

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

**Complaint no. : 1142 of 2018**  
**First date of hearing : 14.03.2019**  
**Date of decision : 14.03.2019**

Ms. Reeta Janghala

Address: Flat no.308, Block B2, SIDCO  
Shivalik Apartments, Gurugram-122050.

**Complainant**

Versus

1. M/s Shree Vardhman Infrahomes Pvt. Ltd.  
2. Mr. Sandeep Jain (MD)  
3. Mr. Sachin Jain (Director)  
Address: Unit no. 301, 3<sup>rd</sup> Floor, Inder  
Prakash Building, 21 Barakhamba  
Road, New Delhi.

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Anand Advocate for complainant  
None for the respondent Proceeded ex-parte on  
14.03.2019

**ORDER**

1. A complaint dated 30.10.2018 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 Ms. Reeta Janghala, against the promoters M/s Shree Vardhman

Infrahomes Pvt. Ltd. and others, on account of violation of the clause 14(a) of the flat buyer's agreement executed on 18.05.2012 in respect of flat described below in the project 'Shree Vardhman Flora', Sector 90, Gurugram for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 18.05.2012 i.e. prior to the commencement of the Act *ibid*, 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 part of the promoter/respondent in terms of 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 the project	Group housing colony
3.	Project area	10.881 acres
4.	RERA Registered/ not registered.	<b>Registered</b>
5.	HRERA registration number	<b>88 of 2017 dated 23.08.2017</b>
6.	HRERA registration certificate valid up to	<b>30.06.2019</b>
7.	DTCP License no.	23 of 2008 dated 11.02.2008

8.	Allotment letter	25.11.2011
9.	Flat/unit no.	507, tower C2
10.	Unit measuring	1300 sq. ft.
11.	Date of execution of apartment buyer's agreement	18.05.2012
12.	Payment plan	Construction linked payment plan
13.	Total cost of the said flat as per customer ledger dated 18.05.2018	Rs.42,60,440/-
14.	Total amount paid by the complainant till date as per customer ledger dated 18.05.2018	Rs.40,81,484 /-
15.	Commencement of construction	24.02.2012
16.	Due date of delivery of possession as per clause 14(a) of flat buyer's agreement (36 months of commencement of construction i.e. 24.02.2012 of particular tower + grace period of 6 months)	24.08.2015
17.	Delay in handing over possession till date of decision	3 years 6 months 18 days
18.	Penalty clause as per the said apartment buyer's agreement	Clause 14(b) of the agreement i.e. Rs.5/- per sq. ft. of the super area of the flat per month for the period of delay.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant. A flat buyer's agreement dated 18.05.2012 is available on record for the aforesaid unit according to which

the possession of the same was to be delivered by 24.08.2015.

Neither the respondent has delivered the possession of the said unit till date to the complainant nor they have paid any compensation @ Rs.5/- per sq. ft. of the super area of the apartment per month for the period of 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 respondents for filing reply and appearance. The case came up for hearing on 14.03.2019. Despite service of notice, neither the respondent has appeared nor has filed their reply to the complaint, therefore the case is being proceeded ex-parte against the respondent.

#### **Facts of the complaint**

6. The complainant submitted the respondent company through their representative had approached the complainant and represented that the respondent's residential project named "Shree Vardhman Flora" will effectively serve the residential purpose of complainant. When the complainant had visited the

abovementioned site office of the respondent company, believing in the advertisements and specific representations of the respondent's representatives that the said project shall be delivered by the year 2015 to be true, agreed to filling of the application form as a means of showing complainant's personal interest in the above said project.

7. 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.
8. The complainant submitted that she 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 18.05.2012 between M/s. Shree Vardhman Infra Homes Private Limited and Mr. Reeta Ganghala for purchase of flat in tower C-2 bearing flat no. 507 admeasuring 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 consideration of Rs.3737259.00/- plus Rs.3,44,224/- towards government taxes and interest against a total demand of Rs.4504592/-. The the complainant has paid more than 90% of the sale consideration towards the cost of the flat till date including costs towards other facilities.
10. The complainant submitted that the respondent committed under clause 14(a) of the flat buyer's agreement 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 start of construction, 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 up to February 2015 and with grace periods inclusive was till August 2015.

11. The complainant submitted that the respondent has claimed Rs.1,00,000.00 towards open car parking which according to the provisions of the Act ibid under section 2(n) forms part of common areas and is not saleable. Further, the respondent has also charged Rs.2,60,000/- towards installation of firefighting equipment (FFC) and for electricity meter, security deposits & energising charges (EEC) etc. Of this amount, the complainant has paid Rs.84,509/- and has written a number of mails and letters to the respondent to provide the calculations of this expenditure which the respondent did not provide and therefore, the complainant did not pay the rest of the amount of EEC/FFC. The respondent has also charged Rs.75,000/- for the membership of the club house but has not laid even the foundation stone for the same.
12. The complainant submitted that as she 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. This clearly indicates the intentions of the respondent that he is only interested in claiming money through fraudulent means.

