar, Uttar Pardesh 201012.

2. Mrs. Bhawana Varshney,

W/o Manish Varshney,

R/o Flat no. 1102, T-2, DevikaSkyper Society, Raj Nagar Extension
Gautam Buddha Nagar, Uttar Pardesh 201012.

.....COMPLAINANTS

Versus

1. Shree Vardhman Developers Pvt. Ltd.

301-311, 3rd Floor, Indraprakash Building,
21-Barakhamba Road, New Delhi-110001.

2. State Bank of India

Through its Authorised Officer/Representative

Branch office: RASMEC, Karkardooma, Delhi-110032.

.....RESPONDENTS

Present: - Adv. Mayank Goel, Id counsel for the complainants, through VC.
Adv. Vishwajeet Kumar, Id. counsel for the respondent no.1, through VC.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint is filed by the complainants 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 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.	Unit no.	C4/1102
4.	Date of builder buyer agreement	17.08.2018
5.	Due date of offer of possession	Not available

6.	Possession clause in BBA	<i>"Clause 11(b) The Company shall handover possession of the Flat to the Buyer(s) only on receipt of the entire amount due in terms of the agreement and registration of sale deed in favour of the buyers."</i>
7.	Total sale consideration	₹81,37,500/-
8.	Amount paid by complainants	₹17,50,000/- by complainants and ₹59,80,625/- as home loan
9.	Offer of possession given on	Not given

B.FACTS OF THE PRESENT COMPLAINT

3. Complainants made following submissions in their complaint which are as follows:

- (i) That in the year 2018, builder namely Shree Vardhman Developers Pvt Ltd/respondent No. 1 was in the process of constructing a group housing project named "Shree Vardhman Gardenia" situated at Sonipat (Haryana). That respondent No.1/builder assured the complainants that the project in question is running in full swing and possession of the said project will be allotted to the complainants shortly.
- (ii) That respondent No.1/ builder further told the complainants that respondent No. 2/ Bank is providing a loan facility at low-interest rates for the customers/buyers of respondent no.1/Builder to purchase the flat in the above project of respondent No. 1/ Builder. That the respondent no.1/ builder further assured the complainants that if they purchase a flat with them and take a loan from the SBI for financing the loan for the flat

in question, then, in that case, respondent no. 1/Builder will make timely and regular payment of all the EMIs of the flat to the said financial institution on behalf of the complainants till the possession is delivered to the complainants.

(iii) That at that time it was also assured by the respondent no. 1/Builder to the complainants that if for the aforesaid flat, the complainants get the loan sanctioned from State Bank of India then they have made such an arrangement with the said financial institution that in the event of non-completion of the project in time or/and non-allotment of flat in question, the respondent no.1/ builder will be only and solely responsible for the default of loan amount and they will also be liable and responsible for closing the loan account with the respondent no.1/ bank after making the payment of entire loan amount along with interest either by arranging the said amount themselves or by selling the flat.

(iv) Thereafter, the complainants approached respondent No.2/ Bank and enquired about the project in the question of respondent No. 1/Builder and about the assurance of timely and regular payment of all the EMI's being paid by the Builder to them, then the officials of respondent No.2/ Bank had assured the complainants that the above project of the Builder is a good and trusted beyond doubt project and they have already checked the title of the Builder and they are financing unconditionally in the above project of Builder because of their good and trusted reputation in the



market. The officials of Respondent No. 2/ Bank further assured the complainants that the Builder is regularly and timely paying all the EMI's of customers who have booked flats with them and have taken loan from Respondent No.2/ Bank qua the finance of home in the said project.

(v) That complainants agreed to purchase a flat in the project of the Builder and consequently entered into the Builder buyer Agreement (BBA) dated 17.08.2018 and were consequently allotted Unit No. C4/1102 to a tune of ₹81,37,500/- in project namely; "Shree Vardhman Gardenia" vide allotment letter dated 04.08.2018.

(vi) Respondent No. 2/ Bank agreed to sanction loan to the complainants and consequently complainants, respondent No.2/ bank, and respondent No. 1/ Builder entered into a Tripartite Agreement dated 18.08.2018 whereby a loan to the tune of ₹64,00,000/- was sanctioned on 18-08-2018 vide Loan Account No: 37944820313 against the mortgage of property bearing no. 1102/C4, Sector 10, Shree Vardhman Gardenia at Sonipat, Haryana and from the said sanctioned amount, the respondent No.2 disbursed an amount of ₹59,80,625/- vide loan Account Number 37903890313 directly to the respondent No.1 without checking the status or position of the construction since it was in collusion with the respondent No.1. Copy of Tripartite Agreement, Loan sanction letter are annexed as Annexure P-4, Annexure P-5 respectively.



