

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

Complaint no. : 376 of 2018
First date of hearing: 02.08.2018
Date of decision : 29.01.2019

Sh. Abhimanyu Singh
Sh. B.S. Chhikara
Ms. Sudha Chhikara
R/o. A-1001, Bestech Park, View Spa Next,
Sector- 67, Gurugram, Haryana - 122001

Complainants

Versus

Shree Vardhman Infraheights Private Limited
Regd. Office: - 302, III floor, Indraprakash
Building, 21, Barakhamba Road,
New Delhi - 110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Ms. Sonali Joon

Advocate for the complainant

Shri Rajesh Kumar

Advocate for the respondent

ORDER

1. A complaint dated 04.06.2018 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 complainants, Sh. Abhimanyu Singh, Sh. B.S. Chhikara and Ms. Sudha Chhikara





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against the promoters M/s. Shree Vardhman Infraheights Private Limited in respect of flat/unit no. 402, admeasuring 1950 sq. ft., tower B of the project 'Shree Vardhman victoria', located at sector 70, Gurugram, on account of violation clause 14 (a) of the flat buyer's agreement dated 10.06.2013 by not delivering the possession of the flat on due date i.e. 07.03.2018 which is an obligation of the promoter under section 11(4)(a) of the Act ibid.

2. Since the flat buyer's agreement was executed on 10.06.2013 prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat this complaint as an application for non compliance of obligations on the part of the respondent 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 victoria, sector 70, Gurugram.
2.	Nature of real estate project	Group housing colony
3.	Total area of the project	10.9687 acres
4.	DTCP license no.	103 of 2010 dated 30.11.2010
5.	RERA registered/unregistered.	Registered vide no. 70 of 2017
6.	Allotted flat no.	402, tower B
7.	Unit admeasuring super area	1950 sq. ft.





8.	Payment plan	Construction linked payment plan (Pg.49 of the complaint)
9.	Date of execution of flat buyer's agreement	10.06.2013 (Annx P-1)
10.	Total consideration as per statement of account (Pg.58 of the complaint)	Rs.1,13,61,300/-
11.	Total amount paid by the complainant till date	Rs. 65,50,117/- 1,13,83,866/-
12.	Percentage of consideration amount	58% approx.
13.	Due date of delivery of possession as per clause 14 (a) of the buyer's agreement dated 10.06.2013 (40 months + 6 months' grace period from the date of commencement of construction) Note:-as per statement of accounts construction is 07.05.2014 (Pg.60)	07.03.2018 Note- April, 2017 was due date of delivery of possession as per the complainants' and respondent's version.
14.	Delay in handing over possession till date	11 months approx.
15.	Penalty clause as per BBA dated 10.06.2013 (Pg.41)	Clause 14(b) – Rs. 10/- per sq. ft. per month of the super area of the flat
16.	Revised date of completion of project as per RERA certificate	31.12.2020



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 10.06.2013 is available on record for the subject flat/unit no.

Corrected vide order dated 28/03/19.



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B 402, according to which the possession of the same was to be delivered by 28.03.2017, 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 issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 02.08.2018. The case came up for hearing on 02.08.2018, 05.09.2018, 04.12.2018, 21.12.2018 and 29.01.2019. The reply has been filed by the respondent and the same has been perused.

Facts of the case: -

6. Briefly stated facts relevant for the disposal of the present complaint are that the complainants have booked a flat in the year 2012 in the respondent's upcoming group housing residential project, namely 'Shree Vardhman Victoria', located at sector - 67, Gurugram.
7. Pursuant to aforesaid booking of the complainants, respondent allotted flat no. 402 in tower B in favour of complainant. On 10.06.2013, an agreement for the allotted flat was executed between the parties. The total consideration of the flat was fixed at Rs. 1,13,61,300/- as against which the complainants have made a total payment of Rs. ~~65,50,117/-~~ 1,13,83,866/-





under construction linked payment plan on various dates. As per clause 14 (a) of the agreement dated 10.06.2013, respondent was under obligation to complete the construction and deliver the possession within a period of 40 months' plus 6 months' grace period from the date of commencement of construction.

