

PROCEEDINGS OF THE DAY

Day and Date	Friday and 16.11.2018
Complaint No.	378/2018 case titled as Mr. Mohinder Singh Sagwan Vs. M/s Shree Vardhaman Infraheights Private Limited
Complainant	Mr. Mohinder Singh Sagwan
Represented through	Shri Akshey Advocate proxy counsel for the complainant
Respondent	M/s Shree Vardhaman Infraheights Pvt. Ltd.
Respondent Represented through	Shri Rajesh Kumar, Advocate for the respondent
Last date of hearing	15.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

Complainant has alleged that he had booked a flat bearing No.501, Tower-C, in project "Shree Vardhman Victoria" and BBA to this effect was executed inter se the parties on 20.5.2013. As per clause 14 (a) of BBA, the possession of the unit was to be handed over within a period of 40 months from the date of commencement of construction i.e.07.05.2014 + six months grace period which comes out to be **7.3.2018**. As on date, the complainant had paid a sum of Rs.78,12,059/- to the respondent but the respondent has not yet delivered the possession of the unit to the complainant.

On perusal of the file and hearing arguments advanced by the parties, the authority is of the considered opinion that the project is not complete and possession of the booked flat could not be handed over in near future. Accordingly, as per section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% on the deposited amount on account of delayed delivery of possession w.e.f **7.3.2018**.

Accordingly, it is directed that arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10th of subsequent month till handing over the possession.

Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

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

Complaint No. : 378 of 2018
First date of hearing: 02.08.2018
Date of Decision : 16.11.2018

Mr. Mohinder Singh Sagwan
R/o H. No. 1166, Sector 23, DLF Colony, near **...Complainant**
Marwah Hospital, Rohtak, Haryana

Versus

M/s Shree Vardhman Infraheights Private
Limited
Office at : 302, III Floor, Indraprakash
Building, 21, Barakhamba Road, New Delhi- **...Respondent**
110001

CORAM:

Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Akshey proxy counsel Advocate for the complainant
Shri Rajesh Kumar Advocate for the respondent

ORDER

1. A complaint dated 04.06.2018 was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Mohinder



Singh Sagwan against the promoter M/s Shree Vardhman Infraheights Private Limited on account of violation of clause 14(a) of the agreement executed on 20.05.2013 for residential flat bearing no. 501, tower C in the project “Shree Vardhaman Victoria” with a super area of 1350 sq. ft. for not giving possession on the due date i.e. on 07.03.2018 which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	“Shree Vardhman Victoria” in sector 70, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Revised date of completion	31.12.2020
4.	Flat no.	501, Tower C
5.	Project area	10.9687 acres
6.	Registered/ Not Registered	Registered (70 of 2017)
7.	DTCP license	103 of 2010(30.11.2010)
8.	Date of booking	11.06.2012
9.	Date of builder buyer agreement	20.05.2013
10.	Total consideration	BSP-Rs. 82,13,000/-
11.	Total amount paid by the complainant	Rs. 78,12,060/-
12.	Payment plan	Construction Linked Plan
13.	Date of delivery of possession.	07.03.2018



	Clause 14(a) – 40 months from commencement of construction + 6 months grace period Note: Date of commencement of construction i.e. 07.05.2014	
14.	Delay of number of years	8 months
15.	Penalty clause as per builder buyer agreement dated 09.08.2018	Clause14(b)- Rs. 107.64 per sq ft or Rs. 10/- per sq. ft. per month

3. As per the details provided above, which have been checked as per record of the case file, a flat buyer agreement dated 20.05.2013 is available on record for flat no. 501, tower C according to which the possession of the aforesaid unit was to be delivered. The promoter has failed to deliver the possession of the said unit to the complainants on the due date i.e. on 07.03.2018. Therefore, the promoter has not fulfilled his committed liability as till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 02.08.2018. The case came up for hearing on 02.08.2018, 05.09.2018, 11.10.2018, 15.11.2018, and 16.11.2018. The reply has been filed on 11.10.2018.



Facts of the case

5. The complainant submitted that he the resident of H.No. 1166, Sector 23, DLF colony near Marwah hospital, Rohtak is the owner of flat no. C 501 in the project “Shree Vardhaman Victoria” situated in Sector 70, Gurugram.
6. The complainant submitted that the original buyer of the said flat was Mr. B.S. Chhikara. The flat buyer agreement was executed on 10.06.2013, and later was sold to the complainant vide an agreement dated 24.05.2013.
7. The complainant submitted that as per clause 14(a) of the flat buyer agreement dated 20.05.2013, the physical possession of the flat was to be delivered to the complainant within a period of 40 months from the signing of the agreement or within an extended period of 6 months’ subject to force majeure conditions.
8. The complainant submitted that the respondent company raised demand and received from the original allottee an amount of Rs 20,96,480/-even before the execution of flat buyer agreement which was much above the 10% cost of the apartment which is contravention of section 13 of RERA Act, 2016.