- (vii) That during the sanctioning of the aforementioned loan, the employees of the respondent No. 2/ Bank came to know that the complainants have taken one more home loan against the property bearing no. Flat no. 1102, T-2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh- 201012 with the PNB Bank. The loan documents of the property bearing no. Flat no. 1102, T 2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh- 201012 with the PNB Bank are annexed as Annexure P-6 (Colly).
- (viii) That the employees of the respondent No. 2/ Bank immediately started luring the complainants to get the aforementioned home loan with the PNB Bank transferred to the respondent No.2/ Bank and on doing so the respondent No. 2/Bank will give the home loan at a much lower interest rate and greater benefits. On initial refusal by the complainant, the respondent No. 2/ Bank started rigorous follow-ups and started pressurizing the complainants to get the home loan with the PNB Bank transferred to the respondent No. 2/ Bank. Ultimately, the complainants succumb to the pressure of the respondent No. 2/ Bank and further lured by the extra-ordinary home loan offers, get the home loan running with the PNB Bank transferred to the Respondent No.2/ Bank.
- (ix) Consequently, a loan to the tune of ₹26,50,000/- was sanctioned on 14-09-2018 against the property bearing no. Flat no. 1102, 1-2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar



Pradesh- 201012 vide Loan Account No: 37944820314 was sanctioned by respondent No.2/ Bank. Loan account documents are annexed as Annexure P-7 (Colly).

- (x) Respondent No.1/ Builder started paying the EMIs of the loan account bearing no. 37944820313 against the property bearing no. 1102/C4, Sector 10, Shree Vardhman Gardenia at Sonipat, Haryana in the account of complainant no. 1 who thereafter used to pay/transfer the said EMI in the loan account no. 37944820313. Bank statement showing the payment of the EMI by the builder into the account of the Applicant No. 1 is annexed as Annexure P-8. The Loan Account statement of the loan account bearing no. 37944820313 is annexed as Annexure P-9.
- (xi) That on the other hand, the complainants were on their own regularly paying the EMIs in the loan account bearing no. 37944820314 which was against the property bearing no. Flat no. 1102, T-2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh- 201012. Complainants are still paying the EMIs regularly to respondent No. 2/ Bank in loan account no. 37944820314. It is further pertinent to mention here that the complainants have never failed to pay the EMI in the loan account bearing no. 37944820314. Loan Account Statement qua the loan account bearing no. 37944820314 is annexed as Annexure P-10.
- (xii) That in or around the month of May 2021, respondent No. 1/ Builder stopped paying the EMIs for the loan account bearing no. 37944820313



to the complainants. Complainants immediately approached respondent no. 1/ builder and requested respondent no. 1/ builder to continue paying the EMIs to which the respondent no. 1/Builder asked for some time to make good the default for the month of May 2021. Complainants also approached the respondent No. 2/ Bank in the same month and told the respondent No. 2/ Bank about the conversation between the complainants and the builder and that the builder need some time to clear the default amount.

(xiii) Thereafter, respondent No.1/ builder told the complainants that he had entered an arrangement with respondent No. 2/ Bank qua the loan account bearing no. 37944820313 and the complainants need not worry about the EMIs. The complainants also did not receive any communication from respondent No. 2/ Bank regarding loan account no. 37944820313.

(xiv) That suddenly on 07.05.2023, some officials of the respondent No. 2/ Bank came at the property bearing no. Flat no. 1102, T-2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh-201012 and started pasting one letter dated 06.05.2023 at the walls of the said property. On enquiry, the complainants came to know that the said letter was issued by respondent No. 2/ Bank under Section 13(4) of the SARFAESI Act, 2002. Copy of Notice U/s 13(4) of the SARFAESI Act, 2002 dated 06.05.2023 is annexed Annexure P-11.



- (xv) The fact that shocked the complainants more was that the property bearing Flat no. 1102, T-2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh- 201012 was kept as a security against loan account no. 37944820314 and the complainants are regularly and without any default paying the EMIs against the said loan. Hence the respondent No. 2/ Bank cannot, legally declare the loan account no. 37944820314 as NPA leave alone the fact that notice under Section 13(4) of the SARFAESI Act, 2002 was issued against the said property.
- (xvi) Complainants immediately rush to the concerned branch of the Respondent No. 2/ Bank from which the loan was issued, i.e., Karkardooma Branch. The officials at the Karkardooma Branch told the complainants that the concerned loan account has been transferred to the Najafgarh Road Branch. Complainants immediately rushed to the Najafgarh Road Branch and met the branch manager. Even after many enquiries, the branch manager refused to help the complainants and only told the complainants that the respondent No. 2/ Bank has taken action against the Loan account bearing no. 37944820313 (against the property taken from the respondent no. 1/ builder) as there were defaults in the payment of the EMIs in the said loan account and has merged the loan account no. 37944820314 which was against the property bearing no. Flat no. 1102, T-2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh- 201012 with the same despite the fact that

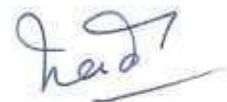


the complainants were paying EMIs regularly in the said loan account. That the complainants somehow arranged the documents from the respondent No. 2/ Bank concerning the NPA declaration of both the loan accounts.

(xvii) Complainants also came to know that both the loan accounts were declared as NPA on 15.06.2021 despite the fact that there was no default in the either account till May 2021. That further the branch manager of Najafgarh branch of respondent No. 2 also handed over one notice U/s 13(2) of SARFESI Act, 2002 to the complainants. That the complainants had never received any notice U/s 13(2) from the bank herein any in any manner what so ever. Copy of Notice U/s 13(2) of the SARFAESI Act, 2002 dated 27.02.2023 is annexed as Annexure P-12.

