

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 26.02.2019
Complaint No.	896/2018 Case Titled As Devinder Bhutani V/S Shree Vardhaman Infra Homes Pvt Ltd
Complainant	Devinder Bhutani
Represented through	Shri Anand Advocate for the complainant
Respondent	M/S Shree Vardhaman Infra Homes Pvt Ltd
Respondent Represented through	None for the respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S. L. Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

Complaint was filed on 10.9.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 4.10.2018, 17.10.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 17.10.2018 and on 29.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte

against the respondent and to decide the matter on merits by taking into account legal/factual propositions, as raised, by the complainant in his complaint.

A final notice dated 14.2.2019 by way of email was sent to both the parties to appear before the authority on 26.02.2019.

Brief facts of the matter are as under :-

As per clause 14(a) of the Builder Buyer Agreement dated 28.11.2012 for unit No. 503, 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 date of commencement of construction i.e. 14.05.2012 + 6 months grace period which comes out to be 14.11.2015. However, the respondent has not delivered the unit in time. It was a construction linked plan. Complainant has already paid Rs.59,84,406/- to the respondent against a total sale consideration of Rs. 63,12,011/-. 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 offer of possession.

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 offer of possession shall be paid before 10th of subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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

Samir Kumar
(Member)
26.2.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 896 of 2018
First date of hearing: 26.02.2019.
Date of decision : 26.02.2019.

Shri Devinder Kumar Bhutani, s/o Late Shri
Ram Lal Bhutani.
R/o. 468/27, Gali no. 7, Madanpuri,
Gurugram, Haryana.

Complainant

Versus

1. M/s. Shree Vardhman Infrahomes P. Ltd.
(through its M.D.)
 2. Shri Sandeep Jain, M.D.
 3. Shri Sachin Jain, Director
- Regd. Office:** - 301, III floor, Indraprakash
Building, 21, Barakhamba Road,
New Delhi - 110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Anand Advocate for the complainant
None for the respondent Proceeded ex parte on 26.02.2019

ORDER

1. A complaint dated 10.09.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Sh. Devinder against the promoters M/s. Shree Vardhman Infrahomes Private Limited through its M.D. and Director, Shri Sandeep



Jain and Shri Sachin Jainin respect of flat no. 503, tower B1 admeasuring 1875 sq. ft. of the project 'shree vardhman flora', located at sector 90, Gurugram, on account of violation clause 14 (a) of the flat buyer's agreement dated 28.11.2012 by not delivering the possession of the flat on due date i.e. 14.11.2015 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer's agreement for the subject flat was executed on 28.11.2012 prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application for non-compliance of obligations on the part of the respondent/promoter under section 34(f) of the Act *ibid*.

3. The particulars of the complaint case are as under: -

1.	Name and location of the project	Shree vardhman flora, sector 90, Gurugram.
2.	Nature of real estate project	Group housing colony
3.	Total area of the project	10.881 acres
4.	DTCP license no.	23 of 2008 dated 11.02.2008
5.	RERA registered/unregistered.	Registered vide no. 88 of 2017
6.	Allotted flat no.	503, tower B1
7.	Unit admeasuring super area	1875 sq. ft.
8.	Payment plan	Construction linked payment plan (Pg.58 of the complaint)



9.	Date of execution of flat buyer's agreement	28.11.2012(AnnxC-6)
10.	Total consideration as per statement of account (Pg.58)	Rs. 63,12,011.63/-(AnnxC-7)
11.	Total amount paid by the complainant till date	Rs.59,84,406.68/-(Pg.58 of the complaint)
12.	Percentage of consideration amount	95 %
13.	Due date of delivery of possession as per clause 14 (a) of the flat buyer's agreement dated 28.11.2012 (36 months + 6 months' grace period from the date of commencement of construction) Note:- as per statement of accounts construction was commenced on 14.05.2012	14.11.2015
14.	Delay in handing over possession till 26.02.2019	4 years and 3 months approx.
15.	Penalty clause as per FBA dated 28.11.2012(Pg.39)	Clause 14(b) – Rs. 5/- per sq. ft. per month of the super area of the flat
16.	Revised date of completion of project as per RERA certificate	30.06.2019

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An agreement dated 28.11.2012 is available on record for the subject flat/unit no. B1-503, according to which the possession of the same was to be delivered by 14.11.2015, in terms of clause 14(a) of the agreement. The respondent has failed to deliver the possession till date which is in violation of section 11(4)(a) of the Act *ibid*.



5. Taking cognizance of the complaint, the authority has issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor file their reply to the complaint therefore the case is being proceeded exparte against the respondent.

Facts of the case: -

6. Briefly stated facts relevant for the disposal of the present complaint are that on the basis of the representations made by the respondent, the complainant has booked a flat in the year 2012 in the respondent's upcoming group housing residential project, namely 'shree vardhman flora', located at sector - 90, Gurugram.

7. Pursuant to aforesaid booking of the complainants, respondent allotted flat no. 503 in tower B1 in favour of complainant. On 28.11.2012, flat buyer's agreement for the allotted flat was executed between the parties. The total consideration of the flat was fixed at Rs. 63,12,011/- (including service tax) as against which the complainants have made a total payment of Rs. 59,84,406.88/- under construction linked payment plan on various dates. As per



clause 14 (a) of the agreement dated 28.11.2012, respondent was under obligation to complete the construction and deliver the possession within a period of 36 months plus 6 months' grace period from the date of commencement of construction.

