

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 29.01.2019
Complaint No.	499/2018 Case titled as Anil Kumar versus M/s Shree Vardhman Build Prop. Pvt. Ltd.
Complainant	Anil Kumar
Represented through	Shri Jai Kishan, Advocate for the complainant.
Respondent	M/s Shree Vardhman Build Prop. Pvt. Ltd.
Respondent Represented through	Shri Rajesh Kumar Advocate for the respondent.
Last date of hearing	9.1.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Case came up for hearing. On the previous date of hearing i.e.9.1.2019, it was directed as under:-

“respondent is directed to file an affidavit regarding applicability of S.C. judgment on the land in question of project on 29.1.2019.”

The respondent filed an affidavit that their land is under the purview of CBI enquiry alongwith a copy of Apex court Judgment dated November 1, 2017”.

In view of the affidavit submitted, the matter is closed. However, the complainant is entitled for delayed possession charges @ 10.75% per annum but the same shall be subject to final out come of the CBI enquiry.

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

Samir Kumar
(Member)
29.1.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 499 of 2018
**Date of First
Hearing : 28.08.2018**
Date of Decision : 29.01.2019

Mr. Anil Kumar
R/o H. No. V.P.O Milakpur, Tehsil Bawani
Khera Distt., Bhiwani, Haryana-127021

Complainant

Versus

M/s Shree Vardhman Build Prop. Pvt. Ltd.,
Through its directors/authorised
representative,
Regd. office: Shree Vardhman Mantra, Sector-
67, Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Jai Kishan Advocate for the complainant
Shri Rajesh Kumar Advocate for the respondent



ORDER

1. A complaint dated 03.07.2018 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. Anil Kumar,

against the promoter M/s. Shree Vardhman Build Prop. Ltd, on account of violation of clause 9(a) of flat buyer's agreement executed on 10.11.2011, in respect of flat described as below for not handing over the possession on due date which is an obligation under section 11 (4) (a) of the Act ibid.

2. Since, the flat buyer's agreement has been executed on 10.11.2011 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
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Shree Vardhman Mantra", Sector-67, Gurugram
2.	Unit no.	E/1303, 13 th floor, tower no. 'E'
3.	Registered/ un registered	un registered
4.	Date of flat buyer agreement	10.11.2011
5.	Project area	11.262 acres
6.	Nature of the project	Group Housing Colony



7.	DTCP License no.	69 of 2010 dated 11.09.2010
8.	Payment Plan	Time linked payment plan
9.	Total area admeasuring	48 sq.mtr (520 sq.ft)
10.	Basic Sale price consideration as per the agreement under Clause 2(a)	Rs. 16,00,000/- (excluding tax)
11.	Total amount paid by the complainant As per receipts available in the case file	Rs 18,24,908. /-
12.	Date of delivery of possession from the date of execution of flat agreement As per clause 9(a)- 36 months from the date of start of foundation of the particular tower + 6 months grace period	10.05.2015 Cannot be ascertained since the date of start of foundation is not given, thus calculated from the date of execution of the agreement
13.	Delay for number of months/ years upto date 06.12.2018	3 years 7 months approx..
14.	Penalty clause as per flat buyer agreement dated 10.11.2011	Clause 9(c) of BBA i.e. Rs. 53.80 per sq meter or Rs.5/- per sq.ft. per



		month of the carpet area for the period of delay
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4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. The promoter has not fulfilled his committed liability by not giving possession as per the terms of the builder buyer agreement. Neither paid any compensation i.e. @ Rs. 53.60/- sq meter or Rs.5/- per sq. ft. per month for the period of delay as per builder buyer agreement dated 10.11.2011.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 28.08.2018. The case came up for hearing on 28.08.2018, 26.09.2018, 06.12.2018, 09.01.2019 and 29.01.2019. The reply was filed by the respondent on 26.09.2018.



Facts of the complaint

6. Briefly stating the facts of the complaint, the developer M/s Shree Vardhman Build Prop. Pvt. Ltd. came up with a group housing project "Shree Vardhman Mantra" in sector-67 Gurugram under "Affordable housing" scheme of the

government wherein the complainant applied for such apartment and paid sum of Rs. 1,64,120/- as booking amount dated 24.03.2011 and the developer M/s Shree Vardhman Build Prop. Pvt. Ltd. in said project.

7. The complainant took housing loan for above flat and paid all instalments of the cost of flat to the developer in-time without default. The financier also paid Rs. 9,62,472/- to the developer out of loan amount of the complainant in three instalments.
8. The developer did not construct the flat within assured period of 36 months. The complainant visited the site to inspect the stage of construction but he was not allowed to inspect the flat. On the other hand, developer levied sum of Rs. 1,00,000/- on the complainant for alleged delayed payment whilst there was no delay in payment as the payment was linked to construction.
9. The developer insisted on above illegal payment threatening to cancel the allotment of flat wherein the complainant, having no option and seeing forfeiture of his money, paid Rs. 1,00,000/- plus Rs. 23,072/- on 12.11.2012 raising total payment to Rs. 18,24,908/-.
10. The developer, vide letter no SVBPL/16907 dated 04.09.2015, further demanded Rs. 2,26,947/- and still further demanded



sum of Rs. 1,58,472/- and interest of Rs. 1,40,842/- vide letter No SVBPL/2017- 18/20431 dated 08.09.2017.