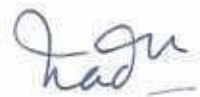
(xviii) That even after a significant delay there is no sign of delivery/possession of the unit in question. That the builder continues to remain evasive by giving false commitment and deferring the completion and delivery of the unit in question for past many years. That despite repeated requests and reminders to the respondent no.1, the respondent no.1 has failed to handover the possession of the unit in question to the complainants.

(xix) That the complainants have also sent a notice/letter dated 01.06.2023 to the respondent no. 1/ builder asking him to cancel the unit of the complainants and to refund the entire bank loan along with all penalty, interest to the bank/respondent No.2 directly, however the respondent



no.1 has failed to act upon the same in any manner what so ever. Copy of cancellation notice sent by complainants to builder along with postal receipts are annexed as Annexure P-13(Colly).

- (xx) That the respondent No.2 is totally harassing the complainants and is not taking the necessary action against the respondent No. 1/ Builder despite the fact that as per clause 1 of the Tripartite Agreement, the respondent No.2/Bank has lien over the property bearing no. Unit No. 1102/C4, Sector 10, Shree Vardhman Gardenia at Sonipat, Haryana. So if any default has been committed in the loan account no. 37944820313, then the only property over which the Defendant bank has lien is Unit No. 1102/C4, Sector 10, Shree Vardhman Gardenia at Sonipat, Haryana and not property bearing no. Flat no. 1102, T 2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh-
- (xxi) That the respondent No.2 is totally harassing the complainants and is not taking the necessary action against the respondent No.1/ Builder despite the fact that as per clause 2 of the Tripartite Agreement, even in case of default in repayment by the borrower, the primary liability will fall on the Builder and the builder will be responsible to return the entire amount received by the Bank on behalf of the Applicants to the Respondent No.2/Bank.
- (xxii) That as per clause 4 of the Tripartite Agreement, in case of any default committed by the Builder, only and only builder shall be responsible to



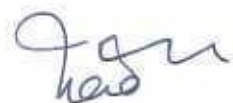
refund all the amount received from the respondent No.2/Bank on behalf of the complainants to the respondent No.2/Bank. In the present case, it was the liability of the builder to pay the EMIs on behalf of the complainants to the respondent No.2/Bank. Hence on default by the respondent no.1/builder, the respondent No.2/Bank is bound to take actions against the Builder.

(xxiii) That as per clause 13 of the Tripartite Agreement, in case of default in repayment, the Respondent No.2/Bank shall make good the defaults by the sale of the secured property which is Unit No. 1102/C4, Sector 10, Shree Vardhman Gardenia at Sonipat, Haryana and not property bearing no. Flat no. 1102, T 2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh- 201012.

(xxiv) That the respondent No.2 is not taking the necessary action against the respondent No. 1/ Builder despite the fact that as per clause 14 of the Tripartite Agreement, timely completion of the project is the essence of the Agreement. The builder has breached that term. Hence the builder is liable to make the payments of the EMIs to the Defendant bank.

C. RELIEFS SOUGHT

4. Complainants have sought following reliefs from the Authority:



- (i) Directing the developer/promoter to cancel the booking of the complainants in Unit No. C4/1102 in the project namely Shree Vardhaman Gardenia, situated at Sector 10, Sonipat, Haryana.
- (ii) Directing the Developer/promoter to refund a sum of ₹17,50,000/- paid by the complainants to developer on account of the payment towards flat in question along with an interest @24% per annum from the date of cancellation.
- (iii) Directing the builder/developer to pay a sum of ₹59,80,625/- to respondent no. 2/Bank on account of home loan of the complainants along with all interest, penalties, charges, etc.

Or

Directing the builder/developer to pay of sum of ₹59,80,625/- to the complainant on account of home loan of the complainants along with all interest, penalties, charges, etc. so that the said amount can be paid by the complainant to the bank.

- (iv) Pay a sum of ₹15,00,000/- for physical pain and mental agony, which the complainant suffered due to the respondent's negligent, criminal and malafide acts.
- (v) Any other order which this Hon'ble Authority deems fit and proper in the interest of justice.



INTERIM RELIEF:

- (i) Direct the respondent No.1 to pay the pending and future EMI's of the loan account of the complainants bearing loan account number 37944820313 to the Respondent No.2 till the disposal of the present case.
- (ii) Restrain the Respondent No.2 from taking over the physical possession of the personal property of the complainants, i.e., Flat no. 1102, T 2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh-201012.
- (iii) Restrain the Respondent No.2 from selling/conducting auction of the personal property of the complainants, i.e., Flat no. 1102, T 2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh- 201012.