9. The complainant submitted that the respondent company has failed to develop and complete the project in accordance with the sanctioned plans and specification as approved by the competent authorities and it is on account of such defects that the project is facing delays. Furthermore, the respondent has not cared to disclose any alterations in the sanctioned plans and layout plans to the allottee with respect to the said property purchased by the allottee.
10. The complainant submitted that the respondent company has further failed to obtain requisite insurance for the said project only to save out on the premium and other charges in respect of the insurance and as such the respondent company has failed to protect the interest of the innocent and bonafide allottee and expose the complainant to the risks which could be easily set off had the respondent company cared to apply for and purchase the insurances as required.
11. The complainant submitted that the respondent company has not even maintained a separate account for the funds collected from the allottee(s) of the present project and the cheques and the drafts collected have been asked to issue in favour of account maintained with IndusInd bank, New Delhi which is a



common pool from where the funds have been diverted to make payments for commercial sites.

12. The complainant submitted that till date the total amount received by the respondent in lieu of the flat unit is to the tune of Rs 78,12,059/-.

13. The complainant submitted that the date of completion mentioned by the respondent was March 2017, and still the project is not likely to be completed in near future. Even from the latest photographs provided still the project is under construction and it seems will be taking more time to reach the completion stage and to give physical possession.

Issues to be decided

- I. Whether or not the Respondent failed to perform upon the said agreement and could not handover the possession of flat within the stipulated time i.e. on 20.05.2017 period mentioned in the agreement dated 20.05.2013?

Whether or not an extension of the grace period of 6 months on top of 40 months as envisaged in the agreement by respondent is justified and can be extended as there has been no force majeure conditions and also according to the facts and circumstances of the case.



- III. Whether the respondent company is liable to be penalized for the wrong and false advertisement u/s 12 of RERA Act, 2016?
- IV. Whether or not the respondent company is in defiance of the provision u/s 13 of the RERA 2016 by taking more than 10% as deposit/advance money before the signing of the agreement in terms of the cost of the flat of the complainant?
- V. Whether or not the respondent company is liable to be penalised and the complainant compensated for non-adherence to project specification in terms of the quality of the material used and non-intimation/approval from the allottee for alteration/addition the sanctioned plans with respect to the projects under section 14 RERA 2016?
- VI. Whether or not the meagre penalty of Rs. 10 per sq. ft. per month as mentioned in clause 14(b) w.r.t delay in delivery of possession adequate and whether, further penalty over and above it is payable by the respondent to the complainant?
- VII. Whether or not the complainant has a right to receive the principal amount paid by him as against the invoice bill raised by the respondent along with an interest @ 24% p.a. and/or the State Bank of India highest marginal cost of lending rate plus 2% for non-delivery of the possession of the flat unit to the complainant on time?



Relief sought

- I. To fully refund the amount paid by the complainant amounting to Rs. 78,12,059/-.
- II. To direct the respondent severally and jointly to pay interest @ 24% per annum compounded quarterly on amount of Rs 1,06,47,204/- from date of receipt till the date of payment of arrears by the complainant.
- III. Direct the respondent to grant such a penalty towards the delay in delivery of possession over and above the rate of Rs 10 per sq. ft. per month along with pendent lite and future compensation at the same rate till the date of actual realization of the amount.

Respondent's reply

14. The respondent submitted that the said project has been registered as an "ongoing project" u/r 2(1)(o) of HARERA rules, 2017 vide registration no. 70 of 2017 dated 18.08.2017 and as per the said registration the completion date undertaken by the respondent and acceptable by the authority is 31.12.2020. Therefore, until the date lapses no cause of action arises in favour of the complainant to file the present complaint.



15. The respondent submitted that as per clause 14(a) of the agreement the date of completion of construction was tentative and subject to various factors and conditions. The date was to be calculated from the date of commencement of construction of tower C which commenced on 07.05.2014. Moreover, clause 14(a) is to be read with 14(b) and (c) and not in isolation.

16. The respondent submitted that the complainant paid an amount of Rs 20,96,480/- before 20.05.2013 i.e. the date of agreement. However, the said payment was received, and the flat buyer agreement was executed between the parties much prior to the date when the RERA provisions came into force. Thus, receipt of such payment can't be said to be in violation of the provisions of RERA, 2016.