11. When repeated requests of the complainant with the developer to deliver actual vacant physical possession of the flat complete in all respects in “*ready to live*” condition as per the terms of agreement did not yield, complainant filed complaint under section 12 of Consumer Protection Act but it was withdrawn on technical grounds with liberty to file afresh before this hon’ble authority.

12. The developer is recovering money from innocent buyers under threats as stated above and diverts so gathered funds in its other projects and does not construct the flats for which the payments received by the developer and the same are made by honest home buyers. Moreover, the developer has very cunningly inserted a clause in the agreement to pay meagre amount of Rs. 5/- per sq. ft. on delayed delivery of possession of the flat whereas the developer charges interest @ 24% p.a. on any delayed payment from the buyers.

13. Issues raised by the complainant:

- I. Whether the developer is not bound, by the terms of agreement, to deliver actual vacant physical possession



of the allotted flat to the complainant within stipulated period of 36 months from the date of allotment?

- II. Whether the complainant is entitled to charge interest @ 24% p.a. on the amount paid by him to the respondent for the period of delay beyond stipulated period of 36 months in delivering the actual vacant physical possession of the flat?

14. Relief sought

- I. Direct to deliver actual vacant physical possession of flat in the project "Vardhman Mantra" situated in Sector-67, Gurugram to the complainant.
- II. To refund the amount of Rs. 1,00,000/- plus Rs. 23,072/- to the complainant along with interest @ 24% p.a. from the date of payment by complainant till actual date of refund which was forcibly charged from him in guise of delayed payment and interest.
- III. To pay interest @ 24% p.a. to the complainant on the amount paid by him i.e. Rs. 18,24,908/- towards cost of allotted flat for the period of delay in delivering the possession till actual date of delivery of possession.



- IV. To pay a sum of Rs. 5,00,000/- to the complainant as compensation for harassing, agonizing and causing hardship
- V. To pay prospective rent to the complainant to the tune of Rs.15,000/- p.m. for the period of delay beyond assured and stipulated date of delivery of possession of the flat.

Respondent's reply

15. The respondent submitted that the complainant has deliberately concealed the fact before the hon'ble authority to create a false impression that the complainant has made all the payments and the answering respondent is at fault where it is the complainant who has failed to abide by the terms and conditions of the flat buyer's agreement.

16. The respondent submitted that the respondent never avoided execution of the agreement and the complainant never requested the answering respondent for execution of the agreement. The complainant authorized Mr. V.K. Sharma to collect the copy of the agreement who collected the same from the office of the respondent and thereafter the complainant signed and submitted the same to the respondent without any



objection and to protest to any of the terms and conditions mentioned therein.

17. The respondent denied that the complainant has paid all the instalments of the cost of the flat to the answering respondent in time without default. The complainant was under an obligation to make timely payments of the instalments, however he did not do so despite various requests and reminders of the answering respondent, which inter-alia included demand letters dated 05.04.2011, 11.04.2011, 22.07.2011, 27.09.2011, 02.12.2011, 01.03.2012, 01.10.2012, 10.10.2012, 06.05.2013, 05.07.2013, 13.11.2014, 04.09.2015 etc.

18. The respondent submitted that the allegations made are inconsistent and in direct conflict with clause 9(a) of the flat buyer's agreement which provide a time frame of 36+6 months from the date of laying of foundation of the particular tower and that too subject to fulfilment of other conditions mentioned therein. The complainant visited the site to inspect the stage of construction and no allottee is ever denied its right to inspect the construction site and the allegations made in this regard are baseless and without any substance.



19. The respondent denied that the respondent forced the complainant to pay interest under the threat of forfeiture as alleged. The conduct of the complainant in not making the timely payments of the demands raised by the respondent, forced the respondent to serve a reminder letter 02.12.2011 and a final reminder dated 10.10.2012 upon the complainant calling upon him to remit the outstanding dues as the defaults made by the complainant hampered the progress of the project in whole.

20. The respondent further submitted that the tentative period as mentioned in the agreement for completion of the construction was to commence from the date of laying foundation of the tower in question. The demands in accordance with the payment plan opted by the complainant and no demand was ever raised which was in conflict with the terms and conditions of the flat buyer agreement.

21. The respondent submitted that all the allottees have opted to purchase their respective out of their own free will and without any pressure and influence and hence it is wrong to submit that the respondent is recovering money from innocent buyers under threats, the project has been completed and awaiting for the occupancy certificate.



Determination of issues

22. In regard to the **first issue** raised by the complainant, the promoters has violated the agreement by not giving the possession on the due date as per the agreement i.e 10.05.2015, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

23. In regard to the **second issue** raised by the complainants, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate , for every month of delay till the handing over of possession.

24. 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.”

25. 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.”

Findings of the authority

26. The respondent admitted the fact that the project Shree Vardhman Mantra is situated in Sector-67, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. 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 Arun Kumar Gupta, 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.

27. **Jurisdiction of the authority-** 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 complainants at a later stage.

28. The authority is of the view that on the previous date of hearing it was directed that the respondent is directed to file an affidavit regarding applicability of SC judgement on the land in question of project on 29.01.2019. The respondent filed an affidavit that their land is under the purview of CBI enquiry along with a copy of apex court judgement dated November , 2017. In view of the affidavit submitted, the matter is closed.

Decision and directions of the authority

29. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent is directed to give the complainant for delayed possession charges @10.75% per annum but the same will be subject to final out come of the CBI enquiry.



30. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

31. The complaint is disposed of accordingly.
32. The order is pronounced.
33. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.01.2019

Judgement uploaded on 25.02.2019

HARERA
GURUGRAM

