

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

Complaint No. : 264 of 2018
First date of Hearing : 27.06.2018
Date of Decision : 29.10.2018

Mr. Naveen Sharma
855/5, street No. 5A, Patel Nagar,
Gurugram, Haryana

Complainant

Versus

Shree Vardhman Infraheights pvt ltd
302,03 floor, Indraprakash building, 21
Barakhamba road, Connaught Place,
New Delhi - 110001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Shalender Behl
Shri Shivam Sharma

Advocate for the complainant
Advocate for the respondent

ORDER



1. A complaint dated 14.05.2018 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 Naveen Sharma, against the promoter M/s Shree Vardhman

infraheights pvt ltd, on account of violation of the clause 14(a) of buyer's agreement executed on 29.05.2014 in respect of unit described as below for not handing over possession by the due date i.e- 16.02.2018 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

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

1.	Name and location of the project	"Shree Vardhman victoria", Sector 70, Gurugram, Haryana.
2.	RERA registered/ not registered	Registered
3.	HRERA registration no.	70 of 2017
4.	Date of completion as per HRERA registration certificate.	31.12.2020
5.	Licence no. of DTCP (30.11.2010)	103 OF 2010
6.	Payment plan	Construction link plan
7.	Commencement of construction of tower E	16.04.2014
8.	Unit no.	301, Tower 'E'.
9.	Unit measuring	1950 sq. ft.
10.	Buyer's agreement executed on	29.05.2014
11.	Basic sale price	Rs.1,01,08,800/-
12.	Total amount paid by the complainants till date	Rs.52,85,144/-
13.	Percentage of consideration amount	Approx. 52.28 percent
14.	Date of delivery of possession as per clause 14(a) of buyer's agreement. (40 months from the date of start of construction with a grace period of 6 months)	6.11.2017
15.	Delay in handing over possession	11months 3 days



	till date	
16.	Penalty clause as per buyer's agreement dated 29.05.2014	Clause 14(b) of the agreement i.e. Rs.10/- per sq. ft. per month of the super area of unit for the period of delay

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 16.02.2018 as per the said agreement. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft. per month of the super area of the unit for the period of delay as per clause 16(b) of the buyer's agreement dated 29.05.2014. Therefore, the promoter has not fulfilled his committed liability as on date.



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 27.06.2018. The case came up for hearing on 18.07.2018, 06.09.2018,

18.09.2018 and 28.09.2018. The reply has been filed on behalf of the respondent on 18.07.2018 has been perused.

Brief facts of the complaint

5. Briefly stated, the facts of the complaint are that respondent company launched a group housing colony/project named as "*Shree Vardhman Victoria*" situated in Sector-70, Gurugram. That Sh. Sant Kumar S/o Mr. Govind Ram purchased /booked one flat/apartment/unit bearing No.301 tower- E, 3rd Floor in said project of the respondent, having super area approx. 1950 sq ft., rate @ Rs.5,184/- per sq. ft. approximately. The total consideration amount of said unit is Rs. 1,010,8800/- (One Crore one lakh eighty eight thousand only) including EDC and IDC, PLC, club membership etc and an covered car parking and had paid Rs 10,00,000.000/-on 01.06.2012 as earnest money. That a builder buyers agreement dated 29.05.2014 was also executed between the complainant said Sh. Sant Kumar and respondent company. That a copy of builder buyers agreement is annexed herewith



6. The complainant submitted that said flat/apartment/unit was purchased by the complainant from Sh. Sant Kumar and further, the name of complainant was duly endorsed in the buyers agreement on 31.05.2014 and all the rights of said flat/apartment/unit were transferred in the name of the complainant. Further, an allotment letter dated 21.07.2016 was also issued by the respondent in the favour of the complainant.
7. The complainant submitted that till date the complainant has deposited total amount of Rs Rs.52,85,144/- (Fifty two lakhs eighty five thousand one hundred and forty four rupees only) on different dates in the favour of the respondent company and the same was duly received by the respondent company
8. The complainant submitted that the physical possession booked flat/ unit has not given to the complainant till date even after his repeated requests, phone call and visits. The complainant has never been given satisfactory in its reply to explain the delay, As such, the complainant, left with no other option requested the respondent verbally many times for either handing over the above said unit or for refunding the



whole amount along with interest as paid by the complainant to the respondent, However, the respondent have been lingering on the matter on one pretext or other without bothering to comply with the rules and regulations which it is bound to adhere. As have been passed by the Apex Court of India concerning the builder and developers.

