

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	93/2018 Case titled as Mrs. Renu Sehrawat Vs. M/s Shree Vardhman Infrahome Pvt. Ltd.
Complainant	Mrs. Renu Sehrawat
Represented through	Shri R.S.Yadav Advocate for the complainant.
Respondent	M/s Shree Vardhman Infrahome Pvt. Ltd
Respondent Represented through	Shri Bijender Kumar, authorized representative on behalf of the respondent-company
Last date of hearing	29.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

As per clause 14 (a) of the Builder Buyer Agreement dated 18.9.2012 for unit No.B1-403, in project "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 date of commencement of particular tower/block in which the flat of the complainant is located or from the date of approval of building plans which comes out to be **31.3.2016**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.60,92,535/- to the respondent against a total sale consideration of

Rs.63,54,405.50/- As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **31.03.2016** 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 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 10th 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. : 93 of 2018
First date of hearing : 19.4.2018
Date of decision : 10.1.2019

Ms. Renu Sehrawat
R/o: H.No 2061, Sector 2 and 3 Part,
Rohtak-124001, Haryana

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 Ravinder Singh Yadav Advocate for the complainants
Shri Shelly Singhal Advocate for the respondent

ORDER

1. A complaint dated 3.4.2018 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. Renu Sehrawat, against M/s Shree Vardhman Infrahome Pvt Ltd., in respect of apartment/unit described below in the project



‘Shree Vardhman Flora’, on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer’s agreement has been executed on 18.9.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be 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 License no.:** 23 of 2008 dated 11.2.2018

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

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.	Revised completion date as per RERA registration	30.6.2019
5.	Unit no.	B1-403
6.	Unit measuring	1875 sq. ft.
7.	Buyer’s agreement executed on	18.9.2012
8.	Basic sale price as per statement of buyer’s agreement	Rs.63,54,405.50/-
9.	Total amount paid by the complainants till date	Rs.60,92,535/-
10.	Percentage of consideration amount	95%



11.	Payment plan	Construction link plan
12.	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)	31.3.2016 (to be ascertained)
13.	Delay in handing over possession till date	2 years 7 months 29 days (approx.)
14.	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 31.3.2016 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 on 26.4.2018. the case came up for hearing on 19.4.2018, 8.5.2018, 22.5.2018, 30.5.2018, 5.6.2018, 17.7.2018, 30.8.2018, 7.9.2018, 9.10.2018, 13.11.2018, 29.11.2019 and 10.1.2019.



BRIEF FACTS OF THE COMPLAINT

6. That the complainants booked the apartment no B-403 in the project “Shree Vardhman Flora” sector-90, Gurugram. The buyers’ agreement was signed between the parties on 18.9.2012 and the complainants were allotted the apartment vide letter dated 10.1.2012.
7. 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. 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. ISSUES RAISED BY THE COMPLAINANT

- I. Whether the builder should provide a specified date for offer of possession of the flat?
- II. Whether the respondent is liable to pay interest and compensation for delayed possession till date?



10. RELIEF SOUGHT

The complainants are seeking the following reliefs:

- I. To provide the possession of the apartment at the earliest.
- II. To provide compensation with interest for the delay till the date of possession.

RESPONDENT'S REPLY

11. That the buyers' agreement was executed on 18.9.2012 but the possession was not supposed to be delivered by 18.9.2016 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.

12. 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.

13. 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.

14. 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 cannot have retrospective operation and the same is applicable only in respect of agreements executed after the act came into force.
15. 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.
16. 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.



17. 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.
18. 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.
19. 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.



WRITTEN SUBMISSION FILED BY THE COMPLAINANT

20. That the construction had to be complete within 36 months plus 6 months grace period on receipt of building plan. As per clause 3(d) the respondent has mentioned that zoning and building plan of the complex is complete and has been approved by the authority. Therefore, the login period for possession starts from 18.9.2012 and the due date is 31.3.2016.
21. That the respondent is trying to link construction/possession of the apartment with the registration of the project with RERA which are two different things.
22. That section 2(zj) and (zn) of RERA provides definition of “project” and “Real Estate Project” and section 18 provides subsequent relief to the allottees in terms of violation by the promoter. Section 15 and 16 of RERA provides that if promoter fails to give possession of the apartment in accordance with the terms and conditions of sale in terms of section 19(4) of RERA, the rate of interest payable by the promoter to the allottee shall be the state bank of India highest marginal cost of lending rate plus 2%.
23. The complainant has made payment to the promoter of Rs.65,21,652 as on 15.12.2016, pending 5% of the basic to be



paid at the time of possession. The allottee has no balance to be paid as 95% has already been paid and 5% is to be paid on possession. The respondent cannot be allowed to interpret the word “tentative” and cannot delay the project infinite. There is no construction going on and the respondent has received full payment.

24. If there is “force majeure” it should have affected other promoters in the region also. The adjoining project of DLF is completed, OC is received and possession has been offered.

REPORT OF LOCAL COMMISSIONER

25. The authority vide order dated 5.6.2018 appointed a local commissioner Shri Suresh Kumar Verma SDO (retired) PWD, B&R, Chandigarh resident of 421/C/Civil Lines, Gurgaon to visit the spot and verify the status of construction of flat B1/403 and submit report within 10 days along with photographs.
26. The local commissioner submitted its report vide letter dated 9.7.2018 as per which physical progress of the work is only 40%. This construction has been carried out in time span of September 2012 till 13.6.2018.



OBJECTIONS BY RESPONDENT ON THE REPORT OF LOCAL COMMISSIONER

27. That the local commissioner acted irrationally and beyond the scope of his mandate. The report suffers from serious defects and is based on inaccurate details thereby causing huge prejudice to the respondent.
28. The local commissioner failed to bring in actual status of the project before this authority and the respondent has prepared a comparative chart of the construction activities which have been incorrectly recorded in the report in Annexure-A.
29. The local commissioner has failed to understand and appreciate activities such as wall putty, painting, CP fittings and sanitary ware. The commissioner did not visit each and every tower and has given details based on assumptions.
30. The physical progress of the project is not less than 75% as compared to 40% told by the commissioner. The entire report does not give reasons for arriving at the figure of 40%. Also, the photographs submitted by the commissioner were selectively taken and did not depict the actual stage of construction.



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:

31. 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 31.3.2016 and the possession has been delayed by 2 years 7 months 29 days till date.

31. 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%.

32. In the proceedings dated 30.8.2018, the respondent has made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation and Development) Act, 2016.

FINDINGS OF THE AUTHORITY

32. 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.

33. As the possession of the apartment was to be delivered by 31.3.2016, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a)
34. In the present complaint, the complainants are seeking possession of the apartment and delay interest on the money paid till date i.e. 60,92,535/- along with interest from the due date of allotment till the offer of possession.
35. 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 complainants, at the prescribed rate, for every month of delay till the handing over of possession.

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.



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) As per clause 14 (a) of the builder buyer agreement dated 18.9.2012 for unit no.B1-403, in project “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 date of commencement of particular tower/block in which the flat of the complainant is located or from the date of approval of building plans which comes out to be **31.3.2016**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.60,92,535/- to the respondent against a total sale consideration of Rs.63,54,405.50/- As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75%



per annum w.e.f **31.03.2016** as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over possession failing which the complainant is entitled to refund the amount.

- (ii) 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.

37. The order is pronounced.

38. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 10.1.2019

Judgement uploaded on 29.01.2019

