

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 10.01.2019
Complaint No.	379/2018 Case Titled As Ms. Kalpana Vs M/s Shree Vardhman Infraheights Private Limited
Complainant	Ms. Kalpana
Represented through	Shri R.S.Yadav Advocate for the complainant
Respondent	M/s Shree Vardhman Infraheights Private Limited
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 5.6.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 6.7.2018, 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 25.1.2012 for unit No.302, tower-B4, in project "Shree Vardhman Flora" Sector-82, 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. 31.5.2012 + 6 months grace period which comes out to be **31.11.2015**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.60,25,906/- to the respondent against a total sale consideration of Rs.58,75,555/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **31.11.2015**, 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. : 379 of 2018**  
**Date of First hearing : 02.08.2018**  
**Date of decision : 10.01.2019**

Mrs. Kalpana  
R/o: H.No. 222, Type-4, Nanakpura,  
Chanakaya Puri, New Delhi-110021

**Complainant**

Versus

M/s Shree Vardhman Infrahome Pvt. Ltd.  
Office at: 301, 3<sup>rd</sup> Floor, Indraprakash  
Building 21- Barakhamba Road, New Delhi-  
110001

**Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri R.S. Yadav Advocate for the complainant  
Shri Ashutosh Srivastava Advocate for the respondent



**EX-PARTE ORDER**

1. A complaint dated 05.06.2018 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 Mrs.Kalpana, against the promoter M/s Shree Vardhman Infrahome Pvt. Ltd, in respect of said 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 agreement has been executed on 25.01.2012, 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 are as under: -

1.	Name and location of the project	"Shree Vardhman Flora" in Sector 82, Gurugram
2.	Nature of real estate project	Group housing Colony
3.	Project area	10.881 acres
4.	Unit no.	302, tower no. B4
5.	Unit area admeasuring	1875 sq.ft.
6.	Registered/un registered	<b>registered</b>
7.	RERA Registration no.	<b>88 of 2017</b>



8.	RERA Revised date	<b>30.06.2019</b>
9.	DTCP license	23 of 2008 dated 11.02.2008
10.	Date of agreement	<b>25.01.2012</b>
11.	Total sales consideration	Rs. 58,75,555/- As per customer ledger dated 01.05.2018
12.	Total amount paid by the complainant	Rs. 60,33,491 /- <b>As per statement of account, Annexure B, page 23</b>
13.	Payment plan	<b>Construction lined payment plan</b>
14.	Date of delivery of possession <b>Clause 14(a)</b> - 36 months from commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months	<b>30.11.2015</b> <b>Date of commencement of construction-</b> <b>31.05.2012</b> <b>As per customer ledger dated 01.05.2018</b>
15.	Delay of number of months/ years	3 years 1 month 11 days
16.	Penalty clause as per office space buyer agreement dated 01.09.2010	<b>Clause 14(b)- Rs. 5/- per sq. ft. per month for such period of delay.</b>



3. The details provided above have been checked on the basis of the record available in the case file. An agreement dated 25.01.2012 is placed on record for the aforesaid unit according to which the possession of the same was to be delivered by 30.11.2015. Neither the respondent has delivered

the possession of the said until 30.11.2015 nor it has paid any compensation @ Rs.5/- per sq.ft. per month of the area of the said unit for the period of such delay as per clause 14(b) of the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

4. 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 02.08.2018 and 05.09.2018. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent.

#### **Facts of the complaint**

5. Briefly stated the facts of the complaint, the complainant submitted that an agreement was executed between the Mr. Anil Malik and respondents on 25.07.2012. Mr. Anil Malik original allottee transferred his all rights and liabilities under an agreement to Mr. Vinayak Narula on 22.10.2012 by way of endorsement of the buyer's agreement arrived with Mr. Anil Malik. Mr. Vinayak Narula has transferred his rights to Mrs. Kalpana as per customer ledger of transaction statement of



M/s. Shree Vardhaman Infrahome Pvt. Ltd. dated 01.05.2018, where Mrs. Kalpana has gained absolute ownership right vide authorization letter dated 20.05.2018.

6. The complainant submitted that she has made payment of Rs. 60,33,491/- pending 5% of the basic to be paid at the time of possession.
7. As per clause 3(d) of the agreement the respondent mentioned that the zoning and building plan of the complex has been approved by the competent authority.
8. The promoter has violated the terms of section 4(d) of the RERA Act, 2016 vide which the promoter was bound to maintain separate account and keep the 70% of the money realized from the complainant to cover the cost of the construction etc. as per section 11(1) of RERA Act, 2016 the promoter is bound to provide inter alia the quarterly information of upto date status of the project and as per section 11(4) of the Act, the promoter will be responsible for all obligation, responsibilities and functions made under the provisions of the Act.
9. The complainant submitted that visited several times to the company and at the site construction and lodged protest





against the stopping of the construction at site in arbitrary manner and failed to give the possession of the apartment on time.

#### 10. Issues raised by the complainant

The relevant issue as culled out from the complaint are as follows:

- I. Whether the respondent is liable to refund the entire principal amount of Rs. 60,33,491 /- along with interest at such rate as prescribed in RERA Act, 2016?

#### 11. Relief sought

- I. Direct the respondent to refund the amount of Rs. 60,33,491 /- along with interest at such rate as prescribed in RERA Act, 2016.

#### Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

12. With respect to the **first issue** raised by the complainant, as per clause 14(a) of the agreement dated 25.01.2012, the





possession was stipulated to be handed over within 36 months plus 6 months from date of commencement of construction of the particular tower in which the flat is located i.e. by 31.11.2015. Thus, the respondent neither handed over the possession on or before the said due date, nor paid the compensation stipulated under clause 14(b) of the agreement, thereby committing a breach of the said agreement. However, refund cannot be allowed at this stage. The complainant is entitled to delayed possession interest @ 10.75% p.a. from the due date of possession till the actual handing over of possession.

13. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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.

14. The complainant reserves her right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



### Findings and directions of the authority

15. **Jurisdiction of the authority-** The project “Shree Vardhman Flora” is located in Sector-90 , Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The authority has complete jurisdiction to decide the complaint regarding 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. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs.



5,000/-. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000/-.

17. Such notices were issued to the respondent on 06.07.2018, 30.10.2018 ,15.11.2018 and final notice dated 31.12.2018 by way of email.

18. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority hereby proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainant in its pleading.

19. The ex-parte final submissions have been perused at length. Details regarding the status of the project have not been supported by relevant documents, as already stated above. The agreement has been executed on 25.01.2012. However, the respondent has not delivered the unit in time.

20. The complainant has already paid Rs. 60,25,906/- to the respondent against a total sale consideration Rs. 58,75,555/-. The complainant is entitled for delayed possession charges at prescribed rate of interest as per the provisions of section 18(1) of the RERA Act, 2016



### Decision and Direction of the Authority

21. 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 to the complainant for delayed possession charges at prescribed rate of interest of 10.75% per annum w.e.f. 31.11.2015 till the handing over of the possession.
- (ii) The respondent is directed to pay interest accrued so far to the complainant on account of delay in handing over of possession to the complainant within 90 days from the date of order and thereafter monthly payment of interest till handing over the possession be paid before 10<sup>th</sup> of subsequent month.
- (iii) In case, the respondent fails to handover the possession to the complainant, in due course, then the complainant is entitled seek refund of deposited amount.



22. The complainant is disposed off accordingly.
23. The order is pronounced.
24. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Date: 10.01.2019

**Judgement uploaded on 25.02.2019**



**HARERA**  
GURUGRAM