Or

Direct the respondent no.2 to take measures under SARFESI Act 2002 by taking the possession and/or by selling the property bearing no. 1102/C4, Sector-10, Shree Vardhman Gardenia at Sonipat, Haryana of respondent no.1.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

- 5. Respondent no.1/Builder had made following submissions in its reply dated 13.05.2024:



- (i) Complainants have approached the respondent no.1 for booking/allotment of a Unit/Flat no. C4/1102 in the said complex namely; "Shree Vardhman Gardenia" constructed by the company. Complainants prior of booking the said flat have seen the project and understood the terms and conditions of the Flat Buyer Agreement and undertook to sign the same as and when required by the respondent.
- (ii) Flat Buyer Agreement also contained the payment plan in accordance with which the complainants were to make the payment as per the payment plan option chosen by the complainants themselves. Complainants had issued a cheque for ₹1,00,000/- at the time of booking, the cheque when presented was dishonoured. Thereafter, RTGS was made for ₹1,00,000/-. Copy of receipt towards dishonoured cheques is attached as Annexure – 1.
- (iii) Complainants were interested in the said Flat which was allotted to them in the project of the respondent company. They were also well versed with the terms and conditions and payment plan which was very well described in the Flat Buyer's agreement executed on 17.08.2018. The respondent Company vide its allotment letter dated 04.08.2018 intimated the complainants that they have been allotted flat no. C4/1102. Copy of the Allotment letter dated 04.08.2018 is already on record.
- (iv) That the complainants, after going through the terms and conditions of the Flat Buyer's Agreement dated 17.08.2018, signed and handed over the



same to the respondent. That as per Clause 5(a) of the FBA, timely payment of the installments of the basic price and other charges are the essence of the Agreement. That as per the aforesaid clause of the FBA it is clear that in the eventuality of cancellation, earnest money being 15% of the basic price would be forfeited and the balance, if any, would be refundable without interest. On cancellation of the Agreement, the Buyer(s) 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 buyer(s). In any case, all the dues, whatsoever, including interest, if any, shall be payable before taking possession of the Flat by the Buyer(s). 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. It is further submitted that as per Clause 6, the Allottee(s) herein referred as complainants, 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. That as per clause 11 (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 favor of the Buyer. A copy of the Flat Buyer Agreement dated 17.08.2018 is already on record.

(v) That at the time of signing the FBA, the complainants had handed over three cheques bearing no. 002391 for ₹5,50,000/- dated 06.08.2018, cheque no. 002392 for ₹5,00,000/- dated 14.08.2028 and cheque no. 002393 ₹6,00,000/- dated 16.08.2018. It is relevant to mention here that the payment for all the three cheques were stopped by the complainants on the assurances that the loan for ₹64,00,000/- has been sanctioned by Respondent no. 2 and at the time of possession, the remaining amount including the amount of these cheques will be paid. Complainants have concealed all the material facts from the Hon'ble Authority and misused the receipts issued against these three cheques. The cheques were never presented and the payments were never made by the complainants.

(vi) Complainants were not having sufficient amount to pay the payment for the said flat, therefore, approached the respondent no. 2 for a loan of ₹64,00,000/-. That out of total loan amount, the respondent No. 1 has received ₹59,80,625/- from the Respondent no. 2.



- (vii) Thereafter, complainants, respondent no. 1 and the respondent no. 2 had entered into a tripartite agreement dated 18.08.2018, where, as per clause 4 of the TPA, the respondent no. 2 has charge/lien of the bank and the same has been duly noted by the respondent no. 1 in its records/ books. That as per TPA, the respondent no. 2 shall always hold the first charge on the said flat till the entire loan is paid back by the borrower. Copy of the Tri Partite Agreement is already on record.
- (viii) That complainants were not having sufficient fund to pay the EMI to the respondent no. 2. Therefore, respondent no. 1 agreed to pay the Pre-EMIs interest to the complainants after filing the proof of paid EMIs. The complainants and respondent no. 1 executed addendum to pay the Pre-EMI interest upto two years from the date of disbursal of loan amount. Copy of addendum is attached as Annexure-2.
- (ix) That complainants failed to pay the EMI amount to Respondent no. 2. Therefore, respondent no. 2 filed OA no. 681 of 2023 to recover the loan amount from the Complainants and respondent no. 1. Copy of the summon issued to the parties in OA is attached as Annexure-3.
- (x) That the said flat is already ready in all respect and the concerned Authority has issued OC dated 02.03.2017. The said flat was even complete prior of executing the FBA. Copy of OC dated 02.03.2017 is attached as Annexure-4.



- (xi) That the present complaint is not maintainable as per Section 31(2) of the RERA Act, 2016 and deserves to be dismissed. The complaint has been filed on false averments.
- (xii) That complainants themselves have breached the contractual terms by not making the entire payment timely, as per clause 2(a) of the Flat Buyer's Agreement and further not making the payment of EMI to respondent no. 2.
- (xiii) That complainants themselves have breached the contractual terms by not making the payments timely as per the Clause 5(a) of the Flat Buyers Agreement. *"Timely payment of the installments of the basic price and other charges shall be the essence of this Agreement. It shall be incumbent on the Buyer(s) to make timely payments and to comply with other terms and conditions of this agreement. If payment is not made within the period stipulated and or the Buyer(s) commits breach of any of the terms and conditions of this Agreement, then this agreement shall be liable to be cancelled and the Buyer shall be left with no lien on the said premises/flat".* Therefore, it is to be stated that the complainants have themselves breached the contractual terms.
- (xiv) As per the Clause 11(b) of the Flat Buyer's Agreement, *"The Company shall handover possession of the Flat to the Buyer(s) only on receipt of the entire amount due in terms of the Agreement and registration of sale deed in favour of the Buyer".* That the complainants have not made the



entire payment to the respondent no. 1 in respect to the said premises and therefore, possession has not been made in favour of the complainants.

