

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

**Complaint no. : 864 of 2018**  
**Date of First hearing: 27.02.2019**  
**Date of decision : 27.02.2019**

Mrs. Veena Bhutani  
R/o 602,GH-15, Sector-1, IMT Manesar,  
Gurugram

**Complainant**

Versus

M/s Shree Vardhman Infra Homes Private  
Limited  
Office at : 302, III Floor, Indraprakash  
Building, 21, Barakhamba Road, New Delhi-  
110001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Anand Dahiya  
Non for respondents

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 07.09.2018 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. Veena



Bhutani against the promoter M/s Shree Vardhman Infra Homes Private Limited, on account of violation of clause 14(a) of the flat buyer's agreement executed on 16.02.2012 for unit no. 204, tower C1 in the project "Shree Vardhman Flora" for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. The complaint was filed on 07.09.2018. Notices w. r. t. hearing of the case were issued to the respondent on 05.10.2018, 17.10.2018 and 29.11.2018 for making his appearance. Besides this, a penalty of Rs. 5,000/- was imposed on 17.10.2018 and a penalty of Rs. 10,000/- was imposed on 29.11.2018. However, despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter 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 account legal/factual propositions as raised by the complainant in his complaint

3. Since the flat buyer's agreement has been executed on 16.02.2012, 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.
4. The particulars of the complaint are as under: -

1.	Name and location of the project	"Shree Vardhman Flora" in Village Hayatpur, Sector 90, Gurugram
2.	Unit no.	204, tower C1
3.	Project area	10.881 acres
4.	Unit area	1300 sq. ft.
5.	Registered/ not registered	<b>Registered (88 of 2017) dated 23.08.2017</b>
6.	Revised date of completion as per RERA registration certificate	<b>30.06.2019</b>
7.	DTCP license	23 of 2008 dated 11.02.2008
8.	Date of booking	08.07.2011
9.	Date of flat buyer's agreement	16.02.2012



10.	Basic sale price	Rs. 32,82,500/-
11.	Total sale consideration	Rs. 43,56,124/-
12.	Total amount paid by the complainant	Rs. 43,38,823/-
13.	Payment plan	Construction linked plan
14.	Date of delivery of possession Clause 14(a) – 36 months from commencement of construction + 6 months grace period (06.03.2012)	<b>06.09.2015</b>
15.	Delay of number of months/ years	3 year 5 months and 21 days
16.	Penalty clause as per flat buyer's agreement dated 30.05.2013	Clause14(b)- Rs.53.82 per sq. mtr. or Rs. 5/- per sq. ft. per month

5. As per the details provided above, which have been checked as per record of the case file, a flat buyer's agreement is available on record for unit no. 204, tower C1 according to which the possession of the aforesaid unit was to be delivered within 36 months of commencement of construction including 6 months grace period, i.e. by **06.09.2015**. The promoters have failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

6. Thereafter, again notice was sent to respondent but despite service of notice the respondent neither appeared nor file



reply. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore, case is being proceeded ex-parte against the respondent.

### **Facts of the complaint**

5. The complainant submitted that the respondent company through their representative had approached the complainant and represented that the respondent residential project named “Shree Vardhman Flora” will effectively serve the residential purpose of complainant and her family and has best of the amenities. Further the representative of the respondent company then persuaded the complainant, through repeated requests to visit their site office again on 08.07.2011 for detailed representation pertaining to their aforesaid project.
6. The complainant submitted that the respondent has claimed that they have obtained License from Director General, Town



and Country Planning (DTCP), Haryana for development of a residential group housing colony on the said land and building plans have already been approved.

7. The complainant submitted that the respondent has further claimed that the unit area and the location of the unit are based on approved building plans and in case of any change in plans due to technical reasons or minor deviation during construction they may vary marginally.
8. The complainant submitted that the complainant entered into the agreement to sale for a unit in “Shree Vardhman Flora” in Sector-90, Gurugram and the agreement was made at New Delhi on 16.02.2012 between M/s. Shree Vardhman Infra Homes Private Limited (as first part seller) and Mrs. Veena Bhutani (as second part – purchaser) for purchase of 2 BHK flat In tower C-1 ,flat no. 204, measuring approx.. 1300 sq. ft. super area which was under development.
9. The complainant submitted that as per agreement read with schedule of payment the complainant was to make payments as per the schedule provided by them and till date the



complainant has already paid a total of Rs. 4338823.00 (rupees forty three lacs thirty eight thousand eight hundred and twenty three only) against a total consideration of Rs.4502948.00 (forty five lacs two thousand nine hundred and forty eight rupees only)

10. The complainant submitted that the possession still is not forthcoming so far and the respondent company despite passing of more than 78 months of the start of the construction have miserably failed to perform their obligations as per the agreed terms and as on date also the respondent company has not even completed the basic structure of the project.
11. The complainant submitted that the respondent company committed under the agreement to sell that it is their sincere endeavour to give possession of the flat to the complainant within 36 months in respect to the project from the date of execution of the agreement to sell, subject to force majeure conditions. Further a grace period of 06 months was also provided for in case Government / Regulatory authority's sanction of the building plans/revised plans. Thus, the commitment of the respondent company to hand over the



possession of the unit to the complainant was upto February, 2015 and with grace periods inclusive was till August-2015.

