



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

**Complaint No. : 472/2021
Date of Decision : 19.03.2021**

**Sanjay Goel
R/o Flat No.A-6, Type VI Quarters,
Sector D-II, Delhi Govt Officers Flat,
Vasant Kung, New Delhi-110070**

Complainant

V/s

**M/s Shree Vardhman Infraheights Pvt Ltd.
302, 3rd Floor, Indraprakash Building
21, Barakhamba Road,
New Delhi-110001**

Respondent

**Complaint under Section 31
of the Real Estate(Regulation
and Development) Act, 2016**

Argued by:

**For Complainant:
For Respondent:**

**Ms Surbhi Garg,
Shri Yogender Bhaskar, Advocate**

ORDER

This is a complaint under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule

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29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) filed by Shri Sanjay Goel, seeking refund of Rs.62,00,823/- deposited with the respondent-builder for booking of unit bearing No.C-802 in its project known by the name of "Shree Vardhman Victoria" situated in Sector 70,Gurugram on account of violation of obligations of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"Shree Vardhman Victoria" Sector 70, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	C-802/H-903
V.	Tower No. / Block No.	
VI.	Size of the unit	1300 sq ft.
VII.	Size of the unit	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Residential
X.	Date of booking(original)	10.07.2014/05.09.2019
XI.	Date of Allotment(original)	
XII.	Date of execution of BBA (copy of BBA enclosed)	02.09.2019

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XIII	Due date of possession as per BBA	
XIV	Delay in handing over possession till date	More than six years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said FBA	
Payment details		
XVI	Total sale consideration	65,82,613/-
XVII	Total amount paid by the complainant	Rs. 62,00,823/-

2. Brief facts of the case can be detailed as under.

The project known by the name of 'Shree Vardhman Victoria' situated in Sector 70, Gurugram was to be developed by the respondent. The complainant coming to know about the same booked a unit in it as detailed above by making payment of Rs.5,15,450/- on 04.07.2014. It is the case of the complainant that on the basis of booking, he started making various amounts and paid a total sum of Rs.62,00,823/- by the year 2018. The possession of the allotted unit was to be delivered within a period of three years. But neither that project was complete nor the respondent offered its possession to the complainant. In the months of August/September 2019, he visited the site but the respondent was unable to offer possession of the allotted unit. It offered another unit bearing No.H-903 having a super area of 1300 sq. ft. vide P/3 and promised to deliver its possession by October, 2019. Believing the version of the respondent to be correct, it changed the allotment and which led to execution of new agreement of sale on 02.09.2019 as Annexure P/4. A number of visits were made at the site as

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well as to the office of respondent to know about the stage and extent of construction but without any positive result. Even a complaint to the higher authorities was also made having no response. So, keeping all these facts in mind, the complainant withdrew from the project and is seeking refund of Rs.62,00,853/- besides interest and compensation.

3. Despite giving time, the respondent failed to file any response which led to striking off its defence for non-payment of costs.

4. I have heard the learned counsel for the parties and have also gone through the case file.

5. A perusal of various documents placed on the file shows that initially, the complainant booked a unit with the respondent in its project known as 'Shree Vardhman Victoria' situated in Sector 70, Gurugram. In September, 2014 against a total sale consideration of Rs.65,82,613/- ^{he} and paid total sum of Rs.62,00,853/- upto 18.04.2018 vide Annexure P/1 and P/2 respectively. The possession of the allotted unit was to be delivered within three years from the date of booking. However, till July, 2018, there was no progress of the project at the site and which led the complainant to change of allotment from Unit No.C-802 to H-903 in the above mentioned project vide letter dated 05.09.2019 as Annexure P/3, It also led to execution of an agreement of sale Annexure P/4. The total sale consideration received earlier was adjusted against that new booking as is evident from the perusal of Annexure P/4 at page 10. The total sale consideration to be paid by the complainant against the changed unit was Rs.65,82,613/-. It is evident from the perusal of Clause 7.1 of that document that the possession of the allotted unit was to be handed over within 12 months from the date of execution of Builder Buyer Agreement i.e. on 22.08.2020 with a grace period of six months. Though the photograph Annexure P/5 show the stage and pace of

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construction at the spot but there is no document on record to show as to what is the stage and extent of construction of the project at the site. Though as per clause 7.5 of that document, an option has been given to the allottee to withdraw from the project but after forfeiting earnest money alongwith component of delayed payment, brokerage/commission for booking by the promoter. The original allotment was made to the complainant in September, 2014 and he has waited for more than six years to see the project to be completed and offer of possession of the allotted unit to him. So, that unilateral clause about the cancellation by the allottee debar him from seeking refund is not binding in view of the ratio of law laid down in cases of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021. In **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors**, the Hon'ble Supreme Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him alongwith compensation. The complainant had been waiting for completion of the project in which allotted unit is located for more than six years. He cannot be asked to wait indefinitely to seek possession of his dream house. So, in such a situation, he is held entitled to the refund of the amount deposited with the respondent besides interest and compensation.

7. Thus, in view of my discussion above, the complaint filed by the complainant is hereby ordered to be accepted. Consequently, the following directions are hereby ordered to be issued to

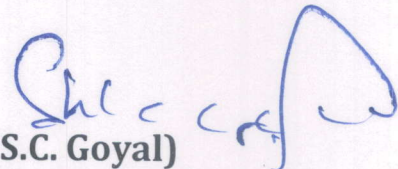
- i) The respondent is directed to refund a sum of Rs.62,00,823/- to the complainant with interest @ 9.30% p.a. till the whole

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amount is paid;
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- ii) The respondent is also directed to a sum of Rs.25,000/- as compensation inclusive of litigation charges to the complainant;
- iii) The above mentioned directions be complied with by the respondent within a period of 90 days and failing legal consequences would.

8. File be consigned to the Registry.

19.03.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram 19-3-2021