9. The complainant submitted that on witnessing the conduct of the respondent, now the complainant is no longer interested in the said unit. *It is submitted as per the clause:*

".....14(a) of the builder buyers agreement the construction of flat is likely to be completed within a period of forty (40) months of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6months"

It is a known fact that the earnest money was taken in 2012 and at that time the construction of said tower had begun accordingly, the time span to hand over the physical possession was 46 months which got expired in Feb, 2016 and it is pertinent to note that respondent kept on sending the complainant fiscal reminders and demand notices after such date even though the respondent had failed to fulfil his



committed liability and is now a defaulter as per the agreement.

10. The complainant submitted that the legal notice dated 26-05-2017 has been duly served upon the respondent. However, the respondent even after receipt of the notice failed to comply with the requirements of the notice as no action was initiated by the respondent to the send notice by them, Hence the respondent has provided deficient services to the complainant in addition to indulged in unfair trade practice.
11. The complainant submitted that instead of handing over the physical possession of the flat to the complainant the respondent is demanding the balance money whereas, till date the project is in raw status. That the complainant continuously called upon the respondent to enquire about the status of completion of the project, and in one such enquiry recently the complainant was informed that the delivery date of residential flat would be very shortly. It is also respectfully submitted that when complainant visited the site/project, the complainant saw that the project is in the same condition. It is pertinent to mention here that when the complainant



asked the respondent about the delivery schedule of the unit on this the respondent told the flat would be delivered within short time period. That the action of the respondent demanding for balance money amounts to harassment of the complainant as the respondent is trying to grab the hard earned money of the complainant.

12. The issues raised by the complainant is as follow:

- 1. Whether the promoter/respondent handed over the possession of the flat to the complainant in duly time period as per clause 14(a) in terms of the builder buyer agreement?**
- 2. Whether the promoter/respondent has been completed the entire project on time?**

13. Relief sought

The complainant are seeking the following reliefs:

- (i) Direct the opposite party to refund the deposit amount of Rs.52,85,144/- (Fifty two lakhs eighty five thousand one hundred and forty four)



alongwith interest @ 24% per annum from the date of receipt till its realization to the complainant.

(ii) Award Rs.25,00,000/- as damages/ compensation to the complainant for providing deficient services and for causing mental agony, pain and suffering caused to the complainant.

(iii) Award a cost of Rs.10,00,00/- towards litigation expenses in favour of the complainant and against the opposite party.

(iv) Grant any other relief in favour of the Complainant as the hon'ble authority may deem fit and proper in the fact and circumstances of the case.

Respondent's reply

14. The respondent has raised various preliminary objections and submissions challenging the jurisdiction of this hon'ble authority. They are as follow:

i. The present complainant filed u/s 31 of the RERA Act, is not maintainable under the said provision. The respondent has not violated any of the provision of the said act. The



complainant has not asserted the provision that according to him has been violated by the answering respondent.

- ii. It is also submitted that the project in question is an ongoing project under the Act vide registration no. 70 of 2017 dated 18.08.2018 and as per the said registration the date for completion of the project is 31.12.2020. As such the complaint having been filed much prior to the said date is premature and liable to be dismissed on this ground alone.
- iii. The respondent submitted that the originally projected cost of the apartment was Rs1,15,75,800/- which was to be paid by the complainant as per the agreed schedule duly mentioned in the agreement. The complainant however failed to make payment of the instalments. As against the amount of Rs.1,0,37,085/- toward cost of the flat, agreed charges and taxes, which has already fallen due, the complainant has paid merely an amount of Rs. 52,85,144/- and that too belatedly. The hon'ble authority has no jurisdiction to entertain the present complaint as the complainant have not come to this authority with clean hands and has concealed the material facts.



