BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUHORITY, GURUGRAM.

Complaint No. :2548-2025
Date of Decision: 03.11.2026

Mahender Singh Yadav, R/o H. No. B2-104, Shree Vardhman Flora, Sector-90, Gurugram, Haryana- 122001.

..... Complainant

Versus

Shree Vardhman Infra Homes Pvt. Ltd., Registered address: 301, Third Floor, Indraprakash Building Barakhamba Road, New Delhi, Delhi, India, 110001.

..... Respondent

APPEARANCE

For Complainant:	**Mr. Sukhbir Yadav, Advocate.**
For Respondent:	**Mr. Gaurav Rawat, Advocate.**

ORDER

This is a complaint filed by Mr. Mahender Singh Yadav (allottee) under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against Shree Vardhman Infra Homes Pvt. Ltd. (promoter).

2. Briefly stated, according to complainant, he is a law-abiding citizen. He (complainant) purchased flat no. B2-104 admeasuring 1875 sq.

ft. (hereinafter referred as the said unit) in a group housing scheme being developed by the respondent as "Shree Vardhman Flora" in sector 90, Gurugram (hereinafter referred to as the said project). The said flat was purchased through a transfer from the second buyer in accordance with the permission given by the respondent. Originally the said flat was allotted to Sh. Om Parkash Banga vide allotment letter dated 21.12.2011.

3. That on 02.02.2012, a pre-printed, unilateral, arbitrary Builder Buyer's Agreement (BBA) was executed in the name of the original allottee, namely Sh. Om Prakash. Subsequently, Sh. Om Prakash Banga sold it to Sh. Neeraj Raheja & Ankur Aggarwal in July, 2012 as per endorsement in the said agreement.

4. That he (complainant) purchased the said flat from Neeraj Raheja & Ankur Aggarwal vide agreement to sell dated 09.11.2012 and paid the full amount already paid by them to the respondent. Thereafter, the change of right of said unit in favour of him (complainant) was duly agreed and endorsed by the respondent vide letter dated 17.11.2012 and the same was also endorsed in the original agreement.

5. That the amount paid by the seller/allottee to the respondent as on the date of transfer was duly paid by him (complainant) to the seller and the same duly reflected in the complainant's ledger sheet maintained

by the respondent. He (complainant) paid all the installments as per the construction linked payment plan annexed with the agreement dated 02.02.2012. The respondent issued a customer leger on 03.05.2019 showing that against the total sale consideration of Rs.59,99,480/-, he (complainant) had paid Rs.59,56,999/-, which amounts to almost 100% of the total sale consideration. Further, as per the statement of account dated 29.09.2023, he (complainant) has paid Rs.64,52,295/-.

6. That as per the BBA, the unit was to be handed over within 36 months of commencement of construction of the particular tower/block, with a grace period of 6 months, on receipt of sanctions and approval of concerned authorities and also subject to force majeure. Notably, the 4th instalment, which was due on "Commencement of Construction" was demanded and paid by him (complainant) on 26.02.2012, therefore the date of construction comes out to be 26.02.2012. Hence, the due date of possession as per BBA was 26.08.2015, however the Authority has taken 18.03.2016 as the due date of possession as per Order dated 08.10.2021 in CRN No. 3629 of 2019. Despite he (complainant) paying 100% of the total sale consideration on time, the respondent did not hand over possession on the due date.

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7. That the respondent did not comply with the order of the Authority, therefore the aggrieved he (complainant) had to file an execution petition bearing no. 1691 of 2022. During the proceedings of said execution petition, he (complainant) was given physical possession of their unit on 01.08.2024 i.e. after 2 years and 9 months of the passing of said judgment by the Authority. The respondent deprived him (complainant) of his unit for 8 years.

8. That the respondent has obtained the OC for the project on 02.02.2022 and never offered a valid offer of possession and refused to hand over the physical possession of the unit, despite repeated requests by him (complainant). The delayed possession interest of him (complainant) was much more than the balance payable at the time of handover of the unit. The offer of possession dated contains several illegal and unreasonable demands.

9. Contending all this, the complainant prayed for compensation of Rs.28,56,000/- for rental cost/loss, Rs.10,80,306/- on account of depreciation, Rs.3,82,483/- on account of loss of interest, Rs.10,00,000/- for causing mental agony and Rs.1,50,000/- for litigation cost.

10. The respondent contested the complaint by filing a written reply. It is averred that no allegation, averment or contention shall be

deemed to be admitted for want of specific traverse. The present complaint is not maintainable as the respondent has not violated any of provisions of the Act.

11. That the Authority vide its final order dated 08.10.2021 has already granted the interest as aforesaid on the ground of delay in completion of project and non-handing of possession within the agreed time. Therefore, the complainant cannot seek additional compensation on the said very ground. The complainant cannot be allowed to unduly enrich himself and seek to be compensated twice over for the one single cause of action.

12. That the reliefs sought by the complainant are in direct conflict with the terms and conditions of the Flat Buyer Agreement (FBA) and on this ground alone the complaint deserve to be dismissed. The said agreement was executed much prior to Act of 2016 coming in to force and the same has not been declared and cannot possibly be declared as not binding between the parties.

13. That the alleged delay in completion of the project within the time frame given in the said FBA, even if assumed to have occurred, cannot be treated as a violation of the provisions of the Act of 2016 and as such Section 18 (3) of Act of 2016 has no application in this case because under

the said section compensation can be claimed only on the basis of the violation of the provisions of this Act and not on the basis of violation of contractual provisions.

14. Contending all this, respondent has prayed for dismissal of complaint.

15. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and perused the record.

16. Admittedly, the complainant had approached the Authority seeking delayed possession compensation (DPC) by filing a complaint no.3629 of 2019. Said complaint was allowed by the Authority vide order dated 08.10.2021 and the respondent has been directed to pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay from due date of possession i.e. 18.03.2016 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession, whichever is earlier, apart from some other reliefs.

17. It is submitted by learned counsel for the complainant that despite said order of the Authority, it is for the Adjudicating Officer to

allow compensation for delay in handing over possession, in view of section 72 of Act of 2016.

18. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, (b)-------, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf **including compensation, in the manner as provided under this Act.**

19. It is worth mentioning here that the complainant did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay till handing over of possession, at such rate as may be prescribed. The

parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

20. Upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra" Appeal No. 70 of 2023 decided on 20.04.2023----------;**

> ***"13.9. If we closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."***

21. Similar was finding of Haryana Real Estate Appellate Tribunal in case "TATA Housing Development Company Limited vs. Nitin Singhal & Surendra Kumar Singhal, Appeal No.737 of 2023 decided on February 17,2026.

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22. When the complainant has already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession.

23. Complaint in hands is thus dismissed. File be consigned to the record room.

Announced in open Court.
today i.e. **on 03.11.2026.**

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory,
Gurugram.

Present: Mr. Sukhbir Yadav, Advocate for the complainant.
Mr. Gaurav Rawat, Advocate for the respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.

(Rajender Kumar)
Adjudicating Officer,
Gurugram.03.11.-2026