

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 10.01.2019
Complaint No.	331/2018 Case Titled As Mr. Rajesh Kumar Vs M/s Shri Vardhman Infracome Pvt. Ltd.
Complainant	Mr. Rajesh Kumar
Represented through	Shri Sushil Yadav Advocate for the complainant.
Respondent	M/s Shri Vardhman Infracome Pvt. Ltd.
Respondent Represented through	Shri Ashutosh Srivastava, Advocate for the respondent.
Last date of hearing	11.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority.**

Arguments heard.

Complaint was filed on 25.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 19.6.2018, 30.10.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 30.10.2018 and on 15.11.2018 for non-filing of reply even after service of notice.

A final notice dated 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.

The brief facts of the matter are as under :-

As per clause 14 (a) of the Builder Buyer Agreement dated 1.8.2012 for unit No.204, tower-B1, in project "Shree Vardhman Flora" Sector-90, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the commencement of start of construction i.e. 14.5.2012 or receipt of sanctioned plan + 6 months grace period which comes out to be **14.11.2015**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.58,89,281/- to the respondent against a total sale consideration of Rs.59,88,374/- As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **14.11.2015**, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over possession failing which the complainant is entitled to seek refund of 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)  
10.1.2019

Subhash Chander Kush  
(Member)

**BEFORE THE HARYANA REAL ESTATE REGULATORY**

**AUTHORITY, GURUGRAM**

**Complaint no. : 331 of 2018**

**First date of hearing : 24.07.2018**

**Date of decision : 10.01.2019**

Sh. Rajesh Kumar  
R/o Village Chaneti, post office Fatehpur,  
Teh Jagadhri Distt. Yamuna Nagar, Haryana. **..Complainant**

Versus

M/s Shree Vardhman Infrahome Pvt. Ltd.  
R/o 301, 3<sup>rd</sup> floor, Indrapraksh building,  
21 Barakhamba Road, New Delhi: 11001. **...Respondent**

**CORAM:**

Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Shri Sushil Yadav Advocate for the complainant  
Shri Ashutosh Srivastava Advocate for the respondent



**ORDER**

1. A complaint dated 25.05.2018 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 Sh. Rajesh

Kumar against the promoter, Shree Vardhman Infrahome Pvt. Ltd in respect of apartment/unit described below in the project "Shree Vardhman Flora' on account of violation of section 11(4)(a) of the Act ibid.

2. The complaint was filed on 25.05.2018. Notices w. r. t. hearing of the case were issued to the respondent 19.06.2018, 30.10.2018 and 15.11.2018 for making his appearance. Besides this, a penalty of Rs. 5000/- and 10,000 was imposed on 30.10.2018 and on 15.11.2018 for non filing of reply even after service of notice. However despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint.



3. Since, the flat buyers agreement has been executed on 01.08.2012 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
4. The particulars of the complaint are as under: -

- **Nature of the project: Residential Group Housing Colony**
- **DTCP license no: 23 of 2008 dated 11.02.2008**

1.	Name and location of the project	Shree Vardhman Flora, Sector 90, Gurugram
2.	Registered/Unregistered	<b>Registered</b> <b>88 of 2017</b>
3.	Payment plan	Construction linked
4.	Date of flat buyers agreement	01.08.2012
5.	Unit no.	204, tower B1
6.	Area of unit	1875 sq. ft.
7.	Total consideration	Rs 59,88,374/-
8.	Total amount paid by the complainant	Rs 58,89,281/-



9.	Date of construction	14.05.2012
10.	Possession As per clause 14(a) within 36 months from commencement of construction of part tower+ 6months months on receipt of sanction of building plans	14.11.2015
11.	Delay	Approx. 3 years 1 month 27 months
12.	Penalty as per clause 14(b)	Rs 5 per sq. ft. of super area per month of delay

**FACTS OF THE CASE:**

5. That the respondent gave advertisement in various leading newspapers about their forthcoming project named shree Vardhman flora, sector 90 Gurugram promising various advantages like world class amenities and timely completion/execution of project. Relying on the promises and undertakings given by the respondent in the aforesaid advertisements Mr. Surender Kumar, booked an apartment/flat admeasuring 1875 sq. ft and same was purchased by the petitioner in aforesaid project of the respondent for basic sale price of Rs 42,66,093/-



6. The complainant made payment of Rs 58,89,281/- including all taxes to the respondent vide different cheques and RTGS on different dates.
7. That as per flat buyers agreement the respondent had allotted a unit bearing no 204 on 2<sup>nd</sup> floor in tower B1 having super area of 1875 sq. ft. to the complainant. That as per para no 14(a) of the builder buyers agreement the respondent had agreed to deliver the possession of the flat within 36 months from the date of start of construction dated 01.08.2012 with an extended period of six months.
8. 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 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 the stipulated period.

