

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 06.12.2018
Complaint No.	544/2018 Case Titled As Mr. Virender Singh V/S Shree Vardhman Infrahome Pvt Ltd
Complainant	Mr. Virender Singh
Represented through	Complainant in person.
Respondent	M/S Shree Vardhman Infrahome Pvt Ltd
Respondent Represented through	Shri Rajesh Kumar Advocate for the respondent.
Last date of hearing	13.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Arguments heard.

Project is registered with the authority.

As per clause 14 (a) of the Builder Buyer Agreement dated 22.2.2012, unit No. 1005, Tower No.C-2, in Project Shree Vardhman Flora in Sector 90, Gurugram, was to be handed over to the complainant within a period of 36 months + 6 months grace period which comes out to be 12.1.2015. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.44,56,590/-. Project is registered with the authority and as per registration application, the revised date of delivery of flat is 30.6.2019 and as such, complainant is entitled for delayed possession charges @ 10.75% per annum as per the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, till the handing over the offer of

possession failing which the complainant is entitled to withdraw from the project.

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

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. : 544 of 2018
First date of hearing : 13.09.2018
Date of decision : 06.12.2018

Ms. Virender Singh
R/o: H.no D 106, Corona Optus, Sector 37 C,
Gurugram-122001

Complainant

Versus

M/s Shree Vardhman Infrahome Pvt Ltd.,
Address: 301, 3rd floor, Indraprakash Building
21 Barakhamba road, New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Virender Singh
Shri Rajesh Kumar

Complainant in person
Advocate for the respondent

ORDER

1. A complaint dated 18.07.2018 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 Ms. Virender Singh against M/s. Shree Vardhman Infrahome Pvt Ltd., on



account of violation of the clause 14(a) of buyer's agreement executed on 22.02.2012 in respect of unit described as below for not handing over possession by the due date i.e. 12.01.2015 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 22.02.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation And Development) Act, 2016.

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

- **DTCP licence no. 23 of 2008**
- **Nature of project group housing colony**

1.	Name and location of the project	"Shree Vardhman Flora", Sector-90, Gurugram, Haryana.
2.	RERA registered/ not registered	Registered
3.	Registration certificate no.	88 of 2017
4.	As per RERA registration revised date of possession	30.06.2019



5.	Unit no.	1005, tower no. C2
6.	Unit measuring	1300 sq. ft.
7.	Buyer's agreement executed on	22.02.2012
8.	Basic sale price as per statement of buyer's agreement	Rs.34,45,000/-
9.	Total amount paid by the complainants till date	Rs.44,56,590/-
10.	Percentage of consideration amount	100%
11.	Payment plan	Construction link plan
12.	Start of construction	12.07.2011
13.	As per clause 14(a) (construction shall be complete within 36 months with 6 months grace period from the commencement of the particular tower/block in which the flat is located or from the date of approval of building plans)	12.01.2015
14.	Delay in handing over possession till date	3 years 10 months 24 days
15.	Clause 14(b) of the buyers' agreement dated 22.02.2012	Penalty @Rs.5 per month per sq. ft' of the super area.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants 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 12.01.2015 as per the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.



5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. the case came up for hearing on 13.09.2018.

Brief facts of the complaint

6. The complainant submitted that the complainant booked the apartment no 1005, tower C2 in the project “Shree Vardhman Flora” sector-90, Gurugram. The buyers’ agreement was signed between the parties on 22.02.2012.
7. The complainant submitted that possession of the apartment has not been provided as per the buyers’ agreement. Clause 14(a) of the buyers’ agreement is reproduced hereunder:

14 Possession- “the construction of the flat is likely to be completed within a period of 36 months of the commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months, on receipt of sanction of the building plans/revised plans and all other approvals.”

8. The complainant submitted that the complainant on her visit to the site found that the construction work has not been going on and there is an indefinite delay in the project.
9. The complainant submitted that the interest amount of Rs.27,757 @ 24% was given to builder for delayed payments.



As per last three communications builder is only extending the dates. Recent first commitment of possession was made as October 2017, second April-May 2018 and as last commitment December-2018.

10. The issues raised by the complainant are as follow:

- i. Whether the builder has failed to provide possession of the flat?
- ii. Whether the respondent is liable to pay interest and compensation for delayed possession till date?

11. Relief sought

The complainant are seeking the following reliefs:

- i. To provide the monthly relief till possession since 9.09.2015.
- ii. To provide compensation with interest for the delay till the date of possession.

Respondent reply

12. The respondent submitted that the buyers' agreement was executed on 22.02.2012 but the possession was not supposed to be delivered by 12.01.2015 as per clause 14(a). The



possession was to be provided tentatively in 42 months (including 6 months grace period) from construction of the particular tower/block in which the flat was located.

