

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 13.12.2018
Complaint No.	634/2018 Case Titled As Mr. Narendra Kumar Chaudhary V/S M/S Shree Vardhman Infracome Pvt Ltd.
Complainant	Mr. Narendra Kumar Chaudhary
Represented through	Shri Sukhbir Yadav Advocate for the complainant.
Respondent	M/S Shree Vardhman Infracome Pvt Ltd.
Respondent Represented through	Shri Rajesh Kumar
Last date of hearing	27.9.2018
Proceeding Recorded by	Naresh Kumari

**Proceedings**

Counsel for the complainant has filed application for amendment of the complaint.

Arguments heard.

As per clause 14 (a) of the Builder Buyer Agreement dated 7.5.2012 for unit No.B2-504, in project 'M/s Shree Vardhman Flora' Sector 90, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 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 (i.e. **27.4.2012**) which comes out to be **27.10.2015**. However, the respondent has not delivered the unit in time. Complainant has already

paid Rs.59,91,428 /- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **27.10.2015** 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 refund the amount.

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 10<sup>th</sup> of subsequent month.

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

Samir Kumar  
(Member)  
13.12.2018

Subhash Chander Kush  
(Member)  
13.12.2018

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

**Complaint no. : 634 of 2018**  
**First date of hearing : 13.12.2018**  
**Date of decision : 13.12.2018**

Mr. Narendra Kumar Chaudhary  
H.NO. E-28, Ashok Vihar, Phase-2,  
Gurugram-122001

**Complainant**

Versus

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

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri Rajesh Kumar

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 01.08.2018 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. Narendra Kumar Chaudhary against M/s. Shree Vardhman Infrahome Pvt Ltd., on account of violation of the clause 14(a) of buyer's



agreement executed on 07.05.2012 in respect of unit described as below for not handing over possession by the due date i.e. 14.12.2015 which is an obligation under section 11(4)(a) of the Act *ibid*.

- Since, the buyer's agreement has been executed on 07.05.2012 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.
- The particulars of the complaint case are as under: -

**DTCP License no.: 23 of 2008 dated 11.2.2018**

**License holder: M/s Aggarwal Developers Pvt. Ltd.**

**Nature of the project: residential**

1.	Name and location of the project	"Shree Vardhman Flora", Sector-90, Gurugram, Haryana.
2.	RERA registered/ not registered	<b>Registered</b>
3.	Registration certificate no.	88 of 2017
4.	Revised completion date as per RERA registration	30.6.2019
5.	Unit no.	B2-504



6.	Unit measuring	1875 sq. ft.
7.	Date of booking	12.10.2011
8.	Buyer's agreement executed on	07.05.2012
9.	Basic sale price as per statement of buyer's agreement	Rs.50,62,500/-
10.	Total amount paid by the complainants till date	Rs.59,91,428/-
11.	Total consideration	Rs.63,96,504/-
12.	Payment plan	Construction link plan
13.	Date of start of construction of tower B2 as per annexure P-8	14.05.2012
14.	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) i.e 27.04.2012	27.10.2015
15.	Delay in handing over possession till date	3 years 2 months 16 days
16.	Clause 14(b) of the buyers' agreement dated 18.9.2012	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 27.10.2015 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 respondent filed the reply. The case came up for hearing on 13.12.2018.

### **BRIEF FACTS OF THE COMPLAINT**

6. The complainant submitted that as per section 2(zk) of the Real Estate (Regulation And Development) Act, 2016, the respondent falls under the category of “promoter” and is bound by the duties and obligations mentioned in the said Act. And is under the territorial jurisdiction of this hon’ble regulatory authority.
7. The complainant submitted that the complainant issued a cheque of Rs. 3,59,000/- (three lakhs and fifty nine thousand) vide cheque No. 654626 drawn in HDFC Bank along with application form. Respondent acknowledges the payment and issued payment receipt on date 12.10.2011.
8. The complainant submitted that on date 04.11.2011 respondent issued a letter dated 04.11.2011 and raised the demand of Rs. 6,79,572/- (six lakhs seventy nine thousand



five hundred and seventy two) for allotment of unit. complainant paid the said demand by two cheques vide cheque No. 654629 for Rs. 4,00,000/- (four lakhs) dated 24.11.2011 and cheque No. 654630 for Rs. 2,79,572/- (two lakhs seventy nine thousand five hundred and seventy Two) dated 30.11.2011.

9. The complainant submitted that on date 03.12.2011 respondent sent an allotment letter for residential flat no. B2-504, admeasuring 1875 sq. ft. along with detail of total cost of flat. Total cost of flat was Rs. 53,37,500/- (fifty three lakhs thirty seven thousand and five hundred).
10. The complainant submitted that on date 12.02.2012 respondent issued a demand letter and asked for payment of Rs. 7,78,929/- (seven lakhs seventy eight thousand nine hundred and twenty nine). Demand was paid by complainant vide cheque No. 654635 dated 12.02.2012. respondent issued payment receipt on date 15.02.2012.
11. The complainant submitted that on date 27.04.2012 respondent issued a demand letter on construction stage of “on commencement of excavation work” and asked for



payment of Rs. 5,53,181/- (five lakhs fifty three thousand one hundred and eighty one). Demand was paid by complainant vide cheque No. 066384 dated 10.05.2012. respondent issued payment Receipt on date 11.05.2012.

12. The complainant submitted that on date 12.10.2014 complainant wrote an email to respondent and asked for exact date of possession of flat. Respondent replied the email on 13.10.2014 and confirmed that flat will be handed over as per clause no. 14(a) of FBA and also confirmed that "the date of foundation is 27.04.2012 of tower no. B2".

