

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

Complaint no. : 1157 of 2018
Date of First hearing : 28.02.2019
Date of decision : 28.02.2019

Smt. Minto Yadav
R/o U-73/31, DLF Phase-III,
Gurugram-122002

...Complainant

Versus

M/s Shree Vardhman Infraheights (P) Ltd.
Office at: 302, 3rd Floor, Indraprakash, 21,
Barakhamba Road, New Delhi-110017

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Rajat Sahni Advocate for the complainant
None for the respondent Advocate for the respondent

EX-PARTE ORDER

1. A complaint dated 17.10.2018 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 Smt. Minto



Yadav against the promoter M/s Shree Vardhman Infrastructure Infraheights (P) Ltd. in respect of unit described below in the project 'Shree Vardhman Victoria', on account of violation of section 11(4)(a) of the Act ibid.

2. Since the flat buyer's agreement has been executed on 25.06.2013, 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 Victoria" in Sector 70, Gurugram
2.	Project area	10.9687 acres
3.	Nature of project	Group housing colony
4.	Unit no.	H-1003, tower 'H'
5.	Unit area	1300 sq. ft.
6.	Registered/not registered	Registered (70 of 2017)
7.	Revised date of completion as per RERA registration certificate	31.12.2020
8.	DTCP license	103 of 2010 dated 30.11.2010



9.	Date of booking	22.05.2012
10.	Date of allotment letter	25.12.2012
11.	Date of flat buyer's agreement	25.06.2013
12.	Total consideration	BSP- Rs.71,37,000/- (as per flat buyer's agreement)
13.	Total amount paid by the complainant	Rs. 15,28,103/- (as per receipts attached with the paper book)
14.	Payment plan	Construction linked plan
15.	Date of delivery of possession	25.04.2017 Clause 14(a)- 40 months from commencement of construction of tower/block in which flat is located + 6 months grace period Note: No statement of account has been attached in order to ascertain the date of commencement of construction. Therefore, the due date is calculated from the date of agreement
16.	Delay of number of months/ years up to 28.02.2019	1 year 10 months (approx.)
17.	Penalty clause as per flat buyer's agreement dated 25.06.2013	Clause 14(b)- Rs. 107.64/- per sq. mtr. Or Rs.10/- per sq. ft. per month for the period of delay



4. The details provided above have been checked on the basis of the record available in the case file. A flat buyer's agreement dated 25.06.2013 is available on record, according to which the possession of the same was to be delivered by 25.04.2017. Neither the respondent has delivered the possession of the said until 25.04.2014 nor they have paid any compensation @ Rs.10/- per sq. ft. per month of the 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.
5. 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 28.02.2019. 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

6. On 22.05.2012, the complainant booked a unit in the project named "Shree Vardhman Victoria" by paying an advance amount of Rs. 8,00,000/- to the respondent. Accordingly, the



complainant was allotted a unit bearing no. H-1003, tower 'H', admeasuring 1300 sq. ft. vide provisional allotment letter dated 25.12.2012. It is further submitted that at the time of booking, complainant confirmed with the respondent's employees if "respondent's project is approved for housing loan from govt. bank or any other bank". The employees of respondent company replied in affirmative. The complainant wanted the housing loan of the unit because she didn't have sufficient funds at the time of booking.

7. The complainant submitted that thereafter, the complainant paid first instalment of Rs. 7,28,103/- as demanded by the respondent.
8. The complainant submitted that thereafter, on 09.05.2013, the respondent informed her that the agreement is ready. It is submitted that on 25.06.2013, the complainant again re-confirmed from the respondent's employees if the project is approved from banks for housing loan, to which they replied in affirmative. Accordingly, as per assurances of respondent's employee, the flat buyer's agreement was executed on 25.06.2013.
9. The complainant submitted that as per clause 14(a) of the



agreement, the respondent had undertaken to hand over the possession of the unit within 46 months including grace period, but they failed in handing over possession.

10. The complainant further submitted that the respondent sent the demand letters and demanded the huge amount of Rs.16,09,911.33/-on 08.12.2014. Complainant visited number of times at their office and asked the list of approved banks for housing loan, but their employees gave false assurances. And the only reason was that project was not approved for housing loan. That is the main reason project was not sanctioned for housing loan and complainant was unable to pay further payments. Although at the time of booking, the respondent's employees assured to the complainant that project is approved for housing loan. After that, respondent sent cancellation letter to the complainant on 23.12.2014.

