

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

Complaint No. : 330 of 2018

Date of Institution : 25.05.2018

Date of Decision : 16.11.2018

Mrs. Hemlata

R/O Village Chaneti, Post office Fatehpur,

The. Jagadari Distt. Yamunagar

Haryana

Complainants

Versus जयते

M/S Shree Vardhman Infrahome Pvt Ltd

301, 3 floor, Indrapraksh Building, 21-

Barakhamba Road,

New Delhi

...Respondents

CORAM:

Dr. K.K. Khandelwal

Shri Samir Kumar

Shri Subhash Chander Kush

Chairman

Member

Member

APPEARANCE:

Shri Sushil Yadav

Advocate for the complainant

Shri Shivam Sharma

Advocate for the respondent



ORDER

1. A complaint dated 25.05.2018 was filed under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mrs. Hemlata, against the promoter M/s.Shree Vardhman Infrahome Pvt Ltd
2. The particulars of the complaint are as under: -

1.	Name and location of the project	Shree Vardhman Flora, Sector 90, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit No.	201, 2 floor Tower B1
4.	Area measuring	1875 sq. ft
5.	DTCP Licence no.	23 of 2008
6.	RERA registration	Registered
7.	RERA registration no	88 of 2017
8.	Date of Apartment buyer agreement	09.03.2012
9.	Total consideration	Rs. 57,84,986/-
10.	Total amount paid by the complainant	Rs. 59,80,934/-
11.	Payment plan	Construction linked payment plan



12.	Date of delivery of possession. (As per Clause 14 (a) of FBA : 36 months from the date of start of construction i.e 09.03.2012 of particular tower in which flat is located + 6 months grace period)	09.09.2015
13.	Delay	3 years 2 months
14.	Penalty Clause (As per clause 14 (b) of FBA)	Rs 5 per sq. ft of super area for every month of delay

3. The details provided above have been checked as per record of the case file. A builder buyer agreement is available on record for flat no. 201, 2 floor Tower B1. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability 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 24.07.2018. The case came up for hearing on 24.07.2018, 06.09.2018



,11.10.2018 and 16.11.2018. The reply was filled by the respondent on 06.09.2018

Facts of the Case

5. The complainant submitted that the respondent gave advertisement in various leading Newspapers about their forthcoming project named Shree Vardhman Flora, Sector 90, Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, Mr. Sandeep Malik, booked an apartment/flat admeasuring 1875 sq. ft in aforesaid project of the respondent and same was purchased by the petitioner for total sale consideration is Rs.57,84,986/- which includes BSP, car parking, IFMS, Club Membership, PLC etc.
6. That as per flat buyers agreement the respondent had allotted a flat bearing No 201 on 2nd floor in tower-B1 having super area of 1875 sq. ft. to the complainant. That as per clause 14 (a) of the flat buyer agreement, the respondent had agreed to deliver the possession of the flat within 36 months from the date of start of construction i.e 09.03.2012 with an extended period of six months.
7. That complainant regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the



complainant. The only intention of the respondent was to take payments for the tower without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving of 100% payment of all the demands raised by the respondent for the said Flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted Flat to the complainant within stipulated period.

8. That due to this omission on the part of the respondent the complainants has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the Flat on time.
9. That as per clause 14 (b) of the flat buyer agreement dated 09.03.2012 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.5/- per sq.ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at a such of nominal rate of Rs.5/- per sq. ft per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the flat even after a delay of almost 31 months from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a



compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers agreement and offered to pay a sum of Rs.5/- per sq.ft for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges 24% per annum interest on delayed payment.

10. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the flat in question or to refund the amount along with interest @ 24% per annum on the amount deposited by the complainant but respondent has flatly refused to do so.
11. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard earned huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

Issues raised by the Complainants

12. The issues raised by the complainants are as follows :-
 1. Whether the respondent has delivered the possession of the booked unit to the complainant?
 2. Whether the respondent is liable to deliver the possession of the booked unit to the complainant along with delay interest of 24% per annum ?

or



Whether the respondent is liable to refund the total amount of consideration paid by the complainant along with interest at the rate of 24% per annum?

3. Whether the interest cost of 24% being demanded by the respondent/developer is very high and is unjustified and not reasonable?

Relief Sought

13. In view of the above, complainant seeks the following relief :
- (i) Direct the respondents to refund the amount of Rs 59,80,934 /- along with interest @ 24% per annum on compounded rate from the date of booking of the flat in question ;
- or
- (ii) Direct the respondent to handover the possession of the respective flat to the complainant along with interest calculated @24% per annum on compound rate from the committed date of possession i.e 09.09.2015 on the entire sum paid by the complainant.
- (iii) Direct to pay a sum of Rs.30,000/- (Rs. Thirty thousand only) as cost of litigation.
- (iv) Direct to pay a cost of Rs 5,00,000/- (Rs Five lacs only) for the harassment and mental agony suffered by the complainant



Reply by the Respondent

14. The respondent submitted that respondent never gave any false promise or commitment as regard to the project in question in any of advertisement. It is denied that Mr. Sandeep

Malik booked the apartment based on advertisement issued by the respondent.