13. The complainant submitted that thereafter complainant continued to pay the remaining installment as per the payment schedule of the builder buyer agreement and have already paid the more than 90% amount i.e Rs. 59,91,428/- (fifty nine lakhs ninety one thousand four hundred and twenty eight) out of total cost Rs. 63,96,504/- (sixty three lakhs ninety six thousand five hundred and four) till date 29.06.2015 along with interest and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject flat for a long



time, they raised their grievance to respond. Though complainant was always ready and willing to pay the remaining installments provided that there is progress in the construction of flat.

14. The complainant submitted that the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such they are liable to be punished and compensate the complainant.

15. The complainant submitted that for the first time cause of action for the present complaint arose in May, 2012, when a one sided, arbitrary and unilateral flat buyer agreement was executed between the parties. Further the cause of action arose in April, 2015, when the respondent party failed to handover the possession of the flat as per the buyer agreement. Further the cause of action again arose on various occasions, including on: a) June, 2016; b) Jan. 2017; c) June, 2017, d) November, 2017; e) March. 2018, and on many time till date, when the protests were lodged with the respondent party about its failure to deliver the project and the



assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

16. The complainant submitted that the complainant is entitled to get refund of paid amount along with interest @ 24% per annum compoundable from date of booking to the date of refund. The complainant is also entitled to get Rs. 1,00,000/- (One Lakh) towards the cost of litigation. The complainant is also entitled for any other relief which he is found entitled by this hon'ble authority.

**17. ISSUES RAISED BY THE COMPLAINANT**

- i. Whether the developer has violated the terms and conditions of flat buyer agreement?
- ii. Whether the respondent is liable to pay interest and compensation for delayed possession till date?
- iii. Whether the complainant is entitled for refund?



## 18. RELIEF SOUGHT

The complainants are seeking the following reliefs:

- i. Pass an appropriate award directing the respondent parties to refund the paid amount i.e. Rs. 59,91,428/- (fifty nine lakhs ninety one thousand four hundred and twenty eight) and with compensatory interest from date of booking to date of refund on paid amount by the complainant to the respondent party. (Justification: - Section 18 of RERA Act).
- ii. Respondent party may kindly be directed to pay an amount of Rs.1,00,000/- (one lakh) as litigation expenses; (justification:- cost of litigation).
- iii. Respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the apartment buying application form.
- iv. Any other relief / direction which the hon'ble authority deems fit and proper in the facts & circumstances of the present complaint.



- v. That in the interest of justice, this authority should pass strict and stringent orders against errant promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

#### RESPONDENT'S REPLY

19. That the buyers' agreement was executed on 07.05.2012 but the possession was not supposed to be delivered by April 2016 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.



20. 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., tentative date given by the respondent at the time of registration of the project under RERA.
21. 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.
22. 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 buyers' agreement dated 18.9.2012 as the agreement was signed before coming into force of the act. The Act and section 18 of the Act cannot have retrospective operation and the same is applicable only in respect of agreements executed after the act came into force.
23. 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.

24. 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.

25. 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.

26. The delay was due to acute depression in the real estate sector impacted the sales. There is an unsold inventory of Rs.32 crore and total default committed by various allottees stands Rs.9,57,69,155. The construction progress was hindered due to the order of Hon'ble Punjab and Haryana High court dated 21.8.2012 which prohibited ground water



extraction for construction purposes in Gurgaon District. The administrator HUDA, Gurgaon granted NOC for carrying out construction at the project site vide memo dated 27.12.2013. The respondent had to rely upon water supplied by HUDA in tankers which were not readily available being in huge demand. Further, civil contractors failed to carry out construction within the given timelines.

27. 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 complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

28. With respect to the **first issue**, the authority came across clause 14(a) of buyer's agreement. 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.”*

Accordingly, the due date of possession was 27.10.2015 and the possession has been delayed by 3 years 2 months 16 days till date.

29. With respect to the **second issue**, clause 14(b) of the agreement provides delayed interest @Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay which 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%.

30. With respect to **third issue**, the authority is of the considered opinion that since the construction work is 40% complete as per the local commissioner's report the authority will refund the amount but since the project is registered and the revised completion date is 30.6.2019 as per the registration certificate, the authority can take a different view. Therefore, the authority is of the view that in case refund is allowed in the present complaint, it will have adverse effect on the interest other allottees who wish to continue in the project. Therefore, the refund cannot be allowed in the present complaint.



### **FINDINGS OF THE AUTHORITY**

31. 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.

32. As per clause 14 (a) of the builder buyer agreement dated 7.5.2012 for unit No.B2-504, in project 'M/s Shree Vardhman Flora' Sector 90, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 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 (i.e. **27.4.2012**) which comes out to be **27.10.2015**. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.59,91,428 /- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **27.10.2015** 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 refund the amount.

33. 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 10<sup>th</sup> of subsequent month.
34. 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.*

35. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act 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.*

### **DECISION AND DIRECTIONS OF THE AUTHORITY**

36. 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 respondent is directed to pay delay possession charges @ 10.75% p.a. on the paid amount to the complainants from the due date of delivery of possession i.e. 27.10.2015 till 13.12.2018 (date of offer of possession) amounting to Rs.20,67,815.62/-.
- 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. Calculated amount to be paid on 10<sup>th</sup> of every month.



37. The order is pronounced.

38. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.12.2018



HARERA  
GURUGRAM



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