8. The complainants submitted that for payment of consideration amount they have applied for a home loan of Rs. 48,00,000/- and the same was sanctioned on 21.04.2017. It was further submitted by the complainant that as per statement of accounts, the construction was commenced on 28.05.2012 (i.e. the date on which the respondent has raised first demand under construction linked payment plan), therefore, the due date of delivery of possession on computation, in terms of clause 14 (a) of the flat buyer's agreement i.e. 40 months' plus 6 months' grace period from the date of commencement of construction comes out to be 28.03.2017.

9. It was alleged by the complainants that the respondent has failed to complete the construction and deliver the possession till date. Moreover, the last call notice/ demand letter was issued by the respondent on 12.01.2017 which was raised on





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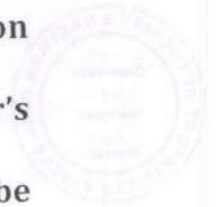
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commencement of brick work, which clearly shows that project is nowhere near completion in the near future.

10. The complainants submitted that left with no other options, they sent a legal notice dated 21.04.2018 to the respondent seeking refund of the paid amount alongwith interest @ 24% p.a. but no reply has been received from the respondent. Hence, the complainants were constrained to file the present complaint.

Issues to be decided:

- 1. Whether the respondent has failed to perform upon the agreement dated 10.06.2013 and could not handover the possession of the flat within stipulated time period as per the terms of agreement entered into between the parties?**
- 2. Whether the extension of grace period of 6 months on top of 40 months' as envisaged in the flat buyer's agreement by the respondent is justified and can be extended as there has been no force majeure conditions?**
- 3. Whether the respondent company is a habitual offender and is in deliberate non-compliance of the**





mandates of the Real Estate (Regulation and Development) Act, 2016 but also of previous guidelines and notification issued by the government?

4. Whether the respondent is liable to be penalized for the wrong/ false advertisement under section 12 of RERA, 2016?
5. Whether the respondent has illegally siphoned off the funds of the allottees and utilized the same by diverting them for construction activity in other commercial projects?
6. Whether the respondent has insured the project and protected the allottee in terms of any financial losses and has paid the premium for insurance, if any?
7. Whether the respondent is in defiance of the provision of section 13 of the Real Estate (Regulation and Development) Act, 2016 by taking more than 10% as deposit/advance money before signing of the flat buyer's agreement?
8. Whether the respondent is liable to be penalized for non-adherence to project specifications in terms of





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quality of the material used and non-intimation/approval for the alteration/addition to the sanctioned plan under section 14 of RERA 2016?

9. Whether the meagre penalty of Rs. 10/- per sq. ft. per month as mentioned in clause 14(2) with respect to the delay is an adequate rate of compensation?

10. Whether the complainant is entitled to receive the principal amount paid by him alongwith interest @ 24% p.a. and/or the state bank of India highest marginal cost of lending rate plus 2% for the non-delivery of possession of the flat on due date?

11. Whether the complainant has the right to claim Rs. 25 lakhs towards mental and physical harassment, agony and undue hardship?

Reliefs sought:-

11. The complainant is seeking the following reliefs:

- i. Direct the respondent to refund the amount of Rs. 1,13,83,866/- (total sales consideration) as paid by the complainant alongwith interest @ 24% p.a. from



- the respective date of payments made by the complainant till actual payment.
- ii. Direct the respondent to grant such a penalty towards the delay in offering of possession over and above the rate of Rs. 10/- per sq. ft. per month alongwith pendente lite and future compensation as the same rate till the date of actual realization.
 - iii. Direct the respondent to pay interest @ 24% p.a. or the amount of interest on the state bank of India highest marginal cost of lending rate plus 2% of the principle amount paid by the complainant to the respondent towards exemplary damages.

Respondent's reply: -

12. The respondent submitted that the project has already been registered as an ongoing project under section 2(1)(o) the Act vide registration no. 70 of 2017 dated 18.08.2017 and as per the said registration the date given for completion of the project is 31.12.2020. Hence, there is no breach/non-compliance of section 14 of RERA, 2016 as alleged or otherwise.