- (xv) That the claims have been made in a manner unknown to the common law of contract and are specifically contrary to the text of the Indian Contract Act, 1872 itself. The complainants are not entitled to any interest on the amounts deposited by them. Rather the respondent no.1 is legally entitled to forfeit the money paid by the complainants as per the settled terms and conditions in case the complainants seeks to wriggle out of the binding terms of the buyer's agreement.
- (xvi) That the complainants have concealed the material facts and have not come to this Authority with clean hands. It is specifically pointed out that the complainants are defaulters, having deliberately failed to make the payment within the time prescribed. It is further stated and an admitted fact by the complainants themselves that substantial amount from the time of offer of possession is still pending with the complainants which has caused financial instability to the respondent no. 1 in planning and executing the said project.
- (xvii) That as the payment plan/schedule as submitted by the complainants themselves clearly states that the complainants had to pay the payment as per the payment plan. Therefore, claiming any relief prior to clearing of the said payments somewhere shows the wrong intention and malafide



motive of the complainants who in the garb of the present complaint wants to grab the money in the form of interest from respondent no. 1.

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

6. Today, when the case was called up, no one has appeared on behalf of complainants. However, later on Mr. Mayank Goel, counsel for the complainants appeared and requested to mark his presence.
7. During the course of hearing on 18.08.2025, arguments were heard in detail which are reproduced below for reference:

“Ld counsel for the complainants stated that he had not received the imposed cost and is ready for the arguments. Reiterating the pleadings of the complaint he stated that complainants booked a flat in the project “Shree Vardhman Gardenia” and BBA was executed on 17.08.2018 which is annexed as Annexure P-3. Consequently, they were allotted unit no. C4/1102 in Shree Vardhman Gardenia, Sector-10, Sonipat. Complainant paid an amount of ₹17,50,000/- on assurance of respondent (Shree Vardhman Developers Pvt. Ltd) that project is a trusted one, and construction of project is in full swing and possession will be handed over shortly. Receipts of payments are attached as annexure P-2 from page no.54-57. Respondent no. 1 further assured that if complainants take loan from State Bank of India (SBI) then in that case



respondent/builder will make timely payments of all EMI of flat to the said financial institution till possession is delivered to the complainants. Trusting the oral assurance rendered by respondent/builder, complainants entered into Tripartite Agreement with respondent and State Bank of India (SBI) whereby a loan of ₹64,00,000/- was sanctioned on 18.08.2018 vide loan account no.37944820313 against unit C4/1102, in Shree Vardhman Gardenia, Sector-10, Sonipat. Further, loan amount of ₹59,80,625/- was disbursed by respondent no.2 on 28.08.2018, loan details are annexed as Annexure P-9. That the project of the respondent was "Construction Linked" despite that loan amount was disburse in one go without knowing the actual stage of construction. The complainants prays for cancellation of the booking of the unit and requested for refund of ₹17,50,000/- which is directly paid by the complainants to the respondent/builder as respondent /builder fails to deliver the timely possession of the unit. Further, complainants prays that respondent be directed to either pay the loan amount of ₹59,80,625/- to the bank on account of home loan or pay to the complainants.

Proxy counsel for the respondent/builder stated that cost of ₹40,000/- has been deposited in the Authority and reply has been filed. However, cost of 2000/- payable to the complainants is pending as respondent did not have the account details of the respondent. Further, he requested for an adjournment, as the main counsel is not available today. Regarding the



cost of ₹2000/-, ld counsel for complainant stated that his statement may be recorded that he did not want the imposed cost."

F.ISSUE FOR ADJUDICATION

8. Whether the complainants are entitled for the reliefs sought?

G.OBSERVATIONS OF THE AUTHORITY

9. After considering the facts and submissions of both parties, Authority observes that the complainants booked Unit No. C4/1102 in the project of the respondent no.1/ builder namely; "Shree Vardhman Gardenia", Sector-10, Sonipat. Builder Buyer Agreement was executed between complainants and respondent no.1 on 17.08.2018 and complainants paid an amount of ₹17,50,000/-. Complainants were induced by respondent no. 1's assurances that possession would be delivered shortly and that all EMIs of the housing loan, if availed through respondent no. 2/State Bank of India (SBI) shall be paid by the respondent no.1 to the complainants for payment to the respondent no.2/Bank. In the event of non completion of project in time or non allotment of flat, respondent no.1 will only be responsible for default of loan and also be liable for closing the loan account with respondent no.2 after making entire loan amount. Relying on these representations, the complainants entered into a tripartite agreement with respondents no. 1 and 2, where under a loan of an amount ₹64,00,000/- was sanctioned vide loan account no.37944820313 by respondent no.2 on 18.08.2018, against



mortgage of the property bearing no. C4/1102, Shree Vardhman Gardenia, Sector-10, Sonipat. Subsequently, respondent no. 2, upon learning of another home loan of the complainants with Punjab National Bank (PNB) against the flat no. 1102, T-2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh, coerced them to transfer the said loan to respondent no.2/SBI, which was effectuated on 14.09.2018 for ₹26,50,000/- vide loan account no. 37944820314.