12. The complainant submitted that the respondent has claimed Rs.100000.00 towards **open car parking** (copy of receipt dated 03.04.2013 is enclosed as annexure **C-8**) which according to the provisions of the RERA Act S-2(n) forms part of common areas and is not saleable. Further the respondent has also charged Rs.260000.00 (rupees two lacs and sixty thousand only) towards installation of **fire fighting equipments(FFC) and for electricity meter, security deposits and energising charges etc.**(copy of receipt dated **15.02.2016** is enclosed as annexure **C-9**) which he has neither purchased nor installed till date nor has paid even a single paisa out of it towards security deposit or other services for which he has charged monies. The respondent has also charged Rs.75000.00(rupees seventy five thousand) for the **membership of the club house** but has not laid even the foundation stone for the same (copies of the receipt dated 09/11/2013 & 10/01/2014 are enclosed as annexure **C-10 and C-11**). Since the complainant has opted for construction





Link Plan the builder is duty bound to charge amounts for the services and equipments for which he has either incurred actual expenses or is about to incur soon in the near future and not for the services and equipments which he does not intend to provide or intend to provide at a very later stage.

13. The complainant submitted that in terms of personal visit to the project site by the complainant in the month of January, 2015 it did not seem possible to the complainant that the project can be completed by August, 2015 and the respondent company failed to keep their promised of delivery of Flat within the time prescribed under the agreement to sale. The respondent company keeps on giving unintended reasoning for the delay which is otherwise should be covered within the extended time of six months as per the agreement to sell. The respondent company does not respond to the genuine problems by affording alternate arrangement.

14. The complainant submitted that thereby the respondent failed to deliver the timely possession as assured and all the representations and assurances of the respondent company have now turned all false and fraudulent and it is quite evident



that the respondent have been wrongfully availing the hard earned money of the complainant for which are complainant's life time savings and the possession still looks distant and the basic structure of the tower is not yet complete so far.

15. The complainant submitted that due to the breach of obligations and wrongful conduct of the respondent the complainant has to suffer doubly on the one hand he has not been delivered the unit noted above secondly the respondent has fraudulently charged from the complainant the monies for open car parking and for services and equipment's which he has not yet purchased and installed such as electrical and fire fighting equipment's and club-house services etc.

16. The complainant submitted that on the basis of the above it can be concluded that the respondent have miserably failed in completing the construction of the building and in handing over the possession of the unit of the complainant in accordance with the agreed terms and has committed grave unfair practices and breach of the agreed terms between the parties for ulterior motives. Since the applicant has invested her lifetime savings for purchasing this flat and has till date



been not offered the possession of her flat the complainant seeks justice from this hon'ble authority. The complainant is not interested in withdrawing from the project. As per obligations on the promoter under section 18(1) proviso, the promoters obligated to pay me interest at the prescribed rate for every month of delay till the handing over the possession. Promoter has not fulfilled his obligation. I reserve my right to seek compensation from the promoter for which I shall make separate application to the adjudicating officer, if required. Hence this complaint.

**17. Issues raised by the complainant**

- i. Whether the promoter has the requisite infrastructure to deliver the possession of the flat since the present state of affair for the project site bears lonely and deserted look for reasons best known to the respondent company?
- ii. Whether the respondent has failed to fulfil its part of the agreement at every step and compelled the complainant to approach this hon'ble authority?



- iii. Whether the failure on the part of the respondent company to deliver the flat even after the expiry of stipulated 36+6 months constitutes deficiency in service and unfair trade practice?
- iv. Whether the respondent is liable to pay an interest on the amount remitted by the complainant from July 2011 to till possession @ 24% per annum compounded quarterly as per the provisions of RERA Act contained in Section 2 (za)?
- v. Whether the open car parking forms part of common area?
- vi. Whether the respondent could have sold the open car parking.
- vii. Whether the respondent could have claimed money in respect of fire fighting equipment, electrical equipment's and for the club-house without providing the same?
- viii. Whether the quality of construction is sub-standard and not in accordance with the provisions of builder buyer agreement or the buildings will meet all safety norms?