- iv. The respondent also stated that in view of the facts of the present case, all the issues concerning the quantum of compensation payable, if at all, to the complainant are to be governed by the terms and condition of the flat buyer agreement dated 29.05.2014 and section 18 of the Act is not applicable in this regard at all as the said agreement was executed much prior to when the act came into force. All such agreement which were executed prior to act coming into force of the Act are not covered under the combat of RERA.
- v. The respondent submitted that the issue of grant of compensation for the loss occasioned due to breaches committed by one party of the contract is squarely governed by the provision of section 73 and 74 of the contract act, 1872.
- vi. The respondent submitted that from the date of booking till the filing of the present complaint i.e. for more than 6 years, the complainant had never ever raised any issue whatsoever and on the contrary the complainant kept on making the payment of instalments, though not within the time prescribed, which resulted in delay payment charges.



- vii. The respondent submitted that the complainant for being entitled to claim compensation as per the agreement was dutybound to comply with terms and condition. The complainant was to make payment of the instalment of various installation as per agreed payment schedule though the payment of the same was specifically made essence of the contract.
- viii. The respondent submitted that the respondent has not refused to hand-over the possession to the complainant the construction is going on and at an advance stage. The possession of the flat shall be offered to all the allottees entitled for the same. The period of construction given in the agreement was tentative and possibility of delay was within the knowledge of the complainant.
- ix. The authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainant. It is matter of record that no such agreement as is referred under the provisions of the said Act or said Rules has been executed between the complainant



and the respondent. Rather, the agreement that has been referred to is buyer's agreement dated 29.05.2014 which was executed much prior to coming into force of the said Act and of the Rules.

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

17. With respect to the **first and second issue** raised by the complainant, the authority came across that as per clause 14(a) of buyer's agreement, the possession of the said apartment was to be handed over within 40 months with a grace period of 6 months from the date of start of construction of Tower. The construction commenced on 16.04.2014. Therefore, the due date of possession shall be computed from 16.04.2014. The clause regarding the possession of the said unit is reproduced below:



"14(a) Time of handing over the possession

Subject to terms of this clause and barring force majeure conditions, and subject to the allottee having complied with all the terms and

condition of this agreement and not being in default under any of the provisions of this agreement and compliance with all the provisions, formalities, documentation etc. as prescribed by the company, the company proposes to handover the possession of the unit within 40 months from the date of start of construction: subject to timely compliance of the provisions of the agreement by the allottee. The allottee agrees and understands that the company shall be entitled to a grace period of 6 months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project."

18. Accordingly, the due date of possession was 06.11.2017 and the possession has been delayed by 11 months and 8 days. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the super area of the unit for the period of delay beyond 40 + 6 months as per clause 14(b) of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:



"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust

clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

As supreme court also held in the case of:

Swapnil Promoters And Developers V/s The Union Of India And Ors Writ petition no. 2737 OF 2017

“As promoter being a failure on the part of completing the project within a reasonable time and handing over possession to the prospective purchasers, the Parliament has thought it fit to enact RERA so as to ensure completion of project or phase, as the case may be, in a time bound manner. Before RERA coming into force, the provisions of MOFA were applicable. However, the completion of construction of building/project was not envisaged in MOFA. This was a serious lacuna in the law which gave rise to institute suits for specific performance of contracts and/or claiming damages. The object of RERA is that the prospective purchasers can consider booking apartment at the time of launching of the project or when the building is under construction. It is common knowledge that there is substantial difference in price when the apartment is booked at the time of launching of the project or when the building is under construction vis-a-vis when the building is complete in all respects along with Occupation Certificate. Naturally the buyers are interested to book the apartment at the time of launching of the project or when the building is under construction. RERA assures completion of a project in time bound manner.....”