10. From August 2018 till May 2021, respondent no. 1 paid EMIs to complainants which were in turn were duly deposited by the complainants to the bank in loan account no. 37944820313. Complainants diligently paid the EMIs of loan in account no. 37944820314 to the bank from their own corpus.

11. Since June 2021, onwards respondent no. 1 started defaulting in payment of EMI of loan account no. 37944820313, the bank against which unit no. 1102/C4, Shree Vardhman Gardenia, Sector-10, Sonipat was mortgaged with respondent no. 2. On 07.05.2023, respondent no. 2 issued letter under section 13(4) of SARFESI Act against flat no. 1102, T-2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh. Complainants approached to bank officials and they said that recovery process has been initiated against loan account no. 37944820313 as there were defaults in payment of EMIs and has merged loan account

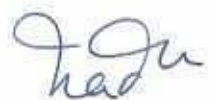


no. 37944820314 which is against Gautam Buddha Nagar property with loan account no. 37944820313 and both accounts were declared NPA.

12. Aggrieved by the act of promoter / respondent no. 1 and respondent no. 2, complainants sent letter dated 01.06.2023 to respondent no. 1 to cancel unit and refund paid amount. However, respondent no. 1 refused to do so. Meanwhile respondent no.2 started harassing the complainants only and is not taking necessary action against respondent no. 1.

13. With regard to the **interim reliefs** claimed by the complainants Authority during the course of hearing dated 27.07.2023 already adjudicated as follows“.....*During the course of hearing, ld counsel for complainant stated that the respondent no. 2 has unilaterally and arbitrarily merged both his loan accounts and is threatening to dispose of the property no. 1102, T-2 Devika Skyper Society , Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh which was mortgage against loan account no. 37944820314. Ld. Counsel for complainants prayed for interim reliefs, as irreparable loss shall be caused to the complainants if prayed interim reliefs are not allowed today. Interim reliefs prayed are as below:*

- 1. Direct respondent no. 1 to pay the pending dues and future EMIs of loan account of complainants bearing loan account number 37944820313 to the respondent no. 2 till disposal of present case.*



2. *Restrain respondent no. 2 from taking over physical possession of personal property of the complainants i.e. Flat no. 1102, T 2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar, Uttar Pradesh.*
3. *Restrain respondent no. 2 from selling/ conducting auction of the personal property of the complainants i.e. flat no. 1102, T 2 Devika Skyper Society, Raj Nagar Extension Gautam Buddha Nagar, Uttar Pradesh. OR Direct respondent no. 2 to take measures under SARFESI Act, 2002 by taking possession or selling the property bearing no. 1102/C4, sector 10, Shree Vardhman Gardenia at Sonipat of respondent no. 1*

Ld. Counsel for respondent no.1 orally averred that there is separate agreement between buyer and builder w.r.t payment of EMIs and as per liability of respondent no. 2 to pay for EMIs, is only for a period of 2 years which they have fulfilled, so respondent no. 2 has completely discharge all the obligations. He also states that he has no objection to interim reliefs no 2 and 3 as he has no relation with concerned reliefs. Moreover he sought time to file reply.

Ld counsel Mr. Devender Rattan for respondent no. 2, i.e., SBI marked his presence and submit memorandum of appearance and one page document containing bare provision of section 34 under SARFESI Act, 2002 on record mentioning that civil court shall not have jurisdiction to



entertain any suit or proceedings in which Debt Recovery Tribunal or the Appellate tribunal is empowered by SARFESI Act, 2002 and no injunction shall be granted by any court or authority in respect of any action taken under SARFESI Act or under Recovery of Debts Due to Banks and Financial Institution Act, 1993. Section 34 of SARFESI Act, 2002 is reproduced herein below:

Section 34 in The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

After hearing both the parties, Authority observes that the complainant is seeking interim relief against the respondent no. 2 for arbitrarily/ wrongfully merging two loan account no. i.e. 37944820313 and 37944820314 and disposing of mortgaged flat no. 1102, T-2 Devika Skyper Society, Raj Nagar Extension, Gautam Buddha Nagar situated in Uttar Pradesh, for non-payment of loan vide account no. 37944820313. In this regard the Authority is of view that the issue whether the merger of two loan account with respondent. 2 bank was illegal or not, or whether



the property mortgage against loan account no.37944820314 can be auctioned for non-payment of loan account no.37944820313 are not within the ambit of RERA Act 2016, and therefore interim relief of staying proceedings initiated by respondent no. 2 cannot be granted, however the complainants are at liberty to avail other civil remedies available with them.

Nevertheless, the issue of non-compliance of its obligations by the respondent promoter i.e. Shree Vardhman Developers Pvt. Ltd shall be decided on merits."