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13. The respondent submitted that in clause 14(a) of the agreement dated 10.06.2013 the period for completion of construction was tentative and subject to fulfilment of various factors and conditions. The said tentative period was to be calculated from 07.05.2014 as the construction of the particular tower/block was commenced to the said date.
14. The respondent submitted that they have carried out the construction strictly as per the approved/sanctioned plans and specifications as agreed to and have not violated any provisions of the Real Estates (Regulation and Development) Act, 2016 as alleged or otherwise.
15. The respondent denied that the funds of the allottees have been diverted and the complainants have suffered on account of non-availability of funds. It is submitted by the respondent that they had already opened an escrow account with Indusind bank.
16. The respondent contended that the complainant has defaulted in making payment of installments. The demand letter dated 12.01.2017 clearly shows that the complainant as on that day



was is arrears of Rs. 34,16,044/- and an interest of Rs. 12,56,435.68/- has also become payable due to non-payment of various other installments.

17. The respondent submitted that the construction has already reached at an advance stage and shall be completed soon. The respondent is ready and willing to handover possession to the complainant subject to compliance of the terms of agreement dated 10.06.2013 and to pay compensation, payable, if any, to all the allottees in compliance of its commitment under the agreements.
18. The respondent submitted that the construction could not be completed within tentative time frame due to various factors beyond the control of the respondent including economic meltdown, sluggishness in the real estate sectors, defaults committed by the allottees in making timely payment of the installments, shortage of labour, non-availability of construction material, etc.
19. The respondent submitted that the legal notice served by the complainants contains baseless allegations and they are not





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entitled for the refund of the paid amount alongwith interest
@ 24% p.a.

Determination of issues:-

20. As regards **issue no. 1** raised by the complainants, it is an admitted fact by the respondent that they have failed to deliver the possession of the subject flat on due date of delivery as per the terms of agreement dated 10.06.2013, hence, this issue is answered in affirmative.

21. As regards **issue no. 2 and 9** raised by the complainants, from perusal of record the authority is of the view that the terms and conditions incorporated in the agreement are one sided and arbitrary. The respondent in their reply has stated that the construction has been delayed due to lack of manpower, labour skill, etc. but this could be treated as justified reason beyond the control of the respondent. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the said





flat as per clause 14(b) buyer's agreement dated 10.06.2013 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 Ors.** (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."



2. As regards **issue no. 3, 4, 5 6, 7 and 8** raised by the complainants, the complainants have failed to adduce any evidence in support of the allegation. Hence, these issues are answered in negative for the want of supportive evidence.

23. As regards **issue no. 10 and 11** raised by the complainant, the authority is view that there is a delay of 11 months approx. from due date of delivery of possession, however keeping in view the present status of the project and intervening circumstances, it is not justified to order for refund of the paid amount at this stage as it will hamper the completion of project and interest of other allottees who wish to continue with the project. However, for the delay so occasioned on account of default of the respondent, the complainant is entitled for the interest at the prescribed rate as per the proviso to section 18(1) of the Act ibid read with rule 15 of The Haryana Real Estate (Regulation and Development) Rules, 2017.

Findings of the authority -

24. The objection raised by the respondent for rejection of complaint regarding jurisdiction of the authority stands dismissed. 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.

25. 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 31.12.2020 as per the RERA registration certificate no. 70 of 2017 instead of 28.03.2017 as per terms of the agreement dated 10.06.2013 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. **07.03.2018** (due date of delivery of possession) as agreed by both the parties. The revised date of





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delivery of possession is 31.12.2020. 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:-

26. 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 delay interest for delayed possession charges till actual offer of possession at the prescribed rate of interest i.e. 10.75% per annum w.e.f. **07.03.2018** (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 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.