The respondent has stated that the project is almost complete and they will be able to handover the possession of the said unit by 31.12.2020 as stated in HRERA registration certificate.

Findings of the authority

19. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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 complainants at a later stage.
20. As the possession of the apartment was to be delivered by 06.11.2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the 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."

21. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

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.

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.



22. In the present complaint, the complainant is seeking refund of the entire money paid till date i.e. 52,85,144/- along with interest @ 24% p.a. till its realization of the payment and cancel the allotment upon entire refund.
23. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project as the project is almost complete and the respondent has committed to handover the possession of the said unit by 31.12.2020. The refund of deposited amount will also have adverse effect on the other allottees in the said project. Therefore, keeping in view the principles of natural justice and in public interest, the relief sought by the complainants cannot be allowed.
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 during proceeding dated 11.07.2018 made a statement that they are not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required. Therefore, the second and third relief sought by the complainant regarding compensation becomes superfluous.



Decision and directions of the authority

25. After taking into consideration all the material facts as adduced and produced by both the parties, 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 respondent in the interest of justice and fair play:

- (i) The complainant entered into construction linked plan for the purchase of flat with the respondent on 29.5.2014. As per clause 14 (a) of the BBA, the possession was to be delivered within a period of 40 months + 6 months grace period which comes out to be 6.11.2017. However, respondent/builder has not delivered the possession in time. As such, the complainant is eligible for prescribed rate of interest i.e. 10.45% as per section 18(1) of the Real Estate(Regulation and Development) Act, 2016. Since the agreement is CLP, if the buyer too has defaulted in making timely payment, in that case, he is also equally liable for making delayed payment of interest @ 10.45% per annum, as the RERA Act provides equitable play ground for both the builder and buyer.



- (ii) The project is registered with the authority and the due date of delivery of possession is 31.12.2020. Both the parties are directed to sort out their payment schedule inter so that matter may be brought on even keel. The buyer is also directed to visit the site to find for himself the status of the project. The cost imposed upon the builder vide previous order be paid within 7 days.

26. The complaint is disposed off accordingly.

27. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.10.2018

Prepared by Gaurav Rawat

Checked by Shreya Gupta

PROCEEDINGS OF THE DAY

Day and Date	Monday and 29.10.2018
Complaint No.	264/2018 Case titled as Mr. Naveen Sharma V/s M/s Shree Vardhman Infraheights Pvt. Ltd.
Complainant	Mr. Naveen Sharma
Represented through	Shri Shailender Bahl, Advocate for the complainant.
Respondent	M/s Shree Vardhman Infraheights Pvt. Ltd.
Respondent Represented through	Shri Rajesh Kumar Advocate for the respondent.
Last date of hearing	28.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

It has been alleged by the complainant that he entered into construction linked plan for the purchase of flat with the respondent on 29.5.2014. As per clause 14 (a) of the BBA, the possession was to be delivered within a period of 40 months + 6 months grace period which comes out to be 6.11.2017. However, respondent/builder has not delivered the possession in time. As such, the complainant is eligible for prescribed rate of interest i.e. 10.45% as per section 18(1) of the Real Estate(Regulation & Development) Act, 2016. Since the agreement is CLP, if the buyer too has defaulted in making timely payment, in that case, he is also equally liable for making delayed

payment of interest @ 10.45% per annum, as the RERA Act provides equitable play ground for both the builder and buyer. The project is registered with the authority and the due date of delivery of possession is 31.12.2020. Both the parties are directed to sort out their payment schedule inter se so that matter may be brought on even keel. The buyer is also directed to visit the site to find for himself the status of the project. The cost imposed upon the builder vide previous order be paid within 7 days.

Complaint is disposed off accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)