13. The respondent submitted that it is denied that no construction work is going on at the site and the project is likely to be completed by 30.6.2019 i.e., the date given by the respondent at the time of registration of the project under RERA.

14. The respondent submitted that as per clause 14(b), the compensation for delay is to be computed @Rs.5 per sq. ft. of the super area per month. However, the amount of compensation, if any, is to be paid/adjusted upon completion of the project and at the time of final settlement of account and not prior to said occasion.

15. The respondent submitted that the present complaint is not maintainable and the respondent has not violated any of the provisions of the act. All the issues concerning compensation are to be governed by the terms and conditions of the buyer's agreement dated 22.02.2012 as the agreement was signed before coming into force of the act. The act and section 18 cannot have retrospective operation and the same is



applicable only in respect of agreements executed after the act came into force.

16. The respondent submitted that the respondent has already registered the project in question vide registration no. 88 of 2017 dated 23.8.2017 and as per the date of registration the date given for completion of the project is 30.6.2019. So, the complaint is premature and liable to be dismissed.
17. The respondent submitted that the complainant has failed to make payment of various instalments as per the agreed payment schedule which was the essence of the contract. Even as per clause 14(a), the obligation of respondent was to complete construction in time subject to timely payment of instalments by the complainant. As the complainant has not made timely payments, she is not entitled to claim any compensation.
18. The respondent submitted that the construction could not be completed within stipulated time due to circumstances beyond control of the respondent and the respondent has spent more than 70% of the money realized from its customers on the project whereas the act only requires 70% to be kept for this.



19. The respondent submitted that despite all odds faced by the respondent the respondent has already achieved major progress in completion of the project. The structural work is already complete and overall project is likely to be completed by 30.6.2019.

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 here under:

20. With respect to the **first and second issues**, as per clause 14(a) of the agreement, the respondent company was bound to deliver the possession of the said unit within 36 months with a grace period of 6 months from the date of start of construction to the complainant which comes to 12.01.2015 but the respondent has not delivered the possession of the said flat till date thereby delaying the possession by 3 years and 10 months twenty four days. The clause regarding the possession of the said unit is reproduced below:

14 Possession- "the construction of the flat is likely to be completed within a period of 36 months of the commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months, on receipt of sanction of the building plans/revised plans and all other approvals."



21. Accordingly, the due date of possession was 12.01.2015 and the possession has been delayed by approx three years ten month till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay beyond 36 months + 6 months as per clause 22 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 per proviso of section 18 of the RERA act read with rule 15 of HARERA rules, the prescribed rate of interest shall be the State Bank of India highest marginal cost of lending rate plus 2%. The respondent is in breach of the terms of the agreement



as the respondent did not deliver the possession of the said unit within the stipulated time

22. As the possession of the flat was to be delivered by 12.01.2015 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 Real Estate (Regulation and Development) Act, 2016.

Powers of Authority to issue directions

23. 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.
24. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.75%, for every month of delay till the handing over of possession.



Findings of the authority

25. As per clause 14 (a) of the builder buyer agreement dated 22.02.2012, unit no. 1005, tower no.C-2, in Project Shree Vardhman Flora in Sector 90, Gurugram, was to be handed over to the complainant within a period of 36 months + 6 months grace period which comes out to be 12.01.2015. However, the respondent has not delivered the unit in time.
26. Complainant has already deposited Rs.44,56,590/-. Project is registered with the authority and as per registration application, the revised date of delivery of flat is 30.6.2019 and as such, complainant is entitled for delayed possession charges @ 10.75% per annum as per the provisions of Section 18 (1) of the Real Estate (Regulation And Development) Act, 2016, till the handing over the offer of possession failing which the complainant is entitled to withdraw from the project.
27. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.



DECISION AND DIRECTIONS OF THE AUTHORITY:

28. After taking into consideration all the material facts as adduced and produced by both the parties, the below noted directions are being issued in the interest of justice and fair play. 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.

29. Thus, 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:

- i. The respondent is directed to pay delay possession charges @ 10.75% p.a. on the paid amount to the complainant from the due date of delivery of possession i.e. 12.01.2015 till 06.12.2018 (date of offer of possession)



amounting to Rs.18,67,987.88 /- that has to be paid till 10th of every month till date of offer of possession.

- ii. The arrears of interest so accrued @ 10.75% p.a. so far shall be paid to the complainant within 90 days from the date of this order.

30. The order is pronounced.

31. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 06.12.2018

HARERA
GURUGRAM



Judgement Uploaded on 08.01.2019