27. The order is pronounced.
28. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:

Corrected Judgement uploaded on 05.04.2019



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 29.01.2019
Complaint No.	376/2018 case titled as Mr. Abhimanyu Singh & Ors. Versus M/s Shree Vardhaman Infra Heights Private Limited
Complainant	Mr. Abhimanyu Singh & Ors.
Represented through	Ms. Sonali Joon, Advocate for the complainant.
Respondent	M/s Shree Vardhaman Infra Heights Private Limited
Respondent Represented through	Shri Rajesh Kumar, Advocate for the respondent
Last date of hearing	21.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

Counsel for the respondent states that the respondent shall hand over the possession to the complainant before **31.12.2020**.

As per clause 14 (a) of the Builder Buyer Agreement dated 10.6.2013 for unit No.402, Tower-B, "Shree Vardhman Victoria", sector-70, Gurugram, possession was to be handed over to the complainant within a period of 40 months from the date of commencement of construction (7.5.2014) + 6 months grace period which comes out to be **7.3.2018**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.65,50,117 /- to the respondent

against a total sale consideration of Rs.1,13,61,300/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **7.3.2018** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till 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 10th of subsequent month. The complainant is also directed to pay delayed payment charges @ 10.75% if any, to the respondent.

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**

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Respondent

CORAM:

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Shri Subhash Chander Kush

Member
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APPEARANCE:

Ms. Sonali Joon Advocate for the complainant

Shri Rajesh Kumar Advocate for the respondent

ORDER

1. A complaint dated 04.06.2018 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 complainants, Sh. Abhimanyu Singh, Sh. B.S. Chhikara and Ms. Sudha Chhikara



against the promoters M/s. Shree Vardhman Infraheights Private Limited in respect of flat/unit no. 402, admeasuring 1950 sq. ft., tower B of the project 'Shree Vardhman victoria', located at sector 70, Gurugram, on account of violation clause 14 (a) of the flat buyer's agreement dated 10.06.2013 by not delivering the possession of the flat on due date i.e. 07.03.2018 which is an obligation of the promoter under section 11(4)(a) of the Act ibid.

2. Since the flat buyer's agreement was executed on 10.06.2013 prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat this complaint as an application for non compliance of obligations on the part of the respondent 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 victoria, sector 70, Gurugram.
2.	Nature of real estate project	Group housing colony
3.	Total area of the project	10.9687 acres
4.	DTCP license no.	103 of 2010 dated 30.11.2010
5.	RERA registered/unregistered.	Registered vide no. 70 of 2017
6.	Allotted flat no.	402, tower B
7.	Unit admeasuring super area	1950 sq. ft.



8.	Payment plan	Construction linked payment plan (Pg.49 of the complaint)
9.	Date of execution of flat buyer's agreement	10.06.2013 (Annx P-1)
10.	Total consideration as per statement of account (Pg.58 of the complaint)	Rs.1,13,61,300/-
11.	Total amount paid by the complainant till date	Rs.65,50,117/-
12.	Percentage of consideration amount	58% approx.
13.	Due date of delivery of possession as per clause 14 (a) of the buyer's agreement dated 10.06.2013 (40 months + 6 months' grace period from the date of commencement of construction) Note:-as per statement of accounts construction is 07.05.2014 (Pg.60)	07.03.2018 Note- April, 2017 was due date of delivery of possession as per the complainants' and respondent's version.
14.	Delay in handing over possession till date	11 months approx.
15.	Penalty clause as per BBA dated 10.06.2013 (Pg.41)	Clause 14(b) - Rs. 10/- per sq. ft. per month of the super area of the flat
16.	Revised date of completion of project as per RERA certificate	31.12.2020

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 10.06.2013 is available on record for the subject flat/unit no.



B 402, according to which the possession of the same was to be delivered by 28.03.2017, 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 issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 02.08.2018. The case came up for hearing on 02.08.2018, 05.09.2018, 04.12.2018, 21.12.2018 and 29.01.2019. The reply has been filed by the respondent and the same has been perused.