17. The respondent submitted that it had already opened an ESCROW account no. 259810875857 with IndusInd bank. It was further submitted that the account was not open for common pooling of funds and neither the funds have been diverted for commercial purposes, and the complainant has not suffered anything on account of non-availability of funds.

18. The respondent submitted that basic sale price as indicated in the agreement was based upon the tentative super area of the



flat indicated in the agreement and the same was to vary with the variation in the area of the flat. In addition to the said basic sale price and other charges were payable as per the agreement.

19. The respondent submitted that the complainant did not make payments as per the construction linked plan. It is further submitted that documents have been placed on record that the complainant failed to make timely payment of instalments demanded through various letters issued by the respondent.

20. The respondent submitted that they never promised or made false representations about the date of delivery of possession. No definite or committed date of delivery of possession was given by the respondent company. The due date given in the agreement was tentative and subject to various factors and conditions.

21. The respondent submitted that the complainant entered into the flat buyer agreement with his free will and accord and is bound by the terms and conditions of the said agreement. The agreement did not violate any law existing at the time of execution of the said agreement and the binding nature of the said agreement cannot be questioned by the parties. No relief can be granted out of the purview of the agreement.



22. The respondent submitted that the construction of the said project cannot be completed due to various factors like, economic meltdown, sluggishness in the real estate market, defaults committed by the allottees in making timely payments, shortage of labour, non-availability of water for construction etc.

23. The respondent submitted that due to above factors the complaint is liable to be dismissed.

Determination of issues

I. In respect to the **first issue** raised by the complainant, the respondent is liable for delayed possession to the complainant. This is fortified from the fact that as per clause 14(a) of the agreement dated 20.05.2013 the due date of possession is 07.03.2018 i.e. 40 months from the date of commencement of construction plus 6 months of grace period. Thus, as the status of the project is not known so refund cannot be decided so the complainant is entitled for interest at the prescribed rate under RERA on the delayed possession i.e. from 07.03.2018 till date as possession has not been offered till date.

II. With respect to the **second issue** raised by the complainant, the authority grants grace period to every



respondent company as a matter of practice respective of the fact that it is mentioned in the agreement signed by both the parties and thus the complainant cannot drift away from this fact. Thus, the authority is justified in granting grace period as mentioned in the agreement.

III. With respect to the **third issue** raised by the complainant, due to lack of sufficient documentary proof this issue cannot be decided and remains unascertained.

IV. With respect to the **fourth issue** raised by the complainant, the respondent is held liable u/s 13 of RERA Act, 2016 for charging more than 10% of the cost of the apartment as advance payment.

24. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is 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; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, 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, 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: Provided 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 the handing over of the possession, at such rate as may be prescribed.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

25. As per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

(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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”



26. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority –

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.

27. The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.



Inferences drawn by the authority

28. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside

compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

Decision and directions of the authority

29. Thus, the authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue following directions to the respondent:

- i. The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.75% on the amount paid by the complainant for every month of delay from the due date of possession i.e. 07.03.2018 till the actual date of handing over of the possession.
- ii. The respondent is directed to pay interest accrued from 07.03.2018 on account of delay in handing over of possession which shall be paid to the complainant after adjusting any due against the allottee within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month and the complainant was also directed to make the payment regarding the full settlement of their account. If the builder fails to hand over



the possession on revised date of delivery, the complainant is entitled to seek refund.

30. The order is pronounced.

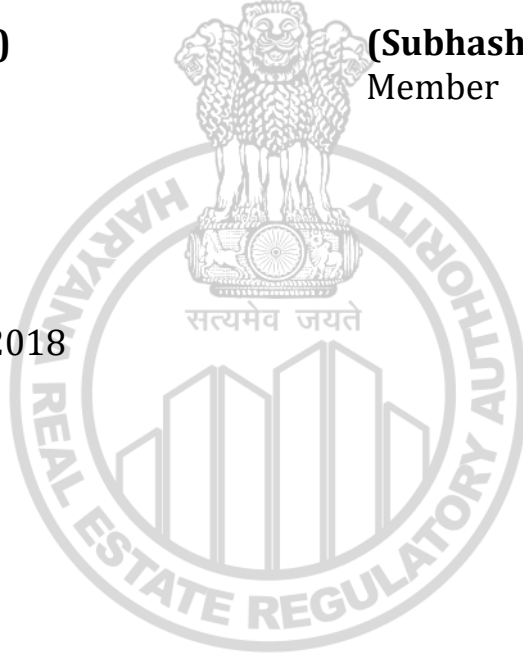
31. The file is consigned to the registry

(Samir Kumar)
Member



(Subhash Chander Kush)
Member

1Dated :16.11.2018



HARERA
GURUGRAM