13. The complainant submitted that on the basis of the above it can be concluded that the respondent has 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 act of 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 is obligated to pay interest at the prescribed rate for every month of delay till the handing over the possession. Promoter has not fulfilled his obligation. The complainant reserves her right to seek compensation from the



promoter for which she shall make separate application to the adjudicating officer, if required. Hence, this complaint.

### **Issues to be decided**

14. The complainant has raised the following issues:

- i. Whether the respondent has violated the terms and conditions of flat buyer's agreement and is there any reasonable justification for delay in giving possession of the flat?
- ii. Whether the respondent is liable to pay an interest at the prescribed rate on the amount remitted by the complainant from July 2011 till handing over of possession?
- iii. Whether open car parking form part of common area and respondent could have sold the open car parking?
- iv. Whether the respondent could have claimed money in respect of firefighting equipment, electrical equipment and for club house without providing the same?

### **Reliefs sought:**

15. The complainant is seeking the following reliefs:

- i. The complainant is seeking delivery of the said unit in time bound manner along with interest at the prescribed rate for delay in handing over the possession.
- ii. The respondent be directed to refund an amount of Rs.1,00,000/- charged on account of sale of open car parking along with interest.
- iii. The respondent be directed to refund the amount of Rs.1,75,491/- on account of EEC (installation of electricity meter, security deposit, energizing charges etc.) and towards FFC (cost firefighting system) along with interest.
- iv. The respondent be directed to refund Rs.75,000/- on account of club membership along with interest.

#### **Determination of issues**

After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are as under:

16. With respect to the **first issue** raised by the complainant, as per clause 14 (a) of the flat buyer's agreement dated

18.05.2012, the possession of the apartment was to be handed over within 36 months of commencement of construction of the particular tower/block in which the flat is located with grace period of 6 months. The grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond the control of the respondent. The demand for start of excavation was raised by the respondent on 24.02.2012 so the due date of possession is computed from 24.02.2012 i.e. date of commencement of construction. The clause regarding the possession of the said unit is reproduced below:

*“ 14(a) The construction of the flat is likely to be completed within a period of 36 months of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months, on receipt of sanction of the building plans/revised plans and all other approvals subject to force majeure...”*

Accordingly, the due date of possession was 24.08.2015 and hence, the delivery of the said unit is delayed by 3 years 6 months 18 days till the date of decision. As the possession of the apartment was to be delivered by 24.08.2015, the authority is of the view that the promoter has failed to fulfil his

obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

17. With respect to the **second issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11(4)(a) of the Act *ibid*, the promoter is liable under proviso to section 18(1) of the said Act to pay interest to the complainant, at the prescribed rate, for every month of delay till the offer of possession.
18. With respect to the **third issue** raised by the complainant, since open car parking is not part of FAR, therefore, it cannot be sold separately. Thus, no charges on account of car parking shall be charged from the complainant.
19. With respect to the **fourth issue** raised by the complainant, the respondent can charge on account of firefighting equipment, electrical equipment and for club house only as per the terms of the agreement and not otherwise. As per clause 2(d) of the said agreement, the respondent has charged Rs.75,000/- on account of club membership charges and the complainant has signed the said agreement with wide open

eyes. Thus, she cannot raise this issue at such belated stage. Moreover, with respect to the firefighting equipment and electrical equipment, as per clause 2(h) and (j) of the agreement, the same shall be charged additionally. Thus, this issue is decided in negative.

### **Findings of the authority**

20. 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 Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

21. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the Act *ibid*. 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 *ibid*.
22. The project is registered with the authority. Complaint was filed on 30.10.2018. Notices with respect to reply to the complaint were issued to the respondent on 30.10.2018, 27.11.2018 and 17.01.2019. Besides this, a penalty of Rs. 5,000/- and Rs. 10,000/- was also imposed on 27.11.2018 and on 17.01.2019 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 a count legal/factual propositions, as raised by the complainant in his complaint. A final notice dated 27.02.2019 by way of email was sent to both the parties to appear before the authority on 14.03.2019.

23. As per clause 14(a) of the flat buyer's agreement dated 18.05.2012 for unit no. 507, tower-C2, 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 commencement of construction i.e. 24.02.2012 + 6 months grace period which comes out to be 24.08.2015. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 40,81,484/- to the respondent against a total sale consideration of Rs. 42,60,440/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 24.08.2015 as per the provisions of section 18(1) of the Real Estate (Regulation and 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 10<sup>th</sup> of subsequent month.

24. Respondent is directed not to charge interest more than 10.75% per annum and no charges on account of car parking shall be charged from the complainant.

**Directions of the authority**

25. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- (i) The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum w.e.f. 24.08.2015 till offer of possession for every month of delay on the amount paid by the complainant.
- (ii) The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.



- (iii) The respondent is directed not to charge interest more than 10.75% per annum on delayed payment and no charges on account of car parking shall be charged from the complainant.

26. The order is pronounced.

27. Case file be consigned to the registry.

**(Samir Kumar)**

Member

**(Subhash Chander Kush)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.03.2019

Judgment Uploaded on 10.04.2019

**HARERA**  
GURUGRAM