9. That it could be seen that the construction of the block in which the complainant flat was booked with a promise by the respondent to deliver the flat by 01.02.2016 but was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was the extract money from the innocent people fraudulently.
10. That due to this omission on 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 have avoided if the respondent had given possession of the flat on time. That as per clause 14(b) of the flat buyers agreement dated 01.08.2012 it was agreed by the respondent that in case of any delay the respondent shall pay to the complainant a compensation @Rs5 per sq. ft. per month of the super area of





the flat. It is however, pertinent to mention here that a clause of compensation at such a nominal rate 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 26 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 interest whereas the respondent charges 24% per annum to be compounded from the promised date of possession till the flat is actually delivered to the complainant.



11. 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. Thus

the respondent in a pre planned manner defrauded the complainants with his hard earned money huge amount and caused wrongful gain to himself and caused wrongful loss to the complainant.

**ISSUE RAISED BY THE COMPLAINANTS:**

12. The following issue have been raised by the complainant:

- i. Whether or not the respondent has delayed possession of the booked unit?

**RELIEF SOUGHT BY THE COMPLAINANTS:**

13. In view of the facts mentioned the following reliefs have been sought by the complainants:

- i. Direct the respondent 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.
- ii. Direct the respondent to pay 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 to the respondent and to continue



paying such interest till the possession is handed over by the respondent to the complainant.

- iii. Direct the respondent to handover the possession of the respective flat to the complainants.
- iv. Direct to pay a sum of Rs 30,000 cost of litigation.
- v. Direct to pay a cost of Rs 5,00,000 for the harassment and mental agony suffered by the complainant.

**DETERMINATION OF ISSUES:**

14. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issue wise findings are as hereunder:

- i. With respect to the **first issue**, 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 36 months plus grace period of 6 months from the date of approval of building plans. The construction commenced on 14.05.2012. Therefore, the due date of possession shall be computed from 14.05.2012. The



clause regarding the possession of the said unit is reproduced below:

*“14(a) Time of handing over the possession*

*The construction of the flat is likely to be completed within a period of 36 months of commencement of construction of the particular 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 14.11.2015 and the possession has been delayed by 3 years 1 month 27 days till the date of decision. The delay compensation payable by the respondent @5/- per sq. ft. per month of the super area of the unit for the period of delay beyond 36 + 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 others. (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.”*

**FINDINGS OF THE AUTHORITY:**

15. 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.
16. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
17. 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 of the Act and to fulfil its obligations.



18. The complaint was filed on 25.05.2018. Notices w. r. t. hearing of the case were issued to the respondent 19.06.2018, 30.10.2018 and 15.11.2018 for making his appearance. Besides this, a penalty of Rs. 5000/- and 10,000 was imposed on 30.10.2018 and on 15.11.2018 for non filing of reply even after service of notice. A final notice dated 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.01.2019.
19. As per clause 14(a) of the builder buyer agreement dated 01.08.2012 for unit no 204, tower B1 in the project “ Shree Vardhman Flora”, Sector 90, Gurugram possession was to be handed over to the complainant within a period of 36 months from the commencement of start of construction i.e. 14.05.2012 or receipt of sanctioned plans+ grace period of 6 months which comes out to be 14.11.2015. it was a construction linked plan. However the respondent has not delivered the unit in time. Complainant has already [paid Rs 58,89,281/- to the respondent against a total sale consideration of Rs 59,88,374/-



**DECISION AND DIRECTIONS OF THE AUTHORITY:**

20. Thus, the authority exercising power under section 37 of Real Estate (Regulation and Development) Act, 2016 hereby issues directions:

- i. The respondent was duty bound to hand over the possession of the said unit by 14.11.2015 as committed by the respondent.
- ii. The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 14.11.2015 till date as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.
- iii. Thereafter the respondent shall pay monthly interest amounting to till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month
- iv. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order



failing which the complainant is entitled to seek refund  
the paid amount with interest.

21. The order is pronounced.

22. Case file be consigned to the registry.

**(Samir Kumar)**

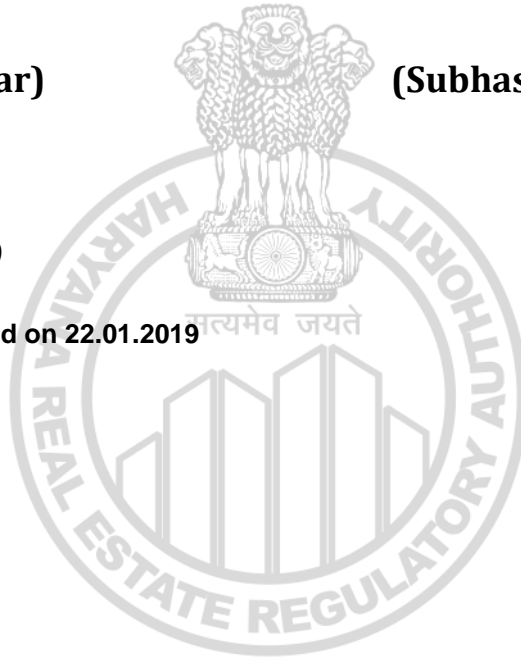
Member

Date:10.01.2019

Judgement uploaded on 22.01.2019

**(Subhash Chander Kush)**

Member



HARERA  
GURUGRAM