8. It was alleged by the complainant that the respondent has failed to complete the construction and deliver the possession till date. In addition to it, the respondent has claimed Rs. 1 lakh towards open car parking and also Rs. 3,75,000/- towards installation of firefighting equipments, electricity meter, security deposit, etc. which was neither purchased nor installed by the respondent till date.
9. Being aggrieved by the aforesaid conduct of the respondent, the complainant was constrained to file the present complaint before this authority.

Issues to be decided:-

- 1. Whether the respondent has failed to perform upon the agreement dated 28.11.2012 and could not handover the possession of the flat within stipulated time period of 36 months + 6 months as per the terms of agreement entered into between the parties?**



2. Whether there are funds diversion from the project money received from the homebuyers since the respondent has already realized more than 96% of the cost from the home buyer in contrast there is only 40% -45% or maximum of 50% of the work is done. Where the rest of the funds received from home buyer have gone?

3. Whether the respondent is liable to pay interest on the amount remitted by the complainant from July, 2011 till possession @ 24% p.a. compounded quarterly as per the provisions of the Real Estate (Regulation and Development) Act, 2016?

4. Whether the open car parking forms part of common area?

5. Whether the quality of construction is substandard and not in accordance with the provisions of flat buyer's agreement?



Reliefs sought: -

The complainant is seeking for the following reliefs: -

- i. Direct the respondent to deliver the project in time bound manner by providing new date of delivery,

backed with the bank guarantee of 10 cost of the project and such other adequate measures which the authority deems fit.

- ii. Direct the respondent to pay interest @ 24% p.a. as per the provisions of RERA Act under section 2(za)
- iii. Direct the respondent to refund Rs. 1 lakh as charged by the respondent on account of open car parking, Rs. 75,000/- for club membership and Rs. 2,60,000/- towards EEC, FFC, etc. alongwith interest @ 24% p.a.

10. The complaint was filed on 10.09.2018. Notices with respect to the hearing of the case were issued to the respondent on 04.10.2018; 17.10.2018 and 29.11.2018 for making the appearance. Besides this a penalty of Rs. 5,000/- and Rs. 10,000/- were imposed on 17.10.2018 and on 29.11.2018 respectively for non-filing of reply. However, despite due and proper service of notices, the respondent did not come present 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 a count legal/factual propositions as raised by the complainants in their complaint.

Determination of issues: -

11.As regards **issue no. 1 and 3** raised by the complainant, as per clause 14(a) of the flat buyer agreement dated 28.11.2012, possession of the flat was to be delivered within a period of 36 months + 6 months' grace period from the commencement of construction. As per statement of accounts, the construction was commenced on 14.05.2012. Hence, the due date of delivery of possession on calculation comes out to be 14.11.2015. But the respondent has failed to deliver the possession till date which is in violation of section 11(4)(a) of the Act *ibid*, and therefore, the respondent is liable to pay delayed possession charges at the prescribed rate of interest @ 10.75% p.a. as per the provision of section 18(1) of the Act.



12.As regards **issue no. 2** raised by the complainant, the complainant has failed to adduce any evidence in support to prove that the respondent has diverted funds from the

project money received from the homebuyers since the respondent has already realized more than 96% of the cost from the home buyer in contrast there is only 40% -45% or maximum of 50% of the work is done. Hence, this issue cannot be decided for the want of documentary evidence in support.

13.As regards **issue no. 4** raised by the complainant, as per the definition of 'common area' under section 2(n)(iii) of the Real Estate (Regulation and Development) Act, 2016, open car parking area forms part of the common area and thus the respondent is not entitled to charge any additional amount for the common area.

14.As regards **issue no. 5** raised by the complainant, there is documentary evidence has been filed by the complainant in support of his allegation regarding sub-standard quality of construction.



Findings of the authority -

15.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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

16. A final notice dated 14.2.2019 by way of email was sent to both the parties to appear before the authority on 26.02.2019.

17. The matter with respect to delivery of possession was thrashed out in detail. It has been brought on record that revised date of delivery of possession is 30.06.2019 as per the RERA registration certificate no. 88 of 2017 instead of 14.11.2015 as per terms of the agreement dated 28.11.2012 which has been acceded to by both the parties. The project stands delayed, as such buyer/complainants are entitled for



delayed possession charges till actual delivery of possession at the prescribed rate of interest i.e. 10.75% per annum w.e.f. 14.11.2015 (due date of delivery of possession) as agreed by both the parties. The revised date of delivery of possession is 30.06.2019. However, if the builder fails to deliver the possession on due revised date, in that case, buyer is entitled to withdraw from the project and seek refund. Respondent is also entitled for interest for delayed payments on the part of complainant.

Decision and directions of the authority:-

17. 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 respondents: -

- i. The respondent is directed to pay delayed possession charges till actual offer of possession at the prescribed rate of interest i.e. 10.75% per annum w.e.f. **14.11.2015** (due date of delivery of possession) till actual handing over of possession failing which the



complainants are entitled to seek refund of their paid amount.

- ii. The arrears of interest accrued so far from due date of delivery of possession i.e. 14.11.2015 till 26.02.2019 (date of order) shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

18. The order is pronounced.

19. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:

Judgement uploaded on 11.03.2019