Facts of the case: -

6. Briefly stated facts relevant for the disposal of the present complaint are that the complainants have booked a flat in the year 2012 in the respondent's upcoming group housing residential project, namely 'Shree Vardhman Victoria', located at sector - 67, Gurugram.
7. Pursuant to aforesaid booking of the complainants, respondent allotted flat no. 402 in tower B in favour of complainant. On 10.06.2013, an agreement for the allotted flat was executed between the parties. The total consideration of the flat was fixed at Rs. 1,13,61,300/- as against which the complainants have made a total payment of Rs. 65,50,117/-



under construction linked payment plan on various dates. As per clause 14 (a) of the agreement dated 10.06.2013, respondent was under obligation to complete the construction and deliver the possession within a period of 40 months' plus 6 months' grace period from the date of commencement of construction.

8. The complainants submitted that for payment of consideration amount they have applied for a home loan of Rs. 48,00,000/- and the same was sanctioned on 21.04.2017. It was further submitted by the complainant that as per statement of accounts, the construction was commenced on 28.05.2012 (i.e. the date on which the respondent has raised first demand under construction linked payment plan), therefore, the due date of delivery of possession on computation, in terms of clause 14 (a) of the flat buyer's agreement i.e. 40 months' plus 6 months' grace period from the date of commencement of construction comes out to be 28.03.2017.

9. It was alleged by the complainants that the respondent has failed to complete the construction and deliver the possession till date. Moreover, the last call notice/ demand letter was issued by the respondent on 12.01.2017 which was raised on



commencement of brick work, which clearly shows that project is nowhere near completion in the near future.

10. The complainants submitted that left with no other options, they sent a legal notice dated 21.04.2018 to the respondent seeking refund of the paid amount alongwith interest @ 24% p.a. but no reply has been received from the respondent. Hence, the complainants were constrained to file the present complaint.

Issues to be decided:

- 1. Whether the respondent has failed to perform upon the agreement dated 10.06.2013 and could not handover the possession of the flat within stipulated time period as per the terms of agreement entered into between the parties?**
- 2. Whether the extension of grace period of 6 months on top of 40 months' as envisaged in the flat buyer's agreement by the respondent is justified and can be extended as there has been no force majeure conditions?**
- 3. Whether the respondent company is a habitual offender and is in deliberate non-compliance of the**



mandates of the Real Estate (Regulation and Development) Act, 2016 but also of previous guidelines and notification issued by the government?

4. Whether the respondent is liable to be penalized for the wrong/ false advertisement under section 12 of RERA, 2016?
5. Whether the respondent has illegally siphoned off the funds of the allottees and utilized the same by diverting them for construction activity in other commercial projects?
6. Whether the respondent has insured the project and protected the allottee in terms of any financial losses and has paid the premium for insurance, if any?
7. Whether the respondent is in defiance of the provision of section 13 of the Real Estate (Regulation and Development) Act, 2016 by taking more than 10% as deposit/advance money before signing of the flat buyer's agreement?
8. Whether the respondent is liable to be penalized for non-adherence to project specifications in terms of



quality of the material used and non-intimation/approval for the alteration/addition to the sanctioned plan under section 14 of RERA 2016?

9. Whether the meagre penalty of Rs. 10/- per sq. ft. per month as mentioned in clause 14(2) with respect to the delay is an adequate rate of compensation?

10. Whether the complainant is entitled to receive the principal amount paid by him alongwith interest @ 24% p.a. and/or the state bank of India highest marginal cost of lending rate plus 2% for the non-delivery of possession of the flat on due date?

11. Whether the complainant has the right to claim Rs. 25 lakhs towards mental and physical harassment, agony and undue hardship?

Reliefs sought:-

11. The complainant is seeking the following reliefs:

i. Direct the respondent to refund the amount of Rs. 1,13,83,866/- (total sales consideration) as paid by the complainant alongwith interest @ 24% p.a. from



- the respective date of payments made by the complainant till actual payment.
- ii. Direct the respondent to grant such a penalty towards the delay in offering of possession over and above the rate of Rs. 10/- per sq. ft. per month alongwith pendente lite and future compensation as the same rate till the date of actual realization.
- iii. Direct the respondent to pay interest @ 24% p.a. or the amount of interest on the state bank of India highest marginal cost of lending rate plus 2% of the principle amount paid by the complainant to the respondent towards exemplary damages.