14. On 13.05.2024, Authority observed, "*.....ld counsel for complainants stated that regarding auction of property, stay has been granted by the DRT on 04.12.2023 and status quo is to be maintained. A copy of judgment of DRT has been filed in the Authority on 18.04.2024. Ld counsel for complainant further stated that at present no interim relief is being prayed before this Authority. Now, only main relief of the complainant is pending before tis Authority, i.e., to cancel the allotment which was made in favour of complainant and refund the amount paid by the complainant to the respondent after forfeiture as per terms and conditions agreed between the parties."*

15. Interim order dated 28.10.2024 record as, "*.....Representative for respondent no.2 stated that there is no dispute of the complainant with*



respondent no.2 as role of respondent no.2 is only limited to finance the loan of the complainant. Ld counsel for complainant confirmed that he had no dispute with respondent no.2 and as such no specific claim is against respondent no.2. In this regard, Authority observes that as complainant counsel himself has made a statement that complainants have no specific claim against respondent no.2, therefore, Authority relieves respondent no.2 from present case and respondent no.2 is exempted from further proceedings of the case." Therefore, present order is passed only against the respondent no.1/builder.

16. Upon a comprehensive consideration of the facts, documents on record, and submissions made by the parties, it emerges that now only sole relief sought by the complainants in the present matter pertains to the cancellation of allotment of Unit No. C4/1102 in the residential project namely; "Shree Vardhman Gardenia", situated at Sector-10, Sonipat, Haryana and sought refund of the paid amount of ₹17,50,000/- alongwith interest. From the material placed on record, it is clear that the complainants had made the payments to respondent no.1, which are as follows: ₹1,00,000/- on 03.08.2018, ₹5,50,000/- on 06.08.2018, ₹5,00,000/- on 14.08.2018, and ₹6,00,000/- on 16.08.2018. Receipts in respect of these payments were duly issued by the respondent no.1 on 04.08.2018 and 23.08.2018, and there exists no cogent or credible evidence to support the respondent no.1 assertion that these receipts were



forged or misused. On the contrary, the sequence of events and the letter dated 23.08.2018 issued by respondent no.1 acknowledging receipt of ₹17,50,000/- unequivocally establish that the said payments were indeed received by the respondent no.1. Subsequently, a Builder-Buyer Agreement was executed between the parties, wherein the total sale consideration was agreed at ₹81,37,500/-.

17. Thereafter, pursuant to the execution of a Tripartite Agreement dated 18.08.2018 between the complainants, respondent no.1 and respondent no.2/bank for loan amount of ₹64,00,00/-, respondent no.2 disbursed a sum of ₹59,80,625/- to respondent no.1 on 28.08.2018. Accordingly, the respondent no.1 has received a total amount of ₹77,30,625/-, leaving a nominal balance of ₹4,06,875/- to be paid by the complainants at the time of possession, in accordance with the payment plan. Therefore, plea of the respondent no.1 that complainants did not make timely payments does not hold good as respondent no.1 has neither submitted any documentary evidence nor any demand letters, notices of default, or other contemporary evidences to substantiate its plea of non-payment or delay by the complainants. As such, the respondent's contentions in this regard are devoid of merit and stand disproved by its own conduct and documentation. Therefore, it can be concluded that till 16.08.2018, respondent no.1 has received an amount of ₹17,50,000/- and thereafter, ₹59,80,625/- on 28.08.2018 in form of disbursement of loan amount.



18. Regarding possession of the unit in question, Clause 11(b) of the Builder-Buyer Agreement executed between the parties, is reproduced below for reference:

"Clause 11(b) The Company shall handover possession of the Flat to the Buyer(s) only on receipt of the entire amount due in terms of the agreement and registration of sale deed in favour of the buyers."

Perusal of said clause reveals that possession was to be offered only on receipt of the entire amount due in the terms of the agreement. Notably, the respondent has been in possession of the Occupation Certificate since 02.03.2017; however, despite receiving substantial consideration of ₹77,30,625/- till 28.08.2018, neither possession has been offered by the respondent no.1 to the complainants till date nor the balance amount, payable at the time of possession is demanded. The respondent no.1 has failed to furnish any valid or lawful justification for such non-delivery of possession of the unit.

19. In view of the inordinate and unexplained delay in offering possession—despite the receipt of the occupation certificate more than seven years ago, and despite receiving the substantial portion of the sale consideration—the complainants cannot be compelled to wait indefinitely for possession of the unit. Record reveals that the complainants served a legal notice dated 01.06.2023 upon the respondent no.1, clearly expressing their intention to withdraw from the project and seeking

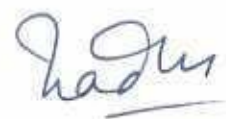


refund of the amounts paid, owing to the respondent no.1 default and their deteriorating financial condition. Contents of the letter dated 01.06.2023 are reproduced for reference:

".....18. That further you the addressee have lapsed and defaulted for so many years in delivering the possession. That further due to personal and monetary reasons our client wishes to terminate/ cancel the booking of the flat in question and as a consequence you the addressee are directed to cancel the booking of the flat in question and refunded the amount paid by our client directly to him and bank loan with interest to bank directly."