## 18. Relief sought

- i. May please direct the respondent to deliver the project in time bound manner” by providing new date of delivery, backed with the bank guarantee of say 10% cost of the project and such other adequate measures which this hon’ble authority deem fit to secure the interests of the complainant.
- ii. May please direct the respondent to interest to the complainant @24% p. a as per the provisions of the RERA Act under section 2(za).
- iii. May please direct the respondent to refund the amount of Rs.100000.00/- (rupees one lakh only) charged by the respondent on account of sale of open car parking with 24% interest thereon.
- iv. May please direct the respondent to refund the amount of Rs.75000.00/- charged for club membership with 24% interest thereon.
- v. May please direct the respondent to refund Rs.260000.00/- the EEC (cost of installation of electricity meter, security deposit, energising charges etc.) and



towards FFC (cost of fire fighting system) along with 24% interest thereon.

### **Determination of issues**

19. With respect to **first issue** raised by the complainant, the complainant has not provided any documentary proof but the respondent has got the said project registered with the authority vide registration no. 88 of 2017 dated 23.08.2017 and has committed the date of delivery of the possession to the complainant by 30.06.2019. hence this issue is decided negative.

20. In respect to the **second and third issues** raised by the complainant, the authority came across that as per clause 14(a) of buyer's agreement, the possession of the said apartment was to be handed over within 36 months from commencement of construction + 6 months grace period.

Therefore, the due date of possession comes out to be **06.09.2015** and the possession has been delayed by **3 years 5 months and 21 days** till the date of decision. The delay compensation payable by the respondent as per clause 14(b)- Rs.53.82 per sq. mtr. or Rs. 5/- per sq. ft. per month of delay of



the unit for the period of delay beyond 36 + 6 months as per clause 14(a) of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

Therefore, under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoters on the due date of possession i.e. **13.02.2015** upto the date of offer of possession.



21. With respect to **fourth issue** raised by the complainant, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 from the due date of possession, i.e. **13.02.2015** till the handing over of possession, failing which the complainant is entitled to seek refund of the amount.

22. With respect to **fifth and sixth issue** raised by the complainant, as per section 2(n) open parking spaces comes in the common areas hence, respondent cannot sell the open parking space. Therefore, respondent have illegal charge and sold the open parking spaces to the complainant and respondent is liable to refund the amount charge for the open parking space.

23. With respect to the **seventh issue** raised by the complainant, the authority came across that as per clause 2(h), (i) and (j) of the agreement between the complainant and respondent which states that the cost of providing fire fighting equipment, electrical equipment's, installing power back-up and for the club-house etc shall be charged additionally and paid by the





buyer on pro-rata basis as and when demanded by the respondent. The agreement has been signed before coming into force of the act, 2016 and thus, parties have to fulfil their contractual obligations. Therefore, the respondent is will within its right to charge the above said amount from the complainant.

24. With respect to the **eight issue** raised by the complainant, due to lack of sufficient documentary proof this issue cannot be decided and remains unascertained.

#### Findings of the authority

25. **Jurisdiction of the authority-** The project “Shree Vardhman Flora” is located in sector 90, Gurugram. 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.



26. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. 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.
27. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
28. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions of the Act and to fulfil its obligations.
29. 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.

30. Such notices were issued to the respondent on 05.10.2018, 17.10.2018 and 29.11.2018.

31. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. To prove the communication of date of hearing to respondent, it is sufficient to prove that such information was available with the website and an electronic communication (e-mail) was served on the respondent.

32. As per clause 14 (a) of the agreement dated 16.02.2012 for unit no. 204, tower C1 in the project Shree Vardhman Flora, Sector 90, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period which comes out to be **06.09.2015**. However, the respondent has not delivered the unit in time. It was a construction linked plan. Complainant has already paid



Rs.43,38,823/- to the respondent against total sale consideration of Rs.43,56,124/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 13.02.2015 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 from the due date of possession, i.e. **06.09.2015** till the offer of possession.

**Decision and directions of the authority**

33. 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 the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession till the offer of possession.

(ii) The respondent is directed to pay interest accrued from **06.09.2015** (due date of possession) to 27.02.2019 (date of this order) on account of delay in handing over of



possession to the complainant within 90 days from the date of this order.

(iii) Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid before 10<sup>th</sup> of every subsequent month.

(iv) Respondent is further directed not to charge for open car parking charges. In addition to this, respondent is also debarred not to charge exorbitant rate of interest @ 24% and is directed to follow the provisions of RERA act.

34. The complaint is disposed of accordingly.

35. The order is pronounced.

36. Case file be consigned to the registry.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 27.02.2019

Judgement uploaded on 26.03.2019