15. The respondent submitted that original project basic sale price of the flat in question is Rs.43,59,375/- and total price is Rs. 57,84,986/-. The complainant so far has paid a sum of Rs. 56,84,986/- which is inclusive of taxes.
16. The respondent is entitled for reasonable extension of time in completing the construction and handing over possession in terms of the agreed contract in between parties
17. The respondent submitted that the subject project had been faced with an unprecedented issue wherein the plans of construction of entire project had to be scrapped since the answering Respondent is not in a position to construct the referred project due to the issue of revenue rasta which has been communicated to the complainant.
18. The respondent submitted that the tentative period as mentioned in the agreement for completion of the construction was to commence from the date of laying foundation of the tower in question which was laid in April, 2012.
19. The respondent submitted that as per the flat buyer agreement which is binding between the complainant and the respondent, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. As such the complainant cannot claim reliefs which are beyond



the compensation cannot claim reliefs which are beyond the compensation agreed upon by them. In this view of the matter, the captioned complaint is not maintainable in law and liable to be dismissed.

20. The respondent submitted that allegations in the present complaint cannot be decided summarily and hence instant complaint is out of the jurisdiction of this Hon'ble Commission.
21. The respondent denied that the complainant is entitled to the compensation in the form of interest @ 24% per annum as alleged or otherwise. No party can be drawn between the compensation payable for delay in completion of construction and interest payable by an allottee for delay in making payment of the installation.
22. The respondent also submitted that the structural work, brick work, flooring, plaster (internal and external), titles work, railing, stair case are already complete and committed to complete the project by the date of 30.06.2019 i.e the date given for completion while registration of the project under RERA.

Determination on issues

23. After considering the facts submitted by the complainants and the respondent and perusal of record on file, the authority decides the issues raised by the complainants as under :



- I. Issue 1 :** After perusal of the facts and circumstances of the case, the authority is of the view that the respondent has failed to deliver the possession of the project in question till date.
- II. Issue 2 :** As per reply submitted by the respondent, the authority is of the view, that as the construction of the project in question is above 50% and the respondent had committed to complete the project by the date of 30.06.2019 in the reply as well as RERA registration certificate no 88 of 2017, therefore refund cannot be allowed in the interest of the project and allottees and the respondent shall deliver the possession of the booked unit on the assured date along with delay interest at the prescribed rate of 10.75% per annum for every month of delay.
- III. Issue 3 :** With respect to issue 3, the authority is of the view that the interest cost of 24% being demanded by the respondent is very high and is unjustified and not reasonable. However the respondent can charge interest at the prescribed rate of 10.75% per annum on delay payments from complainant.

Findings of the authority

24. Jurisdiction of the authority-

Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complainants.

25. The matter with respect to delivery of possession was thrashed out in detail. It has been brought on record that date of delivery of possession was **14.11.2015** instead of 9.9.2015 as per terms and conditions of the BBA which has been acceded to by both the parties. The project stands delayed, as such buyer is entitled for delayed possession charges till actual delivery of possession at the prescribed rate of interest i.e. 10.75% per annum w.e.f. **14.11.2015** as agreed by both the parties. The revised date of delivery of possession is 30.6.2019. However, If the builder fails to deliver the possession on due revised date, in that case, buyer is entitled to withdraw from the project and seek refund. Respondent is also entitled for interest for delayed payments on the part of complainant.



Decision and directions of the authority

26. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents :
- i. The respondent is directed to pay delay interest at for delayed possession charges till actual delivery of possession at the prescribed rate of interest i.e. 10.75% per annum w.e.f. **14.11.2015** as agreed by both the parties.
 - ii. Arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.
 - iii. If the builder fails to deliver the possession on due revised date, in that case, buyer is entitled to withdraw from the project and seek refund.
 - iv. Respondent is also entitled for interest for delayed payments on the part of complainant



27. Complaint stands disposed of.
28. File be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Dated : 16.11.2018



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Friday and 16.11.2018
Complaint No.	330/2018 case titled as Ms. Hemlata Vs. M/s Shri Vardhman Infrahome Pvt. Ltd.
Complainant	Ms. Hemlata
Represented through	Shri Sushil Yadav, Advocate for the complainant
Respondent	M/s Shri Vardhman Infrahome Pvt. Ltd.
Respondent Represented through	Shri Rajesh Kumar, Advocate proxy counsel for the respondent
Last date of hearing	15.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

The project is registered with the authority.

Arguments heard.

Shri Rajesh Kumar, proxy counsel for the respondent insisting on getting a date. However, the matter w.r.t. to delivery of possession was thrashed out in detail. It has been brought on record that date of delivery of possession was **14.11.2015** instead of 9.9.2015 as per terms and conditions of the BBA which has been acceded to by both the parties. The project stands delayed, as such buyer is entitled for delayed possession charges till actual delivery of possession at the prescribed rate of interest i.e. 10.75% per annum w.e.f. **14.11.2015** as agreed by both the parties. The revised date of delivery of possession is 30.6.2019. Arrears of interest accrued so far shall be paid to

the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

If the builder fails to deliver the possession on due revised date, in that case, buyer is entitled to withdraw from the project and seek refund. Respondent is also entitled for interest for delayed payments on the part of complainant.

Complaint stands disposed off. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)