20. Furthermore, the said intent was reiterated during the course of the proceedings, wherein the complainants unequivocally stated that they are no longer interested in having possession of the unit and instead are seeking refund along with interest. Therefore, complainants cannot be made to suffer due to the default of the respondent no.1.

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



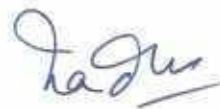
"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right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

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

22. The definition of term 'interest' is provided under Section 2(z) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

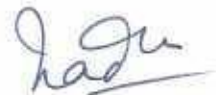


(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

23. Complainants are claiming interest of 24% on the paid amount. In this regard Authority observes 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. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. 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".

24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date, i.e., 27.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

25. In the peculiar facts and circumstances of the case, where the complainants have performed their obligations under the agreement and the respondent no.1 has failed to fulfill its primary obligation of timely delivery of possession, it is manifested that the respondent no.1 is in breach of its contractual and statutory duties. Consequently, the complainants are well within their rights to claim refund of the amount paid, in accordance with the Section 18 of the RERA Act of 2016. Accordingly, the Authority directs respondent no.1 to refund the amount of ₹17,50,000/-received from the complainants at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate of 10.85% till the date of this order and total amount of interest works out as per detail given in the table below:



Sr.No.	Principal Amount in ₹	Date of payments	Interest Accrued till 27.10.2025 in ₹
1.	₹1,00,000/-	04.08.2018	₹78536/-
2.	₹5,50,000/-	23.08.2018	₹428843/-
3.	₹5,00,000/-	23.08.2018	₹389857/-
4.	₹6,00,000/-	23.08.2018	₹467828/-
	Total= ₹17,50,000/-		Total= ₹13,65,064/-
Total amount payable to the complainant= ₹17,50,000/- + ₹13,65,064/- = ₹31,15,064/-			

26. As per clause (1) of reliefs, complainant requested to direct the respondent no.1 to cancel the booking of the complainants with respect to unit no. C4/1002 in the project of the respondent no.1. In this regard, Authority observes that as complainants wants to withdraw from the project and as per the reasoning mentioned above in the order, refund of ₹17,50,000/- along with interest is allowed by the Authority, therefore, respondent no.1 is obligated to cancel the booking of the complainant's unit.

27. With the regard to relief under clause (3), reference is made to following clauses of the tripartite agreement dated 18.08.2018 executed between the parties.

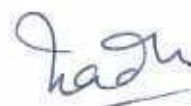
Clause 4: That in the event of the Builder cancelling the said booking for any default committed by the Borrower(s) or the project is shelved by the Builder or for any other reason



whatsoever, the Builder shall pay the entire amount received on behalf of the Borrower(s) to the SBI. However, the builder/developer shall be entitled to recover cancellation and/or any other charges, if any payable by the Borrower under the terms of application form for purchase of the said flat and/or agreement to sell/construction out of the Borrower's contribution only in the instance where the Borrower has cancelled the booking of the flat or has committed any default.

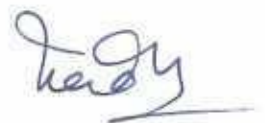
Perusal of the relevant clause reveals that in the event of default by the Borrowers (Complainants), or if the project is abandoned/shelved, or for any other reason whatsoever, Respondent No.1/Builder shall be liable to repay the entire loan amount received on behalf of the Borrowers to the State Bank of India (SBI). In the present factual matrix, the case is covered under the expression **“for any other reason”**, as elaborated in the preceding paragraphs of this Order. Accordingly, respondent No.1/Builder is held liable to refund the entire loan amount of ₹59,80,625/- alongwith interest if any, to SBI, being the amount disbursed by the respondent no.2/ Bank on behalf of the Borrowers.

Consequently, respondent No.1/Builder is hereby directed to make payment of the balance loan amount alongwith interest; if any, out of the total disbursed amount of ₹59,80,625/- to SBI forthwith. Furthermore, all parties are directed to duly perform and discharge their respective



obligations in accordance with the terms and conditions stipulated in the agreements executed inter se. In view of the foregoing, the respondent no.1 is hereby directed to comply with the contractual obligations as stipulated under the terms and conditions of the tripartite agreement. Respondent no.1 shall forthwith take all necessary steps to foreclose and fully settle the outstanding loan amount with the concerned Bank.

28. Further, the complainants are seeking compensation of ₹15,00,000/- on account of physical pain, mental agony due to respondent negligence and malafide act. 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.

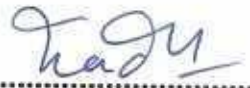


H. DIRECTIONS OF THE AUTHORITY

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

- i. Respondent no.1 is directed to refund the entire paid amount of ₹17,50,000/- with interest of ₹13,65,064/-. It is further clarified that respondent no.1 will remain liable to pay interest to the complainant till the actual realization of the amount.
- ii. Respondent No.1/Builder is further directed to make payment of the balance loan amount alongwith interest, if any, out of the total disbursed amount of ₹59,80,625/- to SBI.
- iii. A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would follow against the respondent.

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


.....
NADIM AKHTAR
[MEMBER]