Respondent's reply: -

12. The respondent submitted that the project has already been registered as an ongoing project under section 2(1)(o) the Act vide registration no. 70 of 2017 dated 18.08.2017 and as per the said registration the date given for completion of the project is 31.12.2020. Hence, there is no breach/non-compliance of section 14 of RERA, 2016 as alleged or otherwise.



13. The respondent submitted that in clause 14(a) of the agreement dated 10.06.2013 the period for completion of construction was tentative and subject to fulfilment of various factors and conditions. The said tentative period was to be calculated from 07.05.2014 as the construction of the particular tower/block was commenced to the said date.
14. The respondent submitted that they have carried out the construction strictly as per the approved/sanctioned plans and specifications as agreed to and have not violated any provisions of the Real Estates (Regulation and Development) Act, 2016 as alleged or otherwise.
15. The respondent denied that the funds of the allottees have been diverted and the complainants have suffered on account of non-availability of funds. It is submitted by the respondent that they had already opened an escrow account with Indusind bank.
16. The respondent contended that the complainant has defaulted in making payment of installments. The demand letter dated 12.01.2017 clearly shows that the complainant as on that day



was is arrears of Rs. 34,16,044/- and an interest of Rs. 12,56,435.68/- has also become payable due to non-payment of various other installments.

17. The respondent submitted that the construction has already reached at an advance stage and shall be completed soon. The respondent is ready and willing to handover possession to the complainant subject to compliance of the terms of agreement dated 10.06.2013 and to pay compensation, payable, if any, to all the allottees in compliance of its commitment under the agreements.

18. The respondent submitted that the construction could not be completed within tentative time frame due to various factors beyond the control of the respondent including economic meltdown, sluggishness in the real estate sectors, defaults committed by the allottees in making timely payment of the installments, shortage of labour, non-availability of construction material, etc.

19. The respondent submitted that the legal notice served by the complainants contains baseless allegations and they are not



entitled for the refund of the paid amount alongwith interest
@ 24% p.a.

Determination of issues:-

20. As regards **issue no. 1** raised by the complainants, it is an admitted fact by the respondent that they have failed to deliver the possession of the subject flat on due date of delivery as per the terms of agreement dated 10.06.2013, hence, this issue is answered in affirmative.

21. As regards **issue no. 2 and 9** raised by the complainants, from perusal of record the authority is of the view that the terms and conditions incorporated in the agreement are one sided and arbitrary. The respondent in their reply has stated that the construction has been delayed due to lack of manpower, labour skill, etc. but this could be treated as justified reason beyond the control of the respondent. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the said



flat as per clause 14(b) buyer's agreement dated 10.06.2013 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 Ors.** (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."



22. As regards **issue no. 3, 4, 5 6, 7 and 8** raised by the complainants, the complainants have failed to adduce any evidence in support of the allegation. Hence, these issues are answered in negative for the want of supportive evidence.

23. As regards **issue no. 10 and 11** raised by the complainant, the authority is view that there is a delay of 11 months approx. from due date of delivery of possession, however keeping in view the present status of the project and intervening circumstances, it is not justified to order for refund of the paid amount at this stage as it will hamper the completion of project and interest of other allottees who wish to continue with the project. However, for the delay so occasioned on account of default of the respondent, the complainant is entitled for the interest at the prescribed rate as per the proviso to section 18(1) of the Act ibid read with rule 15 of The Haryana Real Estate (Regulation and Development) Rules, 2017.

Findings of the authority -

24. The objection raised by the respondent for rejection of complaint regarding jurisdiction of the authority stands dismissed. 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.

25. 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 31.12.2020 as per the RERA registration certificate no. 70 of 2017 instead of 28.03.2017 as per terms of the agreement dated 10.06.2013 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. **07.03.2018** (due date of delivery of possession) as agreed by both the parties. The revised date of



delivery of possession is 31.12.2020. 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:-

26. 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 delay interest for delayed possession charges till actual offer of possession at the prescribed rate of interest i.e. 10.75% per annum w.e.f. **07.03.2018** (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 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.

27. The order is pronounced.
28. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:

Judgement Uploaded on 08.02.2019

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