11. The complainant submitted that after the cancellation letter, finally, respondent sent the letter on 08.07.2015 and informed the complainant that the project is approved from financial institution and again sent another letter on dated- 23.07.2016. Complainant visited and informed personally at the office of respondent "that possession of the project is



delaying, and project is not approved for housing loan at the time of booking and other demands". Thus, the complainant submitted that she is not interested in the unit and is asking for refund with reasonable interest on paid amount. But again false assurances were given by respondent's employees on possession and delayed interest. The respondent neither refunded the amount with interest and nor is interested to settle the dispute with the complainant. This is shocking, unexpectedly and gravely unbelievable and it has disappointed the complainant.

12. The complainant submitted that she informed the respondent that she does not wish to continue with the project and demanded refund of her money, but the respondent failed in doing the same. It is submitted that finally, complainant's advocate sent a legal notice on 12.09.2018 through speed post to the respondent but the complainant hasn't received any reply from their office till date.

13. Issues raised by the complainant

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



- I. Whether the respondent should refund the principal amount paid by the complainant along with interest?
- II. Whether the respondent should not deduct any amount from the principal amount because of fault at respondent's end in not having approvals of the residential project?

14. Relief sought

- I. Direct the respondent to refund the principal amount along with the interest @ 24 % per annum from 29.05.2012 till date.
- II. The respondent should not deduct any amount from the principal amount because its fault at the end of the respondent without approved housing residential project.

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:



15. With respect to the **first and second issue** raised by the complainant, as per clause 14(a), the construction was likely to be completed within 40 months from commencement of construction of tower/block in which flat is located + 6 months grace period. However, no statement of account has been attached in order to ascertain the date of commencement of construction. Thus, the due date is calculated from the date of execution of agreement which has been signed inter-se both the parties on 25.06.2013. Accordingly, the due date of delivery of possession comes out to be 25.04.2017. Thus, the respondent has failed in handing over the unit as per the terms and conditions of the agreement. Keeping in view the status of the project, interest of other allottees, the authority is of the considered view that the amount paid by the complainant shall be refunded after deduction of the earnest money not more than 10% of the basic sale price(BSP) with prescribed rate of interest @10.75%, in accordance with the NCDRC judgment **DLF Ltd. v. Bhagwanti Narula** (RP/3860/2014 decided on 06.01.2015) wherein it was laid down that not more than 10% of the total consideration can be forfeited as earnest money as the forfeiture of amount exceeding 10% of the sale



price would be unreasonable and only the amount which is paid at the time of concluding the contract can be said to be the earnest money.

16. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
17. 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.
18. The complainant reserves her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required.

Findings and directions of the authority

19. **Jurisdiction of the authority-** The project “Shree Vardhman Victoria” is located in Sector 70, 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.

20. 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/-.

21. Such notices were issued to the respondent on 17.10.2018 and on 05.11.2018 and on 29.11.2018. Further, a final notice dated 18.02.2019 by way of email was sent to both the parties to appear before the authority on 28.02.2019.

22. As the respondent has failed to be present before the authority or to submit the reply in such period, despite due



and proper service of notices, it appears that the respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing material particulars in the matter. Thus, 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.

23. The ex-parte submissions of the complainant have been perused at length. The case of the complainant is that she had booked a unit no. H-1003 in the project in question and agreement to this effect was executed inter-se the both the parties on 25.06.2013. By virtue of clause 14(a) the respondent was duty bound to deliver the unit to the complainant by 25.04.2017. Till today, respondent has failed to deliver the unit to the complainant. Against the total sale consideration of Rs.71,37,000/- the complainant has paid only Rs.15,28,103/- to the respondent. Further, the said unit was cancelled by the respondent on 23.12.2014. Keeping in view the non-appearance of the respondent and going through documentary evidence and in view of paltry amount paid by the complainant, the authority is of the considered opinion that respondent be directed to refund the amount



deposited by the complainant by deducting 10% of BSP with prescribed rate of interest @10.75% within a period of 90 days from the date of the order.

24. 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 refund to the complainant the principal sum of Rs. 15,28,103/- paid by him after deducting 10% of BSP with prescribed rate of interest @10.75% within a period of 90 days from the date of the order

25. The complaint is disposed of accordingly.

26. The order is pronounced.

27. Case file be consigned to the registry.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.02.2019

(Subhash Chander Kush)

Member